

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25626
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On December 31, 2012, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing tax and interest for taxable year 2010 in the total amount of \$626.48.

The sole issue for this decision is whether the taxpayer is entitled to the dependency exemption deductions for his children from a previous marriage. As part of his appeal, the taxpayer provided a copy of his Complaint for Divorce issued by the Fifth District Court of Idaho on January 10, 2007. Part VII of the document states that the taxpayer shall be allowed to claim the dependency exemption deductions for [Redacted], for as long as he legally may do so. The document also states that the parents are required to execute any documentation required by the [Redacted] to make same effective.

The taxpayer did not respond to a letter outlining his alternatives for redetermining a protested NODD, nor did he 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 decree provided states that primary residential care of the children will be with their mother. In addition, the taxpayer did not respond to a request for information letter that asked how many days the children lived with him during the year, and none of the correspondence received from the taxpayer indicates that he is not the custodial parent, nor has the taxpayer made such claim.

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 Decree provides that the taxpayer is entitled to the dependency exemptions for [Redacted]. However, the mere fact that the State court granted the taxpayer 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 2010, the taxpayer is not the custodial parent of [Redacted] and does not have a signed release from the custodial parent. Therefore, the taxpayer is not entitled to the dependency exemptions.

THEREFORE, the Notice of Deficiency Determination dated December 31, 2012, and directed to [Redacted], is AFFIRMED and made final.

IT IS ORDERED that the taxpayer pays the following amount of tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$588	\$54	\$642

Interest is calculated through October 18, 2013.

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

An explanation of the taxpayer'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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