BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 25022
[Redacted],	)	
	)	
Petitioner.	)	DECISION
	)	

The Idaho State Tax Commission's (Commission) Tax Discovery Bureau (TDB) issued a Notice of Deficiency Determination to [Redacted] (petitioner) proposing additional income tax, penalty, and interest for taxable years 2007 and 2008 in the total amount of $2,765. The petitioner filed a timely protest and petition for redetermination (petition). The petitioner was informed of his appeal rights. The petitioner did not request an informal hearing or provide any additional information subsequent to the issuance of the Commission's hearing rights letter. The Commission, having reviewed the file, hereby issues its decision.

I. IN GENERAL

Based upon information available to the Commission, the TDB determined that the petitioner had an Idaho filing requirement for taxable years 2007 and 2008. The TDB initiated contact with the petitioner in January 2012 requesting that he file an Idaho income tax return for taxable years 2007 and 2008.

Since the petitioner did not file an Idaho income tax return for taxable years 2007 and 2008, the TDB issued a Notice of Deficiency Determination (NODD) on March 9, 2012.[1] The calculation of the petitioner's Idaho taxable income was based mainly upon information that the TDB had acquired from another taxing agency coupled with information contained within the Commission's records.

[1] As of the date of this decision, the petitioner has yet to file an Idaho resident income tax return for taxable years 2007 and 2008.

The TDB calculated the petitioner's Idaho taxable income as follows:

Calculation of Idaho taxable income and tax liability:	**2008**	**2007**
Wages	$31,499	$20,820
Taxable unemployment compensation	2,907	4,830
Income from rental of personal property	2,592	3,719
Standard deduction	-5,450	-5,350
Personal exemptions	-14,000	-13,600
Taxable income as report to other taxing agency	17,548	10,419
Adjustments in arriving at Idaho taxable income:		
Disallowance of personal exemptions	10,500	
Idaho taxable income per NODD	$28,048	$10,419
Idaho tax liability	$1,867	$558
Withholdings	-318	-49
Permanent building fund tax	10	10
Grocery credit	-30	-80
Amount of tax due per NODD	$1,529	$439

The petitioner did not protest the TDB's finding that the petitioner had an Idaho income tax filing requirement for taxable years 2007 and 2008. The only issue that the petitioner protested was the TDB's disallowance of the dependents deduction in taxable year 2008. Accordingly, the Commission affirms the TDB's proposed assessment on taxable year 2007 and will now turn its attention to the protested issue for taxable year 2008.

II. ANALYSIS AND FINDING

In the petition, the petitioner argues that he is entitled to the dependency deduction for his three children since under an Idaho district court "ORDER FOR CHILD SUPPORT BASED ON STIPULATION," he is entitled to the deduction. The petitioner provided the TDB with the first two pages of the court order which provides that the petitioner shall "[p]ay the amount of . . . per month . . . until said child(ren) reaches the age of majority, unless the child(ren) continue High School, in which case, child support shall continue until the child(ren) discontinue(s) High School or reaches the age of nineteen, whichever is sooner. Pursuant to the Child Support

Guidelines, [the petitioner] shall have the right to claim the tax exemption for the child(ren) subject to this order."

The petitioner has not claimed nor provided any information that he was the custodial or the noncustodial parent.[2] For purposes of this decision, the Commission will assume that the petitioner is the noncustodial parent.

Internal Revenue Code (IRC) section 152(e)(1) provides a special rule for divorced or legally separated parents which permits a noncustodial parent, under certain circumstances, a dependency exemption deduction for a child. As relevant to this case, IRC section 152(e)(2) allows the noncustodial parent a dependency exemption deduction for a child if:

> (A) the custodial parent signs a written declaration (in such a manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and
> (B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

According to the regulations in effect in taxable year 2008, the declaration required by section 152(e)(2) must be made on either Form 8332, or on a statement conforming to the substance of that form.[3] The [Redacted] tax court had interpreted the Treasury's temporary regulations, which were in effect in 2008, as including a decree of divorce if the decree met certain requirements.[4] The requirements under the temporary regulations require that the release of the exemption may not be conditional, the custodial spouse must have signed the decree of

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[2] For purposes of IRC section 152, the "custodial parent" is the parent having custody of the child for the greater portion of the calendar year. IRC section 152(e)(4)(A). The "noncustodial parent" is, conversely, the parent without custody of the child for the greater portion of the calendar year. IRC section 152(e)(4)(B).
[3] Treas. Regs. section 1.152–4T(a), Q & A–3, Temporary Income Tax Regs., 49 Fed. Reg. 34459 (Aug. 31, 1984); Armstrong v. Commissioner, 139 T.C. No. 18, 2012 WL 6618720 (2012); Himes v. Commissioner, T.C. Memo.2010–97.
[4] Miller v. Commissioner, 114 T.C. 184, 190 (2000), *aff'd on other grounds sub nom.* Lovejoy v. Commissioner, 293 F.3d 1208 (10th Cir.2002); Treas. Regs. section 1.152-4T(a), Q&A-3, supra.

divorce or separation agreement, and the decree or separation agreement must provide the information required by [Redacted] Form 8332.[5]

Form 8332 requires a taxpayer to furnish: (1) the name of each child; (2) the name and Social Security number of the noncustodial parent claiming the dependency exemption deduction; (3) the Social Security number of the custodial parent; (4) the signature of the custodial parent; (5) the date of the custodial parent's signature; and (6) the year or years for which the claims were released.[6]

The petitioner has provided the Commission with an unsigned incomplete copy of an Idaho district court "ORDER FOR CHILD SUPPORT BASED ON STIPULATION" document. An unsigned divorce decree or agreement is insufficient to transfer a dependency exemption.[7] The mere fact that the Idaho district court may have granted the petitioner the right to claim the dependency exemption deduction is immaterial because a State court cannot determine issues of Federal tax law.[8] Furthermore, nothing in the limited information that the petitioner has provided to the Commission would support a finding that the petitioner was entitled to the dependency deduction as having satisfied all of the aforementioned federal requirements that were in place in 2008. Accordingly, the TDB was correct in not allowing the petitioner to claim the dependency deduction for his three minor children.

In addition to the amount of Idaho income tax sought by the TDB as shown above, the TDB is seeking interest and penalty. The interest asserted in the NODD was asserted in

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[5] Miller v. Commissioner, 114 T.C. at 190.
[6] Miller v. Commissioner, 114 T.C. at 190; "The exemption may be released for a single year, for a number of specified years (for example, alternate years), or for all future years, as specified in the declaration." Treas. Regs. Sec. 1.152–4T(a), Q & A–4, Temporary Income Tax Regs., supra.
[7] Himes v. Commissioner, T.C. Memo.2010–97.
[8] Miller v. Commissioner, 114 T.C. at 196.

accordance with Idaho Code section 63-3045(6). Penalty asserted in the NODD was asserted for failure to file an Idaho income tax return in accordance with Idaho Code section 63-3046(c).

It is the petitioner's burden of proving error on the part of the deficiency determination. Albertson's, Inc. v. State Dept. of Revenue, 106 Idaho 810, 814, (1984); Parsons v. Idaho State Tax Comm'n, 110 Idaho 572, 574 (Ct. App. 1986). Since the petitioner has not met this burden of proof, the Commission upholds the TDB's determination.

THEREFORE, the NODD dated March 09, 2012, and directed to the petitioner is hereby AFFIRMED by this decision.

IT IS ORDERED that the petitioner pay the following amount of tax, penalty, and interest:

YEAR	TAX	PENALTY	INTEREST	TOTAL
2008	$1,529	$382	$272	$2,183
2007	439	110	106	655
			TOTAL DUE	$2,838

Interest is calculated through May 31, 2013, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

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

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

DATED this _____ day of _____ 2013.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2013, 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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