

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24771
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] (taxpayers) filed a timely appeal of the Notices of Deficiency Determination (NODD) dated November 9, 2011, but did not request a hearing. Both NODDs were issued by the Compliance Department of the Idaho State Tax Commission (Commission). The NODD for taxable year 2009 proposed additional tax due in the amount of \$647, and the NODD for taxable year 2010 proposed additional tax due in the amount of \$334.

The sole issue for this decision is whether the taxpayers are entitled to a dependency exemption deduction for [Redacted] children from a prior marriage, [Redacted]. The taxpayers claimed dependent exemptions for both children in taxable year 2009, and [Redacted] in taxable year 2010.

[Redacted] was previously married to [Redacted], and the two boys were born of that marriage. [Redacted] were divorced pursuant to the Decree of Divorce entered on February 21, 2003. According to the Decree, custody of the two boys would be shared equally between [Redacted]. The Decree required [Redacted] to pay child support and stated that he shall be awarded the income tax exemption for [Redacted] for the current year and every year thereafter.

Taxpayers may claim dependency exemption deductions for their dependents as defined in Internal Revenue Code (IRC) section 152. Under IRC section 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 section 152(c)(1)-(3).

However, the dependency exemption, as a general rule, is limited under IRC section 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 section 152(e)(2).

The term "custodial parent" is defined in IRC section 152(e)(4)(A) as the parent having custody for the greater portion of the calendar year. In the present case, the taxpayers, when asked how many days the dependents lived with them for taxable years 2009 and 2010, they responded over 50 percent. The taxpayers also stated, in a handwritten letter, that they were told by both their tax consultant and their attorney that if the children lived with them even one day over the 50 percent they could legally claim them. The taxpayers' letter further stated that they have always had the boys 25-30 days over the 50 percent. Based solely on this information, the taxpayers would be considered [Redacted] "custodial parents."

An exception to the above rule is provided in IRC section 152(e)(2) in that if the parent having custody elects to release his claim to exemption for the children in his custody for the

year in question and supplies a written release to that effect, and if the noncustodial parent receiving the right to claim the dependency exemption attaches such waiver to the tax return, then the waiver will be honored and the noncustodial parent may claim the dependency exemption for the child.

To meet the requirements of IRC section 152(e)(2), the written declaration, if not made on the official form provided by the Internal Revenue Service (IRS), “shall conform to the substance of such form.” Sec. 1.152-4T(a) Q & A-3, Temporary Income Tax Regs., 49 Fed.Reg. 34459 (Aug. 31, 1984). The form provided by the IRS, Form 8332, calls for the following information: The name of the child or children, the applicable tax year or years, the custodial parent’s signature, and the date of signature, the custodial parent’s Social Security number, the noncustodial parent’s name, and the noncustodial parent’s Social Security number.

In the present case, the Commission finds that the 2003 Decree of Divorce satisfies the requirements of the IRC and is therefore considered a release of the dependent exemption by the custodial parent. The Decree unconditionally entitles [Redacted] to the tax exemption for [Redacted], it indicates the allocation of the dependent exemptions was to apply to taxable year 2003 and all future years, and it contains the signature of the custodial parent. While the social security numbers of the parties do not appear on the Decree, the court has held that the omission of the custodial parents’ social security numbers from a completed Form 8332 does not invalidate the release affected by that form. Bramante v. Commissioner, T.C. Memo 2002-228. Accordingly, the presence of [Redacted] social security number is not required for the Decree to conform to the substance of Form 8332.

Therefore, the taxpayers do not qualify for the dependent exemptions for the two boys for taxable years 2009 and 2010. Also, because the taxpayers are not entitled to the dependent

exemptions for those years, the taxpayers cannot claim the additional grocery credit for the boys per Idaho Code section 63-3024A.

THEREFORE, the Notices of Deficiency Determination dated November 9, 2011, and directed to [Redacted] are AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2009	\$647	\$66	\$713
2010	334	34	<u>368</u>
		TOTAL DUE	<u>\$1,081</u>

Interest is calculated through August 30, 2012.

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

An explanation of the taxpayers' 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.
