

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 38996
Petitioners.) DECISION
_____)

On July 30, 2014, the staff of the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted](taxpayers) denying their dependency exemption deduction and grocery credit claimed for [Redacted] son for taxable year 2013.

The taxpayers timely filed their 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 taxpayers claimed on their income tax return. Taxpayer Accounting sent the taxpayers a letter requesting information to support the dependency exemption claim for [Redacted] son. The taxpayers responded and provided three pages of a Stipulation for Paternity and Child Support dated October 6, 2004. The Stipulation orders [Redacted] to pay child support for his minor child, [Redacted] and states the dependency exemption will be assigned to him pursuant to the Idaho Child Support guidelines. Taxpayer Accounting determined the taxpayers were not entitled to the dependency exemption, disallowed the exemption on the taxpayers' return, and issued an NODD to the taxpayers. The taxpayers protested the NODD and stated that they should be allowed to claim the exemption and grocery credit because it is part of the child support agreement. The matter was then sent for administrative review.

The Commission reviewed the matter and sent the taxpayers a letter that discussed the methods available for redetermining a protested NODD. The taxpayers did not respond to the letter 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. The taxpayers responded to a request for additional information and indicated [Redacted] son did not live with them during 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 Stipulation 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 [Redacted] 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 taxpayers have not shown they are the custodial parents of [Redacted] and do not have a signed release from the custodial parent. Therefore, the taxpayers are not entitled to the dependency exemption. Since the taxpayers are not entitled to the dependency exemption, the taxpayers cannot claim the additional grocery credit for the child, per Idaho Code section 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated July 30, 2014, is hereby 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>
2013	\$385	\$14	\$399

Interest is computed through April 1, 2015.

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.