

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 26116
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

On November 8, 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 dependency exemption deductions for [Redacted]children, [Redacted] and [Redacted]. In support of their claim, the taxpayers provided a copy of [Redacted] Modification of Decree of Divorce dated June 25, 2003, issued by the Seventh Judicial District Court of Idaho. The document states that [Redacted] shall be entitled to the dependency exemption for [Redacted] and [Redacted].

The taxpayers called in response to a letter outlining their alternatives for redetermining a protested NODD, but did not 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 a brief conversation in response to the hearing rights letter, the taxpayers stated the children did not live with them. Based on this response, the taxpayers would not be considered [Redacted] and [Redacted] custodial parents.

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 child 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 [Redacted] is entitled to the dependency exemption for his minor children, [Redacted] and [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 children as dependents 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 Federal 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. The taxpayers' remedy, if any, lies in the state court for enforcement of the order.

The taxpayers did not satisfy the requirements to claim the exemptions for [Redacted] and [Redacted] in taxable year 2012. [Redacted] divorce decree does not satisfy the requirements of the Internal Revenue Code and they do not have a signed release from the custodial parent. Therefore, the taxpayers do not qualify to claim the dependency exemption for [Redacted] and [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] and [Redacted] per Idaho Code 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated November 8, 2013, and directed to [Redacted] and [Redacted], is APPROVED and MADE FINAL.

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	\$367	\$14	\$381

Interest is computed through May 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.
