

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25086
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

On June 11, 2012, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing additional tax for taxable year 2011 in the total amount of \$1,002.

The sole issue for this decision is whether the taxpayers are entitled to a dependency exemption deduction for [Redacted], and [Redacted], Mr. [Redacted] children from a prior marriage. As part of their appeal, the taxpayers provided pages one and three of a Petition to Modify Child Support issued by the Third Judicial District Court of Idaho on June 25, 2009. The document states that dependency exemptions for [Redacted] will be assigned to Mr. [Redacted].

The taxpayers did not respond to a letter outlining his alternatives for redetermining a protested NODD nor did they request a 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 Petition provided does not name the custodial parent, but in response to a request for information, when asked how many days the children lived with them during the year, the taxpayers responded, zero.

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.

The Petition to Modify Child Support provides that Mr. [Redacted] is entitled to the dependency exemptions for [Redacted]. However, the mere fact that the State court granted Mr. [Redacted] the right to claim the dependency exemption deduction is immaterial because a state court cannot determine issues of Federal tax law. *Id.* See 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.

For taxable year 2011, the taxpayers are not the custodial parents of [Redacted], [Redacted], and [Redacted], and they do not have a signed release from the custodial parent. Therefore, the taxpayers are not entitled to the dependency exemptions.

The NODD directed to [Redacted] dated June 11, 2012, is AFFIRMED.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2011	\$1,002	\$31	\$1,033

Interest is calculated through January 31, 2013.

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.
