

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

|                                 |   |                  |
|---------------------------------|---|------------------|
| In the Matter of the Protest of | ) |                  |
|                                 | ) | DOCKET NO. 39251 |
| [Redacted],                     | ) |                  |
|                                 | ) |                  |
| Petitioner.                     | ) | DECISION         |
| _____                           | ) |                  |

On October 21, 2014 the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (petitioner) proposing tax and interest for taxable year 2013 in the total amount of \$375.02.

The sole issue for this decision is whether the petitioner is entitled to the dependency exemption deduction for his daughter, [Redacted]. As part of his appeal, the petitioner provided a copy of a Judgment and Order for Child Support and Medicaid Reimbursement (Judgment and Order) issued by the [Redacted] District Court of Idaho on February 5, 2010. Item No. 4 of the document states that the dependency exemption for [Redacted] will be assigned to the petitioner, pursuant to Idaho Child Support Guidelines.

The petitioner did not respond to a letter outlining his alternatives for redetermining a protested NODD, nor did he request a hearing. 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. 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, (4) has not provided over one-half of the individual’s own support for

the taxable year, and (5) who has not filed a joint return (other than only for a claim of refund) with the individual's spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins. IRC § 152(c)(1)-(3). A qualifying relative is defined as an individual (1) who bears a certain relationship to the taxpayer, such as the taxpayer's child or grandchild; (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 the taxpayer or of any other taxpayer for the taxable year. IRC § 152(d)(1) and (2).

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. The requirements are 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. IRC § 152(e)(2).

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 document provided does not address primary residential care of [Redacted] and the petitioner did not respond to a request for information letter that asked how many days [Redacted] lived with him during the year or if he was the custodial parent.

An exception to the above rule is provided in IRC section 152(e)(2) in that if the parent having custody elects to release his claim to exemption for the children in his custody for the year in question and supplies a written release to that effect, and if the noncustodial parent receiving the right to claim the dependency exemption 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 Judgment and Order provides that the petitioner is entitled to the dependency exemption for [Redacted]. However, the mere fact that the State court granted the petitioner 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 petitioner has not claimed to be, or provided documentation to show that he is, the custodial parent of [Redacted]. The assumption therefore, is that the petitioner is the noncustodial parent and, consequently, would need a signed release from the custodial parent in order to claim the dependency exemption for [Redacted]. The petitioner has provided no such release. The petitioner is not entitled to the dependency exemption.

THEREFORE, the Notice of Deficiency Determination dated October 21, 2014, and directed to [Redacted] is AFFIRMED and made final.

The petitioner has paid the amount due, therefore, no demand for payment is made or necessary.

An explanation of the petitioner'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.