

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 25179  
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 )  
Petitioners. ) DECISION  
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\_\_\_\_\_ )

On August 23, 2012, the staff of the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted](taxpayers) denying the dependency exemption deduction and grocery credit claimed.

The taxpayers timely filed their 2011 Idaho individual income tax return. During the processing of the return, the Taxpayer Accounting Section (Taxpayer Accounting) found that another taxpayer claimed the dependency exemption for the same children, [Redacted], as the taxpayers claimed on their income tax return. Taxpayer Accounting sent the taxpayers a letter requesting information to support the dependency exemption claim. The taxpayers responded and provided a copy of [Redacted] Order for Temporary Support and a Health and Welfare financial analysis report that showed he was current on child support. The Order for Temporary Support states that [Redacted] is entitled to claim the minor children as dependents on his income tax returns and his former wife will sign any documents required for [Redacted] to claim such dependency. Taxpayer Accounting determined the taxpayers were not entitled to the dependency exemption, disallowed the exemption on the taxpayers' return, and sent them a Tax Computation Change letter that shows the tax effect of disallowing the dependency exemption and grocery credit.

The taxpayers protested the change in tax stating that they should be allowed to claim the exemption and grocery credit because it is part of the child custody agreement. Taxpayer Accounting issued an NODD to the taxpayer and sent the matter for administrative review.

The Commission reviewed the matter and sent the taxpayer a letter that discussed the methods available for redetermining a protested NODD. The taxpayers did not respond to a letter outlining their 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 Order provided does not name the custodial parent, but when asked if they were the custodial parent, they stated no. When asked how many days the children resided with them, they provided a 2011 calendar showing 101 days spent with them. Therefore, they are not the custodial parents.

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 parent’s 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 the Order that states he is entitled to the dependent exemptions for his minor children. However, this is where the conformity to Form 8332 ends. The Order 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 Order 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 taxpayers’ remedy, if any, lies in

the State court for enforcement of the Order.

For taxable year 2011, the taxpayer is not the custodial parent of [Redacted] and does not have a signed release from the custodial parent. Therefore, the taxpayers are not entitled to the dependency exemptions. And since the taxpayers are not entitled to the dependency exemption, the taxpayers cannot claim the additional grocery credit for the children per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated August 23, 2012, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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.  
  
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