

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25826
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

On July 10, 2013, the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] and [Redacted] (taxpayers) proposing additional tax and interest for taxable year 2012 in the total amount of \$240.93.

The taxpayers filed a timely protest. The taxpayers' file was transferred to the Legal/Policy department for review. They 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 taxpayers are entitled to a dependency exemption deduction for [Redacted], [Redacted] child from a prior marriage. As part of their appeal, the taxpayers provided a Decree of Divorce issued by the [Redacted] Judicial District Court of Idaho on February 17, 1999. The document states that [Redacted] will receive the tax exemption for the minor child.

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).

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. According to the divorce decree, [Redacted] is awarded joint custody of [Redacted], with physical custody being awarded to [Redacted] mother. In addition, in response to a request for information, when asked how many days [Redacted] lived with them during 2012, the taxpayers responded, "None." When asked if they were the custodial parents of [Redacted], they responded, "No." Based on this information, the taxpayers would not be [Redacted] custodial parents.

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 parents 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.

In addition, the custodial parent must sign and date the agreement.

The taxpayers provided a copy of [Redacted] 1999 Divorce Decree dated February 17, 1999, which states [Redacted] “will claim the child as dependent for income tax purposes and all benefits therefrom.” However, this is where the conformity to Form 8332 ends. The Decree does not state the years the exemptions are released or that the custodial parent will not claim the children as dependents for the year. In addition, the decree does not contain the signature of the custodial parent.

Although the Divorce Decree provides that [Redacted] is entitled to the dependency exemptions for his child, 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 taxpayers’ remedy, if any, lies in the State court for enforcement of the Divorce Decree.

For taxable year 2012, the taxpayers are not the custodial parents of [Redacted] and do not have a signed release from the custodial parent. Therefore, the taxpayers are not entitled to the dependency exemption.

THEREFORE, the NODD directed to [Redacted] and [Redacted] dated July 10, 2013, is  
AFFIRMED.

IT IS ORDERED that the taxpayers pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$238.00	\$7.00	\$245.00

Interest is calculated through March 31, 2014.

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2014, 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.  
  
\_\_\_\_\_