

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 39115
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (taxpayer) submitted a timely protest of the Notice of Deficiency Determination issued October 31, 2014, by the Revenue Operations Division of the Idaho State Tax Commission (Commission) reducing his refund by \$736 for taxable year 2013. The taxpayer disagreed with the adjustment disallowing the dependency exemption deductions for the taxpayer’s children, [Redacted] and [Redacted]. The Commission hereby issues its decision based upon the information contained in the file.

The taxpayer filed his 2013 Idaho individual income tax return claiming dependency exemption deductions for [Redacted] and [Redacted]. The taxpayer’s return was identified as one of two returns that claimed dependency exemption deductions for [Redacted] and [Redacted]. The Taxpayer Accounting Section (Taxpayer Accounting) requested additional information from the taxpayer in the form of a questionnaire. The taxpayer did not respond. A tax computation letter was sent which showed the change in the tax as a result of removing the dependent exemption deductions for [Redacted] and [Redacted]. The taxpayer protested the tax computation change letter.

Included with the protest was the completed questionnaire date stamped July 16, 2014, which stated [Redacted] was the father of [Redacted] and [Redacted] with joint custody and the children had spent 180 days with him during the tax year. An additional questionnaire was

provided with a fax date stamp of June 18, 2014, on which [Redacted] states he is the father of the children, the noncustodial parent, and the children spent 183 days with him.

The taxpayer also provided a Judgment for Modification (Judgment) from the First District Court on April 29, 2013, and a Parenting Plan Agreement (Agreement) between [Redacted] and a different opposing party. The Judgment concerns [Redacted] and [Redacted] and the Agreement does not. The Judgment entitles the taxpayer the right to claim [Redacted] and [Redacted].

Taxpayer Accounting reviewed the additional information, determined the taxpayer was not entitled to the exemptions, and issued a Notice of Deficiency Determination based on the tax computation change. The file was forwarded to the Legal/Tax Policy Division for administrative review. A letter was sent to the taxpayer explaining the methods available for redetermining a protested Notice of Deficiency Determination. There was no response.

Taxpayers may claim dependency exemption deductions for their dependents as defined in Internal Revenue Code (IRC) section 152. Under IRC section 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 section 152(c)(1)-(3).

However, the dependency exemption, as a general rule, is limited under IRC section 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.

According to IRC section 152(e)(2), in order for the noncustodial parent to claim the dependency exemption deduction, the parent having custody must elect to release his claim to the exemption for the children in his custody for the year in question and supply a written release to that effect. If the noncustodial parent receives the right to claim the dependency exemption and 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 term “custodial parent” is defined in IRC section 152(e)(4)(A) as the parent having custody for the greater portion of the calendar year.

In the present case, the taxpayer gave different responses to the same request for information. In one response, the taxpayer claims the children resided less than half the year and in the other it was just over half the year. In neither response does he claim to be the custodial parent, nor has he provided information that he is the custodial parent. In his protest, the taxpayer looks to the Judgment to support his claim to the dependency exemption deductions for [Redacted] and [Redacted].

The Judgment provides that the taxpayer is entitled to the dependency exemptions for [Redacted] and [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] 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 2013, the taxpayer is not the custodial parent and does not have a release signed by the custodial parent. Therefore, he is not entitled to the dependency exemption deductions for [Redacted] and [Redacted].

THEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated October 31, 2014, is AFFIRMED.

Since the taxpayer's refund was reduced, no demand for payment is made or necessary.

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.
