

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 0-517-312-512
[REDACTED],)	
)	
Petitioners.)	DECISION
_____)	

On June 24, 2015, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (Petitioners) proposing tax and interest for taxable year 2014 in the total amount of \$254.85.

The sole issue for this decision is whether Petitioners are entitled to the dependency exemption deduction for [Redacted], Petitioner [Redacted] son. As part of their appeal, Petitioners provided a copy of [Redacted]’s Order of Child Support (Order) which states that petitioner (Father, [Redacted]) shall claim [Redacted] as a dependent for income tax purposes for taxable year 2014, and for each *even* year thereafter. The Order goes on to state that the parents shall sign the federal income tax dependency exemption waiver. Petitioners also provided a document from the Washington State Department of Social and Health Services showing that petitioner [Redacted] is current and in good standing with all child support balances.

Petitioners responded to a letter outlining their alternatives for redetermining a protested NODD, and requested a hearing which took place telephonically on October 21, 2015. 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 with the individual's spouse. IRC § 152(c)(1)-(3).

In the case of divorced or separated parents, IRC § 152(e)(1) provides 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. Generally speaking, the custodial parent has the control over the dependent exemption deduction in the case of divorced or separated parents. In this case, Petitioners stated [Redacted] was not the custodial parent. However, during the October hearing, Petitioners stated [Redacted] resided at their residence half of the year. Since the Commission has no clear documentation as to who the custodial parent was in 2014, the Commission is inclined to accept Petitioners' first statement of not being the custodial parent and the other party's statement of being the custodial parent. Furthermore, the parent paying child support is generally the noncustodial parent, which is [Redacted].

IRC § 152(e)(2) states that if the parent having custody elects to release his or her claim to exemption for the children in his or her 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. Treasury Regulation 1.152-4(d) defines a written declaration.

(i) *In general.* The written declaration must be an unconditional release of the custodial parent's claim to the child as a dependent for the year or years for which the declaration is effective. A declaration is not unconditional if the custodial parent's release of the right to claim the child as a dependent requires the satisfaction of any condition, including the noncustodial parent's meeting of an obligation such as the payment of support. A written declaration must name the noncustodial parent to whom the exemption is released. A written declaration must specify the year or years for which it is effective. A written declaration that specifies all future years is treated as specifying the first taxable year after the taxable year of execution and all subsequent taxable years.

(ii) *Form designated by IRS.* A written declaration may be made on Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent, or successor form designated by the IRS. A written declaration not on the form designated by the IRS must conform to the substance of that form and must be a document executed for the sole purpose of serving as a written declaration under this section. A court order or decree or a separation agreement may not serve as a written declaration.

Since Petitioners don't have a signed federal income tax dependency exemption waiver, Petitioners are relying on the Order for their claim to the dependent exemption. Petitioners essentially are claiming the Order is a release of the dependent exemption as provided in Treasury Regulation 1.152-4(d). If the Order had all the requirements of a release, Petitioners would get the dependent exemption deduction. Comparing the Order to the requirements of Treasury Regulation 1.152-4(d) the Commission found that each parent agreed not to claim the dependent exemption for specific years. The parent to whom the exemption is released is named. The years are specified. Both parents signed the Order signifying agreement with its

provisions. However, the Order is conditional and the release of the dependent exemption is not the sole purpose of the Order.

As mentioned in the above Treasury Regulation, a decree, depending on the language and substance, may not be considered a valid release of the dependent exemption. In addition, 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. See Commissioner v. Tower, 327 U.S. 280 (1946); Kenfield v. United States, 783 F. 2 d 966 (10th Cir.1986); Nieto v. Commissioner, T.C. Memo.1992-296.

The Commission in considering Petitioners' Order found that the Order did not meet all the requirements of a signed release from the custodial parent. Because Petitioners' Order is conditional (obligor parent needs to be current in child support) and releasing the dependent exemption is not the sole purpose of the document, the Order does not meet the requirement of a written declaration by the custodial parent. Therefore, the Commission finds Petitioners are not entitled to the dependency exemption for [Redacted] for taxable year 2014.

THEREFORE, the Notice of Deficiency Determination dated June 24, 2015, and directed to [Redacted], is AFFIRMED.

IT IS ORDERED and this does ORDER that the petitioner pay the following amount of tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2014	\$249	\$5.85	\$254.85

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the Petitioners' 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.
