

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 38960  
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 )  
Petitioner. ) DECISION  
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\_\_\_\_\_ )

On July 9, 2014, the staff of the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted](taxpayer) denying the dependency exemption deduction and grocery credit claimed.

The taxpayer timely filed his 2013 Idaho individual income tax return. During the processing of the return, the Taxpayer Accounting Section (Taxpayer Accounting) found that another taxpayer claimed the dependency exemption for the same child, [Redacted], as the taxpayer claimed on his income tax return. Taxpayer Accounting sent the taxpayer a letter requesting information to support the dependency exemption claim. The taxpayer responded and provided a copy of a Judgment and Decree of Divorce dated June 27, 2012. The Judgment states that [Redacted] is entitled to claim the minor child, [Redacted], as a dependent on his income tax returns. Taxpayer Accounting determined the taxpayer was not entitled to the dependency exemption, disallowed the exemption on the taxpayer's return, and sent him a Tax Computation Change letter that shows the tax effect of disallowing the dependency exemption and grocery credit.

The taxpayer protested the change in tax, stating that he should be allowed to claim the exemption and grocery credit because it is part of the child custody agreement. Taxpayer Accounting issued an NODD to the taxpayer and sent the matter for administrative review.

The Commission reviewed the matter and sent the taxpayer a letter that discussed the methods available for redetermining a protested NODD. The taxpayer did not respond to a letter outlining his alternatives for redetermining a protested NODD, nor did he 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. The Judgment provided states that there is

shared/split custody of the minor child. The taxpayer responded to a request for additional information, but did not indicate how many days [Redacted] spent with him in 2013.

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.

The taxpayer provided a copy of the Judgment that states he is entitled to the dependent exemption for [Redacted]. However, 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 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 taxpayer's remedy, if any, lies in the state court for enforcement of the order.

For taxable year 2013, the taxpayer has not shown he is the custodial parent and does not have a signed release from the custodial parent. Therefore, the taxpayer is not entitled to the dependency exemption. Since the taxpayer is not entitled to the dependency exemption, the taxpayer cannot claim the additional grocery credit for the child per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated July 9, 2014, is hereby 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

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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.