

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 0-157-921-280
[REDACTED])
)
) Petitioners.)
)
) DECISION
)
_____)

On September 23, 2015, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) proposing tax and interest for taxable year 2014 in the total amount of \$354.44. The Commission, having reviewed the file, hereby issues its decision.

The sole issue for this decision is whether the taxpayers are entitled to the dependency exemption deductions for [Redacted]. The taxpayers filed their 2014 Idaho individual income tax return claiming the dependency exemption deductions, and their return was one of two returns that claimed deductions for the children. The taxpayers did not respond to a request for information letter. They protested a subsequent letter notifying them of a tax computation change denying the dependent exemption deductions and statement of account showing the additional tax due.

As part of their protest, the taxpayers provided a Decree of Divorce (Decree) issued by the [Redacted], including Appendix A. Paragraph 11 on page 4 of the Decree states the father shall claim the dependents for tax purposes on even years. The mother will claim the dependents on odd years. There is a handwritten note that states if the father is not current on child support, he forfeits the right to claim the dependents.

The file was referred to the Legal/Tax Policy Division for administrative review. A letter outlining the alternatives for redetermining a protested NODD, including their rights to an informal hearing, was sent to the taxpayers on October 28, 2015. There was no response.

Deductions are a matter of legislative grace and taxpayers bear the burden of proving they are entitled to the deductions claimed. INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84, 112 S. Ct. 1039, 117 L.Ed.2d 226 (1992); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440, 54 S. Ct. 788, 78 L. Ed. 1348 (1934). IRC § 151(c) allows a taxpayer a deduction of the exemption amount for each dependent as defined in IRC § 152.

IRC § 152(a) defines a dependent as either a “qualifying child” or a “qualifying relative.” A qualifying child is an individual who (1) bears a certain relationship to the taxpayer, (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).

A qualifying relative is an individual 1) who bears a certain relationship to the taxpayer, 2) whose gross income for the taxable year is less than the exemption amount, 3) with respect to whom the taxpayer provides over one-half of the individual’s support for the taxable year, and 4) who is not a qualifying child of the taxpayer or of any other taxpayer for the taxable year. IRC § 152(d)(1) – (2).

IRC § 152(e) provides a special rule for parents who are divorced or who do not live together. It states in pertinent part:

(1) In general.

Notwithstanding subsection (c)(1)(B), (c)(4), or (d)(1)(C), if—

(A) a child receives over one-half of the child’s support during the calendar year from the child’s parents—

(i) Who are divorced or legally separated under a decree of divorce or separate maintenance,

(ii) who are separated under a written separation agreement, or

(iii) who live apart at all times during the last 6 months of the calendar years, and—

(B) such child is in the custody of 1 or both of the child’s parents for more than one-half of the calendar year, such child shall be treated as being the

qualifying child or qualifying relative of the noncustodial parent for a calendar year if the requirements described in paragraph (2) or (3) are met.

(2) Exception where custodial parent releases claim to exemption for the year. For purposes of paragraph (1), the requirements described in this paragraph are met with respect to any calendar year if—

(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and

(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

IRC § 152(e)(2) clearly requires that the custodial parent sign a written declaration releasing the dependent exemption in order for the noncustodial parent to claim the child's dependent exemption:

The control over a child's dependency exemption conferred on the custodial parent by section 152(e)(2) was intended by Congress to simplify the process of determining who is entitled to claim dependency exemptions for children of marriage. See H. Rept. 98432 (Part 2) at 1498 (1984). To make section 152(e)(2) work as intended, that control must be preserved by insisting on adherence to the requirements of section 152(e)(2). Simply attaching a State court order that is not signed by the custodial parent to the return of the noncustodial parent does not satisfy the express statutory requirements of section 152(e)(2)(A). Miller v. CIR, 114 T.C. 184, (2000).

The taxpayers do not claim that the father is the custodial parent, but rely on the Decree to claim the dependents for tax purposes in even years. Even though the Decree provides that the taxpayers are entitled to the dependency exemption deductions for the children, the mere fact that the state court granted the taxpayer the right to claim the dependency exemption deductions 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.

For taxable year 2014, the taxpayers do not claim the father was the custodial parent of the children and do not have a signed release from the custodial parent. Therefore, the taxpayers are not entitled to the dependency exemption deductions.

IT IS ORDERED that the taxpayers pay the following amount of tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2014	\$343	\$0	\$12	\$355

Interest is calculated through January 29, 2016.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2015.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, 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.
