

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25829
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On July 11, 2013, the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) reducing his refund in the amount of \$281 for taxable year 2012.

The taxpayer filed a timely appeal. He did not request an informal hearing, but did provide additional information for the Commission’s consideration. The Commission hereby issues its decision based upon the information contained in the file along with the additional information provided.

The sole issue for this decision is whether the taxpayer is entitled to a dependency exemption deduction for his son, [Redacted]. As part of his appeal, the taxpayer provided a copy of the Judgment issued by the Fourth Judicial District Court of Idaho on September 18, 2001. The document states that the taxpayer is entitled to claim his son as a dependent on his income tax returns.

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 taxpayer provided a custody order dated June 13, 2003, which states that he is the father and not the custodial 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 parent's 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 taxpayer provided a copy of his 2001 Judgment that states he is entitled to the dependent exemptions for his son. However, this is where the conformity to Form 8332 ends. The Judgment does not state the years the exemptions are released, that the custodial parent will not claim the children as dependents for those years, or the custodial parent's signature.

Although the Judgment provides that the taxpayer is entitled to the dependency exemptions for his son, State courts, by their decisions, cannot determine issues of [Redacted] 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 taxpayer's remedy, if any, lies in the State court for enforcement of the Judgment.

For taxable year 2012, 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 reducing the refund for [Redacted] dated July 11, 2013, is AFFIRMED.

The taxpayer's refund is reduced by the following amounts:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$281.00	\$0.00	\$281.00

An explanation of the taxpayer's 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.