

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 26048
[Redacted],)	
)	
Petitioners.)	DECISION
)	
_____)	

On August 22, 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 of \$694 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 dependency exemption deductions for [Redacted] and [Redacted], [Redacted] children from a previous marriage. As part of their protest, the taxpayers provided portions of [Redacted] Divorce Decree (Decree) issued by the [Redacted] Judicial District Court of Idaho, dated June 24, 2004. The portions provided do not state which parent may claim the dependent exemptions for the children.

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 his or her return for each taxable year the exemption is being claimed.

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. [Redacted] responded to a request for information from the Commission, stating that he was not the custodial parent and that the children did not stay with him at all during taxable year 2012. In addition, in his protest, he states that he requested a Form 8332 from the custodial parent to release the dependency exemptions to him. Based on this information, [Redacted] is not the custodial parent.

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 and 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.

Since the portions of [Redacted]Decree that were provided do not reference which parent may claim the dependency exemptions, the Commission cannot determine if the Decree meets any of the requirements which allow the noncustodial parent to claim the exemptions.

For taxable year 2012, [Redacted] is not the custodial parent of [Redacted] or [Redacted]and does not have a signed release from the custodial parent. As a result, the taxpayers are not entitled to the dependency exemptions.

THEREFORE, the Notice of Deficiency Determination directed to [Redacted] and [Redacted] dated August 22, 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>CREDITS</u>	<u>TOTAL</u>
2012	\$848	\$29	-\$160	\$717

Interest is calculated through April 30, 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.
