

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 0-190-799-872
[Redacted])	
,)	
)	
Petitioners.)	DECISION
)	

On February 29, 2016, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to **[Redacted]** (taxpayers) reducing the taxpayers' refund by \$289 for taxable year 2013. The Commission, having reviewed the file, hereby issues its decision.

The sole issue for this decision is whether the taxpayers are entitled to the dependency exemption deduction for **[Redacted]** daughter from a previous marriage, **[Redacted]**. The taxpayers amended their 2013 income tax return adding **[Redacted]** as a dependent. The return was one of two returns which claimed **[Redacted]** as a dependent. A form letter requesting additional information was sent. The taxpayers responded that **[Redacted]** was the custodial parent and **[Redacted]** had spent 60 days with him. Based on the information provided, the dependency exemption deduction was denied and a tax computation letter was sent.

The taxpayers protested the change in tax due. As part of their appeal, the taxpayers provided a Divorce Complaint (Complaint) issued by the Third District Court of Idaho on January 12, 2006. The final paragraph of Section 9 on page 5 of the Complaint states the father "should claim the dependency exemption for the child for income tax purposes each year he is current in payment of child support and his share of health care and work related child care at year's-end."

A NODD was issued and the file was referred to the Legal/Tax Policy Division for administrative review. A letter outlining the alternatives for redetermining a protested NODD was sent to the taxpayer on March 24, 2016. There was no response.

Deductions are a matter of legislative grace and taxpayers bear the burden of proving they are 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). Internal Revenue Code (IRC) § 151(c) allows a taxpayer a deduction of the exemption amount for each dependent as defined in IRC § 152.

IRC § 152(a) defines a dependent as either a “qualifying child” or a “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, and (4) has not provided over one-half of the individual’s own support for the taxable year. IRC § 152(c)(1)-(3).

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 the taxpayer or of any other taxpayer for the taxable year. IRC § 152(d)(1) – (2).

IRC § 152(e) provides a special rule for parents who are divorced or who do not live together. It states in pertinent part:

(1) In general.

Notwithstanding subsection (c)(1)(B), (c)(4), or (d)(1)(C), if—

(A) a child receives over one-half of the child’s support during the calendar year from the child’s parents—

(i) Who are divorced or legally separated under a Complaint of divorce or separate maintenance,

(ii) who are separated under a written separation agreement, or

(iii) who live apart at all times during the last 6 months of the calendar years, and—

(B) such child is in the custody of 1 or both of the child's parents for more than one-half of the calendar year, such child shall be treated as being the qualifying child or qualifying relative of the noncustodial parent for a calendar year if the requirements described in paragraph (2) or (3) are met.

(2) Exception where custodial parent releases claim to exemption for the year. For purposes of paragraph (1), the requirements described in this paragraph are met with respect to any calendar year if—

(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and

(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

IRC § 152(e)(2) clearly requires that the custodial parent sign a written declaration releasing the dependent exemption in order for the noncustodial parent to claim the child's dependent exemption.

The control over a child's dependency exemption conferred on the custodial parent by section 152(e)(2) was intended by Congress to simplify the process of determining who is entitled to claim dependency exemptions for children of marriage. See H. Rept. 98432 (Part 2) at 1498 (1984). To make section 152(e)(2) work as intended, that control must be preserved by insisting on adherence to the requirements of section 152(e)(2). Simply attaching a State court order that is not signed by the custodial parent to the return of the noncustodial parent does not satisfy the express statutory requirements of section 152(e)(2)(A). Miller v. CIR, 114 T.C. 184, (2000).

In the present case, the taxpayers claim that the father is the custodial parent, but does not provide sufficient information to demonstrate that his daughter spent over half the year with him.

The taxpayers also rely on a Complaint issued January 12, 2006, to claim the dependent for tax purposes. A post-1984 and pre-2009 divorce decree or separation agreement may be accepted instead of a written release on Form 8332 under certain conditions. In order to qualify, the Complaint must: 1) allow the noncustodial parent to claim the child without condition; 2) state the custodial parent will not claim the dependent; and 3) give the years the custodial

parent will not claim the child. The Complaint must also include the custodial parent's signature and Social Security number.

The Complaint provides that the father is entitled to the dependency exemption deduction if the he meets the requirement of being current in child support payments, health care, and work related childcare for [Redacted]. The Complaint may not be used instead of a written release on Form 8332, because the granting of the exemption is conditional and is missing the other required elements.

In addition, the mere fact that the State court granted the taxpayers the right to claim the dependency exemption deduction is immaterial because a state court cannot determine issues of federal tax law. *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 taxpayers do not support their claim that the father is the custodial parent of [Redacted]. Neither do they provide a signed release from the custodial parent. Therefore, the taxpayers are not entitled to the dependency exemption deductions.

THEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated February 29, 2016, 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 _____ 2016.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2016, 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.
