

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 39122
[Redacted],	)	
	)	
Petitioners.	)	DECISION
	)	
	)	
_____	)	

[Redacted] and [Redacted] (taxpayers) 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 the taxpayers’ refund by \$369 for taxable year 2013. The taxpayers disagreed with the adjustment disallowing the dependency exemption deduction for [Redacted] daughter, [Redacted]. The Commission hereby issues its decision based on the information contained in the file.

**BACKGROUND**

The taxpayers filed their 2013 Idaho individual income tax return claiming a dependency exemption deduction for [Redacted] daughter. The taxpayers’ return was identified as one of two returns that claimed a dependency exemption deduction for [Redacted]. The Taxpayer Accounting Section (Taxpayer Accounting) requested additional information from the taxpayers in the form of a questionnaire. There was no response. Taxpayer Accounting sent the taxpayers a Statement of Account notifying them of the change in tax due as a result of removing the dependency exemption deduction. The taxpayers’ response was that according to the Judgment and Decree of Divorce (Decree) issued by the [Redacted] District Court on May 1, 2004, the parents share custody and take turns claiming the dependency exemption deduction for their daughter. The Decree states that [Redacted] is allowed to claim [Redacted] for taxable years ending in an odd number.

Taxpayer Accounting issued a Notice of Deficiency Determination, based on the tax computation change, denying the deduction and forwarded the file 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.

### **LAW AND ANALYSIS**

The sole issue for decision is whether the taxpayers are entitled to the dependency exemption deduction for [Redacted] daughter, [Redacted]. Deductions are granted by legislative action, and the taxpayer bears the burden of proving he is 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). The 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.

IRC section 152(a) defines a dependent as either “a qualifying child” or “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, (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.

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 such taxpayer or of any other taxpayer for the taxable year.

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 one or both 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. Under the Treasury Regulations, section 1.152-4(b)(3), the requirements for a release of claim is met if (1) the custodial parent signs a written declaration (in such manner and form as the Secretary may prescribe) identifying the taxable year or years the custodial parent will not claim the child as a dependent; and (2) the noncustodial parent attaches the written declaration to his or her return for each taxable year the exemption is being claimed.

The noncustodial parent may only claim the dependency exemption when the custodial parent provides the noncustodial parent a release of the dependency exemption on Form 8332 or other document whose sole purpose is to serve as a written declaration releasing the dependency exemption. The form must be signed and dated by the custodial parent identifying the year or years that the custodial parent will not claim the dependency exemption. The noncustodial parent receiving the right to claim the dependency exemption must attach the waiver to their 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 section 1.152-4(d) as the parent having custody for the greater portion of the calendar year.

In the present case, the taxpayers’ protest states that each parent of [Redacted] has primary physical custody on a “50/50 basis”. The taxpayers’ response to the Commission’s request for information states that [Redacted] stayed with them 183 days. The taxpayers have not provided documentation to support this claim.

The taxpayers state that [Redacted] Decree entitles them to claim the dependency exemption deduction for [Redacted] for taxable years ending with an odd number. As a pre-2009 divorce decree or separation agreement, the Decree may qualify as a release of dependency exemption deduction. However, a key requirement for a valid written declaration releasing the claim to exemption is the signature of the custodial parent. The U.S. Tax Court explained this requirement in a 2003 case. The U.S. Tax Court explained:

Language in a divorce decree purportedly giving a taxpayer the right to an exemption deduction does not entitle the taxpayer to the deduction in the absence of the signed written declaration required by section 152(e)(2). Miller v. Commissioner, 114 T.C. 184, 2000 WL 309121 (2000), affd. on another ground sub nom. Lovejoy v. Commissioner, 293 F.3d 1208 (10th Cir.2002). To meet the requirements of section 152(e)(2), the written declaration, if not made on the official form provided by the Internal Revenue Service, “shall conform to the substance of such form.” Sec. 1.152-4T(a) Q & A-3, Temporary Income Tax Regs., 49 Fed.Reg. 34459 (Aug. 31, 1984). The form provided by the Service, Form 8332, calls for the following information: The name of the child or children; the applicable tax year or years; the custodial parent’s signature and the date of signature; the custodial parent’s Social Security number; the noncustodial parent’s name; and the noncustodial parent’s Social Security number. Boltinghouse v. Commissioner, T.C. Memo. 2003-134 (2003).

Unfortunately, for the taxpayers, they cannot rely on [Redacted] divorce decree to obtain the benefit of this exemption.

The U.S. Tax Court explained in a 1996 case:

Although petitioner’s divorce decree provides that he is entitled to the dependency exemptions for the two children, State courts, by their decisions, cannot determine issues of Federal tax law. 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. Thus, the Court concludes that, pursuant to section 152(e), petitioner is not entitled to claim his two children as dependents for 1992. His remedy, if any, lies in the State court for enforcement of the divorce decree. White v. Commissioner, T.C. Memo 1996-438 (1996).

**CONCLUSION**

The taxpayers have not provided sufficient information to show that [Redacted] was the custodial parent for [Redacted] in taxable year 2013. Therefore, as the non-custodial parent, a written release on a completed Form 8332 signed by the custodial parent must be provided in order to claim the dependency exemption deductions. Because the taxpayers did not provide the required release, it is determined that the taxpayers are not entitled to the dependency exemption deduction for [Redacted].

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

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

An explanation of the taxpayers' 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.

\_\_\_\_\_