

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 39097
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On October 29, 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) proposing additional tax and interest for taxable year 2012 in the total amount of \$350.08.

The taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing. The Commission, having reviewed the file, hereby issues its decision.

The sole issue for this decision is whether the taxpayer is entitled to the dependency exemption for her son from a prior marriage, [Redacted].

Deductions are a matter of legislative grace and the taxpayer bears the burden of proving that 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). Internal Revenue Code (IRC) section 151(c) allows a taxpayer a deduction of the exemption amount for each dependent as defined in IRC section 152. A child of a taxpayer is generally a dependent of the taxpayer. IRC section 152(e) provides a special rule for divorced parents. 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 year, 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.

The taxpayer provided a copy of her decree amending custody and support dated August 23, 2012. The amending decree stated that the parents are to share custody of [Redacted] once the issues of resistance [Redacted] shows to his father are resolved. Until the issues are resolved, his primary residence will be with the taxpayer.

In the present case, the taxpayer is the custodial parent of [Redacted]. Therefore, in order for the noncustodial parent to be allowed the dependency exemption for [Redacted], the taxpayer would need to release her claim to the exemption on Form 8332. The taxpayer appears to have done just that, as she stated in her protest, “I may have mistakenly signed a release exempting my son, [Redacted], to my ex-husband and that may have cause this problem”. Whether intentional or not, for taxable year 2012, the taxpayer released her claim to the exemption for [Redacted]; she is bound by its terms.

Therefore, the Commission finds that the taxpayer is not entitled to dependency exemption deductions [Redacted]for taxable year 2012.

THEREFORE, the Notice of Deficiency Determination dated October 29, 2014, is AFFIRMED and MADE FINAL.

IT IS ORDERED, and this does ORDER, the taxpayer pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$340	\$30	\$370

Interest is calculated through June 30, 2015.

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.
