

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 26040
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

On August 15, 2013, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] and [Redacted] (taxpayers) denying the additional dependency exemption deduction and grocery credit claimed for taxable year 2012.

The sole issue for this decision is whether the taxpayers are entitled to a dependency exemption deduction for [Redacted] son, [Redacted]. In support of their claim, the taxpayers provided a copy of [Redacted] Decree of Divorce dated October 1, 2008, issued by the [Redacted] Judicial District Court of Idaho. The document states that [Redacted] shall be entitled to the dependency exemption for [Redacted] and that the parent not receiving the exemption will sign the required [Redacted] form to release the claim to the exemption.

The taxpayers did not respond to a letter outlining their alternatives for redetermining a protested NODD nor did they request a hearing. The Commission, having reviewed the file, hereby issues its decision.

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. In response to a request for information, the taxpayers stated that [Redacted] is not the custodial parent and indicated that [Redacted] did not spend any days with them during taxable year 2012. Based on this response, the taxpayers would not be considered the custodial parents of [Redacted].

An exception to the above rule is provided in IRC section 152(e)(2) in that if the parent having custody elects to release his claim to exemption for the children in his custody for the year in question and supplies a written release to that effect, and if 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. This written declaration may be on Form 8332 or another document that conforms, in substance, to Form 8332.

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 court order states that [Redacted] is entitled to the dependency exemption for his minor child, [Redacted]. However, this is where the conformity to Form 8332 ends. The document does not state the years the exemptions are released or that the custodial parent will not claim the child as a dependent for the year. The mere fact that the State court granted the taxpayer the right to claim the dependency exemption deduction is immaterial because a state court cannot determine issues of [Redacted] tax law. *Id.* See 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. In addition, generally, once a child reaches the age of majority, they are no longer under the provisions of a divorce decree. [Redacted] turned 18 on [Redacted], 2012.

The taxpayers did not satisfy the requirements to claim an exemption for [Redacted] in taxable year 2012. [Redacted] is the noncustodial parent of [Redacted]. [Redacted] divorce decree does not satisfy the requirements of the Internal Revenue Code because, among other things, it lacks the signature of the custodial parent. They have also failed to show that [Redacted] principal place of abode was with them for more than one-half of the taxable year. Therefore, the taxpayers do not qualify to claim the dependent exemption for [Redacted]for

taxable year 2012. Also, because the taxpayers are not entitled to the dependent exemption, the taxpayers cannot claim the additional grocery credit for [Redacted] per Idaho Code §63-3024A.

THEREFORE, the Notice of Deficiency Determination dated August 15, 2013, and directed to [Redacted] and [Redacted], is APPROVED and MADE FINAL.

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$716	\$24	\$740

Interest is computed through April 15, 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.  
  
\_\_\_\_\_