

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 1-715-417-088
)
)
Petitioner.) DECISION
)
_____)

On June 5, 2015, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (petitioner) proposing tax and interest for taxable year 2012 in the total amount of \$382.19.

The sole issue for this decision is whether the petitioner is entitled to the dependency exemption deduction for his daughter, [Redacted]. As part of his appeal, the petitioner provided a copy of two pages from a Final Decree of Divorce which appears to have been issued in [Redacted] sometime in October 2012. Item number VIII of the decree states that the petitioner shall claim [Redacted] as a deduction for income tax purposes for the year 2012, and for each year thereafter as long as he is current in his child support payments by December 31 of each year. The paragraph goes on to say that if petitioner is not current in all of his child support obligations and reimbursements as set forth in any year, [Redacted] mother shall be entitled to claim [Redacted] as a deduction for income tax purposes for that taxable year and petitioner shall be required to sign [Redacted] Form 8332, upon presentment to ensure that [Redacted] mother is able to claim her as a deduction for that year. The petitioner also provided a document showing the date and amounts of child support he has paid through Idaho Department of Health and Welfare, along with a letter from them that states he is current and in good standing with all child support balances.

The petitioner 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, (4) has not provided over one-half of the individual’s own support for the taxable year, and who has not filed a joint return (other than only for a claim of refund) with the individual’s spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins. 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 pages of the decree provided do not

address primary residential care of [Redacted]. However, in response to a request for information letter that asked how many days [Redacted] lived with him during the year, the petitioner responded, 91. When asked if he was the custodial parent of [Redacted] in taxable year 2014, the petitioner responded, yes, joint custody.

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 children 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. Treasury Regulation 1.152-4(d) defines a written declaration. **(i) *In general.*** The written declaration must be an unconditional release of the custodial parent's claim to the child as a dependent for the year or years for which the declaration is effective. A declaration is not unconditional if the custodial parent's release of the right to claim the child as a dependent requires the satisfaction of any condition, including the noncustodial parent's meeting of an obligation such as the payment of support. A written declaration must name the noncustodial parent to whom the exemption is released. A written declaration must specify the year or years for which it is effective. A written declaration that specifies all future years is treated as specifying the first taxable year after the taxable year of execution and all subsequent taxable years.

(ii) *Form designated by* [Redacted]. A written declaration may be made on Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent, or successor form designated by [Redacted]. A written declaration not on the form designated by the [Redacted] must conform to the substance of that form and must be a document executed for

the sole purpose of serving as a written declaration under this section. A court order or decree or a separation agreement may not serve as a written declaration.

As mentioned in the above Treasury Regulation, a decree, depending on the language and substance, may not be considered a valid release of the dependent exemption. In addition, the mere fact that the State court granted the petitioner 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.

In the present case, the petitioner is not the custodial parent of [Redacted] as she resided with him less than one half of taxable year 2012. The petitioner does not have a signed release from the custodial parent. The petitioner's decree does not meet the requirement of a written declaration, specifically because it is dependent on him paying child support. The petitioner is not entitled to the dependency exemption for [Redacted] for taxable year 2012.

THEREFORE, the Notice of Deficiency Determination dated June 5, 2015 and directed to [Redacted], is AFFIRMED and MADE FINAL.

IT IS ORDERED and this does ORDER that the petitioner pay the following amount of tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$351	\$38	\$389

Interest is calculated through January 15, 2016.

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

An explanation of the petitioner'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.
