

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24613
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On August 24, 2011, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing additional tax and interest for taxable year 2010 in the total amount of \$452.34.

The sole issue for this decision is whether the taxpayer is entitled to dependency exemption deductions for [Redacted] and [Redacted], his children from a prior marriage. As part of his appeal, the taxpayer provided a copy of his Decree of Divorce (decree) issued by the [Redacted] Judicial District Court of Idaho on August 17, 2007. The document states that the taxpayer is entitled to claim the minor children as dependents on his income tax returns and his former wife shall execute an IRS Form 8332, or its equivalent, upon request, if deemed desirable by either party, to furnish such to the taxing authorities to document the taxpayer's entitlement to the exemption. As it pertains to the physical custody of the children, the decree also states the taxpayer's former wife will have primary residential custody.

The taxpayer, along with his appointed representative, participated in an informal hearing which was held telephonically on January 17, 2012. The taxpayer submitted additional information for the Commission's consideration subsequent to the hearing. The Commission, having reviewed the file, hereby issues its decision.

Taxpayers may claim dependency exemption deductions for their dependents as defined in Internal Revenue Code (IRC) § 152. Under IRC § 152(a), the term "dependent" means a

qualifying child or qualifying relative. A qualifying child is defined as an individual who (1) bears a certain relationship to the taxpayer, such as the taxpayer's child, (2) has the same principal place of abode as the taxpayer for more than one-half of the taxable year, (3) meets certain age requirements, and (4) has not provided over one-half of the individual's own support for the taxable year. IRC § 152(c)(1)-(3).

However, the dependency exemption, as a general rule, is limited under IRC § 152(e)(1) as follows: if the child received over one-half of his support during the calendar year from his parents who live apart at all times during the last 6 months of the calendar year and the child is in the custody of one or both parents for more than one-half of the calendar year, then the child is treated as the qualifying child of the noncustodial parent if certain requirements are met. The requirements are met if (1) the custodial parent signs a written declaration (in such manner and form as the Secretary may prescribe) that the custodial parent will not claim the child as a dependent for the taxable year; and (2) the noncustodial parent attaches the written declaration to the noncustodial parent's return for the taxable year. IRC § 152(e)(2).

The term "custodial parent" is defined in IRC § 152(e)(4)(A) as the parent having custody for the greater portion of the calendar year. The decree states the minor children will reside primarily with their mother, making her the custodial parent. The taxpayer did not respond to a request for additional information that asked how many days the children lived with him for taxable year 2010 nor did he claim to be the custodial parent. Therefore, it is assumed he is the noncustodial parent.

However, section 152(e) does allow the noncustodial parent to claim the dependent exemption if certain conditions are met. One condition is that the custodial parent must sign a written declaration that he or she will not claim the child as a dependent. This written

declaration may be on Form 8332 or another document that conforms in substance to Form 8332 and is attached to the noncustodial parents return.

A divorce decree or other agreement, if in effect between 1984 and 2008, may replace Form 8332 but it must state all of the following.

1. The noncustodial parent can claim the child as a dependent without regard to any condition, such as payment of child support.
2. The custodial parent will not claim the child as a dependent for the year.
3. The years for which the noncustodial parent, rather than the custodial parent, can claim the child as a dependent.

The taxpayer provided a copy of his 2007 decree that states he is entitled to the dependent exemptions for his minor children. However, this is where the conformity to Form 8332 ends. The decree does not state the years the exemptions are released or that the custodial parent will not claim the children as dependents for the year.

Although the decree provides that the taxpayer is entitled to the dependency exemptions for the children, state courts, by their decisions, cannot determine issues of Federal tax law. Commissioner v. Tower, 327 U.S. 280 (1946); Kenfield v. United States, 783 F.2d 966 (10th Cir.1986); Nieto v. Commissioner, T.C. Memo. 1992-296. The taxpayer's remedy, if any, lies in the state court for enforcement of the decree.

For taxable year 2010, the taxpayer is not the custodial parent of [Redacted] [Redacted] and does not have a signed release from the custodial parent. Therefore, the taxpayer is not entitled to the dependency exemptions.

THEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated August 24, 2011, is AFFIRMED.

IT IS ORDERED that the taxpayer pay the following amount of tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$477	\$21	\$498

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2012.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2012, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.
