

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 38941
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On May 15, 2014, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted], (taxpayer) for taxable year 2012, denying the additional dependency exemption deductions and grocery credits claimed for her children, [Redacted] and [Redacted].

The sole issue for this decision is whether the taxpayer is entitled to dependency exemption deductions for her children, [Redacted] and [Redacted]. As part of her appeal, the taxpayer stated that she is the custodial parent of [Redacted] and [Redacted] and that they lived with her 365 days in 2012. The taxpayer also provided a copy of the Decree of Divorce and Judgment dated May 29, 2008, issued by the Third Judicial District Court of Idaho.

A letter was sent to the taxpayer outlining her alternatives for redetermining a protested NODD. She responded by sending the first two pages of the Decree of Divorce and Judgment and copies of her electric bill and mortgage statement, a medical statement for [Redacted], and school records for [Redacted] and [Redacted]. 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 taxpayer stated she is the custodial parent of [Redacted] and [Redacted] and indicated they spent 365 days with her during taxable year 2012. Based on this response, the taxpayer would be considered [Redacted] and [Redacted] custodial parent.

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.

In the present case, the Decree of Divorce and Judgment, dated May 29, 2008, states that the father shall claim the children as income tax exemptions for the year 2008 and every year thereafter and is not conditional upon an event such as payment of child support.

Therefore, the Commission finds that the taxpayer is not entitled to dependency exemption deductions for [Redacted] and [Redacted] for 2012. And since the taxpayer is not entitled to the dependency exemptions, the taxpayer cannot claim the additional grocery credits for the children, per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated May 15, 2014, and directed to [Redacted], is APPROVED, AFFIRMED, and MADE FINAL.

The taxpayer's refund was reduced, therefore no demand for payment is made or necessary.

An explanation of the taxpayer's 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.