

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25884
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On June 26, 2013, the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing additional tax and interest in the amount of \$185.84 for taxable year 2012.

The taxpayer filed a timely appeal. She did not request a hearing. The Commission, having reviewed the file, hereby issues its decision based upon the information contained in the file.

The sole issue for the decision is whether the taxpayer is entitled to a dependency exemption deduction for [Redacted], her daughter from a previous marriage.

The taxpayer provided a copy of her divorce decree dated October 20, 2010. The decree states that the parties are awarded joint legal custody of their minor children and joint physical custody of their minor children on the terms of, and according to, the Parenting Plan (a copy of which was not included). As it pertains to the dependency exemption, the decree states the taxpayer is assigned the exemption for the minor child [Redacted], and the father is assigned the exemption for the minor child [Redacted]. The decree also states that the parent not receiving the exemption shall sign the required [Redacted] form(s) to release the claim to the exemption.

Taxpayers may claim dependency exemption deductions for their dependents as defined in Internal Revenue Code (IRC) § 152. IRC § 152(a) defines the term “dependent” as 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 provided over one-half of the individual's own support for the taxable year. IRC § 152(c)(1)(3). A qualifying relative is defined as an individual (1) who bears a certain relationship to the taxpayer, such as the taxpayer's child or grandchild, (2) whose gross income for the taxable year is less than the exemption amount, (3) with respect to whom the taxpayer provides over one-half of the individual's support for the taxable year, and (4) who is not a qualifying child of the taxpayer or of any other taxpayer for the taxable year. IRC § 152(d)(1) and (2).

However, the dependency exemption, as a general rule, is limited under IRC section 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 section 152(e)(2).

The term "custodial parent" is defined in IRC section 152(e)(4)(A) as the parent having custody for the greater portion of the calendar year. In the present case, when asked if she was the custodial parent of [Redacted] in taxable year 2012, the taxpayer responded, "custody agreement did not change until December 2012." When asked how many days [Redacted] lived

with her in taxable year 2012, the taxpayer responded 51 percent. The letter that accompanied the request for information letter sent by the taxpayer stated that she and the children's father had shared custody of their two children in 2012, with her claiming [Redacted] 51 percent and [Redacted] 49 percent and the child's father claiming [Redacted] 51 percent and [Redacted] 49 percent. The taxpayer stated it was made this way so that each parent could claim a child for the earned income credit and child tax credit. The aforementioned custody agreement, dated December 3, 2012, was also included in correspondence from the taxpayer. This agreement stated that the parents shall continue to have joint legal custody of their minor children, but primary residential custody would be placed with their father. Based on this statement, it is assumed primary residential custody prior to the December 3, 2012, agreement may have been with the taxpayer. However, the taxpayer has provided no documentation to show how many days [Redacted] resided with her in taxable year 2012.

The taxpayer did not provide sufficient information to show she is entitled to claim a dependent exemption for [Redacted] as a qualifying child. The taxpayer has not shown that [Redacted] principal place of abode was with her for more than one half of the taxable year, or that [Redacted] was not the qualifying child of another taxpayer. The taxpayer's decree of divorce assigns the state and [Redacted] dependency tax exemptions for [Redacted] to her and the dependent exemption for [Redacted] to her ex-husband. Although the decree provides that the taxpayer is entitled to the dependency exemption for [Redacted], 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 decree.

Deductions are a matter of legislative grace, and taxpayers bear the burden of proving that they are entitled to the deductions claimed. INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84, 112 S. Ct. 1039, 117 L.Ed.2d 226 (1992); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440, 54 S. Ct. 788, 78 L.Ed. 1348 (1934). In the present case, the taxpayer has not met her burden of proving she is entitled to an exemption for a dependent as defined in IRC section 152.

THEREFORE, the Notice of Deficiency Determination directed to [Redacted], dated June 26, 2013, is APPROVED and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$183	\$6	\$189

Interest is calculated through March 28, 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

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