

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25831
[Redacted],)	
)	
Petitioners.)	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] and [Redacted] (taxpayers) reducing their refund in the amount of \$298 for taxable year 2012.

The taxpayers filed a timely protest. The file was transferred to the Legal/Tax Policy Division for review. The taxpayers did not request an informal hearing. The Commission hereby issues its decision based upon the information contained in the file.

The sole issue for this decision is whether the taxpayers are entitled to a dependency exemption deduction for [Redacted], [Redacted] child from a previous marriage. As part of their appeal, the taxpayers provided a copy of the Supplemental Custody Order issued by the [Redacted] Judicial District Court of Idaho on April 13, 2011, and Parental Plan Agreement (Agreement) dated April 11, 2011, which covers the parenting of two minor children, [Redacted] and [Redacted]. The dependent exemption for [Redacted] is the only issue in question.

A taxpayer may claim a dependency exemption deduction for his or her 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.

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.

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 a response to a request for information from the Commission, [Redacted] stated that he had joint legal custody of [Redacted], and that [Redacted] spent 70 nights with the taxpayers during taxable year 2012. By definition, [Redacted] is a noncustodial parent.

However, section 152(e)(2) does allow an exception where the custodial parent may elect to release the dependency exemption so the noncustodial parent may claim the dependency exemption. The custodial parent must provide the noncustodial parent a release of the dependency exemption on Form 8332 or other document whose sole purpose is to serve as a written declaration releasing the dependency exemption. The form must be signed and dated by the custodial parent identifying the year or years that the custodial parent will not claim the dependency exemption for the year or years specified. 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 taxpayers provided a copy of the Agreement dated April 11, 2011, which states “For [Redacted] and State tax exemption purposes, the parties agree that Father shall claim the children yearly.” However, the Agreement is not allowed as a substitute for Form 8332 because it does not conform to the requirements of a declaration to replace Form 8332. The Agreement does not specify the years the exemptions are released or that the custodial parent will not claim the children as dependents for those years.

Although the Agreement provides that the taxpayers are entitled to the dependency exemptions 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.

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

THEREFORE, the Notice of Deficiency Determination reducing the refund for [Redacted] and [Redacted] dated July 11, 2013, is AFFIRMED.

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

<u>YEAR</u>	<u>TAX</u>	<u>TOTAL</u>
2012	(\$298.00)	(\$298.00)

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.