

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 25304  
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 )  
Petitioners. ) DECISION  
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\_\_\_\_\_ )

On September 27, 2012, the Revenue Operations division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing additional tax and interest for taxable year 2011 in the total amount of \$342.29.

The sole issue for this decision is whether the taxpayers are entitled to a dependency exemption deduction for [Redacted], [Redacted] child from a prior relationship. As part of their appeal, the taxpayers provided a Modification Order issued by the Fourth Judicial District Court of Idaho on November 10, 2005. The document states that [Redacted] shall be allowed to claim the minor child, [Redacted], as a deduction for state and [Redacted] income tax purposes commencing with the year 2005.

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 states the parties shall share legal custody of [Redacted] and that primary physical custody shall be awarded to the child's mother. In addition, in a response to a request for additional information that asked how many days [Redacted] lived with them in taxable year 2011, the taxpayers responded, approximately 118. Based on this information, [Redacted] would be [Redacted] 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 taxpayers provided a copy of [Redacted] 2005 Order that states he is entitled to the dependent exemptions for his minor child. 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 child as a dependent for the year.

Although the Order provides that [Redacted] is entitled to the dependency exemption for [Redacted], 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 taxpayers are not the custodial parents of [Redacted] and do not have a signed release from the custodial parent. Therefore, the taxpayers are not entitled to the dependency exemption deduction for [Redacted].

THEREFORE, the NODD directed to [Redacted] dated September 27, 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	\$334	\$13	\$347

Interest is calculated through April 24, 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

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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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