

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25822
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

On June 28, 2013, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) denying the additional dependency exemption deduction and grocery credit claimed for taxable year 2012.

The sole issue for this decision is whether the taxpayers are entitled to a dependency exemption deduction for [Redacted] son, [Redacted]. In support of their claim, the taxpayers provided a copy of the Petition to Modify Child Support dated July 31, 2012, issued by the Fourth Judicial District Court of Idaho. The document states that [Redacted] shall be entitled to the dependency exemption for [Redacted].

In their protest letter, the taxpayers requested an informal hearing. They did not respond to a letter outlining their alternatives for redetermining a protested NODD, nor did they provide dates for 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. In response to a request for information, the taxpayer stated he is not the custodial parent of [Redacted] and indicated he spent 115 days with them during the year. Based on this response, the taxpayers would not be considered the child's custodial parents. Consequently, the taxpayers have no qualifying child for taxable year 2012.

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 child 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 court order states that the taxpayer is entitled to the dependency exemption for his minor child. 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 [Redacted] 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. The taxpayer's remedy, if any, lies in the state court for enforcement of the order.

The taxpayers have not shown they are the custodial parents and do not have a signed release from the custodial parent. Therefore, the taxpayers are not entitled to the dependency exemption.

THEREFORE, the Notice of Deficiency Determination dated June 28, 2013, and directed to [Redacted], is APPROVED, AFFIRMED, and MADE FINAL. The taxpayers' refund for taxable year 2012 was only reduced, therefore, no demand for payment is made or necessary for that year.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
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.  
  
\_\_\_\_\_