

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 39006
[Redacted],)
)
)
Petitioner.) DECISION
)
_____)

INTRODUCTION

The sole issue for this decision is whether the taxpayer, [Redacted], is entitled to claim a dependency exemption deduction for taxable years 2011 and 2013 for his daughter.

On May 22, 2014, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing additional tax, penalty, and interest for taxable year 2011 in the total amount of \$1,883.53. On July 29, 2014, the Commission issued a second NODD to the taxpayer for taxable year 2013, reducing his claimed refund. Both NODDs were based on a denial of the additional dependency exemption deduction and grocery credit claimed for those taxable years. The taxpayer protested the NODDs by letter dated May 4, 2014.

In support of his claim, the taxpayer provided a copy of a Judgment and Order for Child Support dated February 28, 2011, issued by the [Redacted] Judicial District Court of Idaho. While that document does state that “a dependency exemption will be assigned to” [Redacted], and that his child support obligation is adjusted to provide for the pro rata payment of the value of the exemption, the file shows that the taxpayer is not the custodial parent of the daughter in question here. Moreover, there is nothing in the file from the daughter’s custodial parent releasing the tax exemption to the taxpayer.

The Commission acknowledged receipt of his protest by letter dated July 28, 2014, and on October 23, 2014, he outlined his alternatives for re-determining a protested NODD. The

Commission gave the taxpayer an additional thirty days to either schedule a hearing or arrange for additional submissions to the Commission. The taxpayer did not respond to that letter, nor did he request a hearing. The Commission, having reviewed the file, hereby issues its decision.

ANALYSIS

It is a “familiar rule” that “an income tax deduction is a matter of legislative grace and that the burden of clearly showing the right to the claimed deduction is on the taxpayer.” INDOPCO, Inc. v. C.I.R., 503 U.S. 79, 84 (1992) (internal citations omitted). The Internal Revenue Code (IRC) allows a taxpayer to claim a deduction of the exemption amount for each of the taxpayer’s dependents. 26 U.S.C. § 151(c). The term “dependent” is defined as either a “qualifying child” or a “qualifying relative.” 26 U.S.C. § 152.¹ There exists a special rule for divorced or separated parents with regard to which parent may claim a dependent exemption deduction.

Typically, the parent who does not have custody of a child for the greater portion of the calendar year (the noncustodial parent) would not be able to claim a dependent exemption deduction. 26 U.S.C. § 152(e). In the case of divorced or separated parents, however, the IRC provides a special rule: if a child receives over one-half of the child’s support during the calendar year from the child’s parents who are either divorced or separated, and the child is in the custody of at least one of the child’s parents for more than half of the year, such child shall be treated as being the “qualifying child” or “qualifying relative” of the *noncustodial* parent if the custodial

¹ “Qualifying child” means 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, 4) has not provided over one-half of the individual’s own support for the taxable year, and 5) has not filed a joint return with the individual’s spouse for the taxable year. IRC § 152(c)(1).

“Qualifying relative” means 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).

parent “releases” any claim to the dependency exemption. 26 U.S.C § 152(e)(2) and (3).² In this way, the noncustodial parent may claim a dependent exemption deduction.

This release of the custodial parent’s claim must be accomplished in a specific way. The custodial parent must sign a written declaration “in such manner and form as the Secretary may by regulations prescribe” that such parent will not claim the child as a dependent for any taxable year beginning in such calendar year, and the noncustodial parent must attach such written declaration to the noncustodial parent’s return for the taxable year beginning during such calendar year. 26 U.S.C. § 152(e)(2). The applicable regulations indicate that the required written declaration must be an “unconditional release” of the custodial parent’s claim to the dependency exemption deduction; it must name the noncustodial parent to whom the exemption applies; and it must specify the year(s) for which it is effective. 26 C.F.R. § 1.152-4(e)(1)(i). The noncustodial parent must attach it to the return for the applicable taxable year. 26 C.F.R. § 1.152-4(e)(2).

To facilitate the statutory requirement for a written release, the Treasury Regulations provide that the written declaration may be made on a particular form designated by the Internal Revenue Service, known as “Form 8332.” 26 C.F.R. § 1.152-4(e)(1)(ii). The Form 8332 (known as “Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent”) provides all of the required information to comply with the Section 152(e) “written declaration” requirements. *Id.*

A taxpayer is not required to use Form 8332 in order to comply with the “written declaration” requirement; however, any written declaration not on the form designated by the IRS “must conform to the substance of that form and must be a document executed for the sole

² Section 152(e)(3), 26 U.S.C., is inapplicable here as it applies to divorce and separation agreements executed before January 1, 1985.

purpose of serving as a written declaration under this section.” 26 C.F.R. § 1.152-4(e)(1)(ii). Even more, Treasury Regulation 1.152-4(e) unequivocally states that a “court order or decree or a separation agreement may not serve as a written declaration.” *Id.* (emphasis added).

The mere fact that a state court granted the taxpayer 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 this case, the Commission’s NODD should be approved because the taxpayer has not shown that he qualifies for the dependency exemption. The taxpayer has that burden of providing his entitlement to claim the dependency exemption. Here, the taxpayer has failed to show that his daughter is a “qualifying child” or “qualifying relative” under section 152, IRC. Because he has not shown that he is the custodial parent, he must comply with the requirement to supply the required written declaration of release from the custodial parent. 26 U.S.C § 152(e)(2).

The applicable regulations indicate that the taxpayer must provide a written declaration that is an “unconditional release” of the custodial parent’s claim to the dependency exemption deduction; it must name the noncustodial parent to whom the exemption applies; and it must specify the year or years for which it is effective. 26 C.F.R. § 1.152-4(e)(1)(i). In turn, the taxpayer was required to attach a copy of the written declaration to his return for taxable years 2011 and 2013, the years he is claiming the child as a dependent. 26 C.F.R. § 1.152-4(e)(2).

Additionally, a Form 8332 was never provided. In turn, the regulations indicate that the taxpayer could comply with the “written declaration” requirement by providing an alternative to Form 8332. That substitute to Form 8332 “must conform to the substance of [Form 8332] and

must be a document executed for the sole purpose of serving as a written declaration under this section.” 26 C.F.R. § 1.152-4(e)(1)(ii). The taxpayer never submitted a document that meets this requirement.

Instead, the only writing the taxpayer provided was a Judgment and Order for Child Support issued by the [Redacted] Judicial District Court of Idaho on February 28, 2011. That document states that the dependency exemption for the minor child is assigned to Mr. [Redacted]. (The order even provides that his monthly child support payment is being adjusted in consideration for his being able to take the child tax exemption.)

However, while this document is binding as to the taxpayer’s obligation to pay his child support, this court document fails to satisfy the requirements of the tax law. There is no language of “unconditional release” of the custodial parent’s claim to the dependency exemption deduction; and the order does not specify the year(s) for which it is effective. 26 C.F.R. § 1.152-4(e)(1)(i). Additionally, the order also fails as a substitute to Form 8332, in that the order needs to indicate that it was “executed for the sole purpose of serving as a written declaration under this section.” 26 C.F.R. § 1.152-4(e)(1)(ii). More to the point, the pertinent regulation clearly provides that a “court order or decree or a separation agreement may not serve as a written declaration.” *Id.* (emphasis added).

The plain language of both the code and its regulations are clear and unambiguous as to this result. Section 152(e)(2) unmistakably necessitates that the custodial parent affirmatively release the tax exemption by signing a written declaration. Unless and until such a written declaration is executed and produced, there is no basis for the noncustodial parent to claim the child dependency 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 a marriage. 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. Comm’r of Internal Revenue, 114 T.C. 184, 195-96 (2000) (internal citations omitted).

CONCLUSION

Because the taxpayer is not the custodial parent of his daughter, he is not entitled to claim the dependency exemption deduction unless and until the custodial parent provides a sufficient written declaration releasing the exemption to him. That has not happened here. Therefore, the taxpayer does not qualify to claim the dependent exemption for his daughter for taxable years 2011 or 2013. Also, because the taxpayer is not entitled to the dependent exemption, the taxpayer cannot claim the additional grocery credit for his daughter per Idaho Code § 63-3024A.

THEREFORE, the Notice of Deficiency Determination dated May 22, 2014, and directed to [Redacted], is APPROVED and MADE FINAL.

IT IS ORDERED that the taxpayer pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>CREDIT</u>	<u>TOTAL</u>
2011	\$1,975	\$494	\$197	(\$726)	\$1,940

Interest is computed through June 1, 2015. (For taxable year 2013, taxpayer’s refund was already reduced by \$1,087. Therefore, no demand for payment for that year is made or necessary.)

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.
