

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25852
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On July 12, 2013, the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing additional tax and interest in the amount of \$567 for taxable year 2012.

The taxpayer filed a timely protest. The file was transferred to the Legal/Tax Policy Division for review. The taxpayer 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 taxpayer is entitled to dependency exemption deductions for [Redacted] and [Redacted], his children from a previous marriage. As part of his protest, the taxpayer provided a copy of the Establishment Complaint for Child Support (Complaint) issued by the [Redacted] Judicial District Court of Idaho on August 17, 2004, which states, “A dependency exemption shall be assigned to [Redacted] pursuant to the Idaho Child Support Guidelines. The child support obligation as stated above has been adjusted to provide for the *pro rata* payment of the value of the exemption.”

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 one or both 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) identifying the taxable year or years the custodial parent will not claim the child as a dependent; and (2) the noncustodial parent attaches the written declaration to the noncustodial parent's return for each taxable year the exemption is being claimed. 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 Complaint states that the children live with their mother. The taxpayer agreed, stating in his response to a request for information from the Commission, the children were in his custody on weekends, or approximately 104 nights during the taxable year 2012. The taxpayer is the noncustodial parent.

However, section 152(e) allows 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 for which the declaration is the sole purpose 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 or years identified.
3. The year or years for which the noncustodial parent, rather than the custodial parent, can claim the child as a dependent.

The taxpayer provided a copy of the Complaint dated August 17, 2004, which states he is entitled to the dependent exemptions. However, the Complaint is not allowed as a substitute for Form 8332, because it does not include all the information required on Form 8332. The document is not signed and dated by the custodial parent; does not state the year or years the custodial parent will not claim the dependency exemptions; and does not state the year or years the noncustodial parent may claim the dependency exemptions.

Although the Complaint provides that the taxpayer is entitled to the dependency exemptions for [Redacted] and [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 taxpayer is not the custodial parent of [Redacted] or [Redacted] and does not have a signed release from the custodial parent. As a result, the taxpayer is not entitled to the dependency exemptions.

THEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated July 12, 2013, is AFFIRMED.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$561	\$18	\$579

Interest is calculated through March 31, 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 \_\_\_\_\_ 2014.

IDAHO STATE TAX COMMISSION

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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.

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