

Redacted 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.

An exception to the above rule is provided in Redacted which allows the parent having custody to elect to release his claim to the exemption for the children in his custody. The exception is 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. The term "custodial parent" is defined in Redacted as the parent having custody for the greater portion of the calendar year.

The portion of the Decree provided by the taxpayer does not address primary residential care of the Redacted. In response to a request for information letter that asked how many days the Redacted lived with Redacted during the year, the taxpayer states that Redacted is not the custodial parent and no days are claimed. During the hearing, the taxpayer confirmed that Redacted was not the custodial parent.

The Decree provides that the taxpayer is entitled to the dependency exemption deductions for the Redacted. However, the mere fact that the State court granted the taxpayer the right to claim the dependency exemption deductions is immaterial because a state court cannot determine issues of Redacted. *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 of the Redacted and does not have a signed release from the custodial parent. Therefore, the taxpayer is not entitled to the dependency exemption deductions.

IT IS ORDERED that the taxpayer pay the following amount of tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2013	\$589	\$0	\$39	\$628

Interest is calculated through January 29, 2016.

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.
