

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25825
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On July 10, 2013, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) denying the additional dependency exemption deduction and grocery credit claimed for taxable years 2011 and 2012.

The sole issue for this decision is whether the taxpayer is entitled to a dependency exemption deduction for his child, [Redacted]. In support of his claim, the taxpayer provided a copy of the Stipulation for Paternity and Child Support dated November 8, 2011, issued by the First Judicial District Court of Idaho. The document states that the taxpayer shall be entitled to the dependency exemption for [Redacted].

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. In response to a request for information, the taxpayer stated he was not the custodial parent of [Redacted] and indicated she spent no days with him during the year. Based on this response, the taxpayer would not be considered [Redacted] custodial parent. Consequently, the taxpayer has no qualifying child for taxable years 2011 and 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 taxpayer has not shown he is the custodial parent and does not have a signed release from the custodial parent. The taxpayer is not entitled to the dependency exemption for [Redacted] for taxable years 2011 and 2012.

THEREFORE, the Notice of Deficiency Determination dated July 10, 2013, and directed to [Redacted], is APPROVED, AFFIRMED, and MADE FINAL. The taxpayer's refund for taxable year 2011 was only reduced, therefore, no demand for payment is made or necessary for that year.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$1,640	\$43	\$1,683

Interest is computed through February 25, 2014.

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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