

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 39238
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On February 26, 2015, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing additional tax and interest for taxable year 2013 in the total amount of \$374.24.

The sole issue for this decision is whether the taxpayer is entitled to the dependency exemption deduction for his son, [Redacted]. As part of his appeal, the taxpayer provided several pages from a copy of a Decree of Divorce (Decree) issued by the [Redacted] District Court of Idaho on December 14, 2012. Section 8, Part C (page 5), of the Decree states that the dependency exemption for [Redacted] will be assigned to the taxpayer pursuant to Idaho Child Support Guidelines.

A letter outlining the alternatives for redetermining a protested NODD was sent to the taxpayer, who requested an informal hearing on April 30, 2015. At the hearing, additional information was requested from the taxpayer, but was not received. The Commission, having reviewed the file, hereby issues its decision.

Taxpayers may claim dependency exemption deductions for their dependents as defined in Internal Revenue Code (IRC) § 152. Under IRC § 152(a), the term “dependent” means a qualifying child or qualifying relative. In IRC § 152(c)(1)-(3), 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.

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

An exception to the above rule is provided in IRC section 152(e)(2) if the parent having custody elects to release his claim to exemption for the children in his custody, then the noncustodial parent may claim the child, if certain conditions are met. 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 IRC § 152(e)(4)(A) as the parent having custody for the greater portion of the calendar year.

The pages of the Decree provided by the taxpayer do not address primary residential care of [Redacted]. In response to a request for information letter that asked how many days [Redacted] lived with him during the year, the taxpayer's answer was "0". During the hearing, the taxpayer confirmed that he was not the custodial parent.

The Decree provides that the taxpayer is entitled to the dependency exemption for [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 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.

For taxable year 2013, the taxpayer is not the custodial parent of [Redacted] and does not have a signed release from the custodial parent. Therefore, the taxpayer is not entitled to the dependency exemption.

THEREFORE, the Notice of Deficiency Determination dated February 26, 2015, is, hereby, APPROVED and MADE FINAL.

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	\$361	\$0	\$20	\$381

Interest is calculated through August 31, 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.
