

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 1-398-497-280
<b>[Redacted]</b> ,	)	
	)	
Petitioner.	)	DECISION
_____	)	

On November 20, 2015, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to **[Redacted]** (taxpayer) proposing tax and interest for taxable year 2014 in the total amount of \$461.08. The Commission, having reviewed the file, hereby issues its decision.

The sole issue for this decision is whether the taxpayer is entitled to the dependency exemption deductions for his daughters from a previous marriage, **[Redacted]**. The taxpayer amended his 2014 Idaho individual income tax return claiming the dependency exemption deductions, and the return was one of two returns on which the deductions for the children were claimed. The taxpayer's response to a request for information letter was that he was awarded the right to claim the dependency exemption deductions by the court.

As part of his protest, the taxpayer provided the Judgment and Decree of Divorce (Decree) issued by the Fifth District Court of Idaho on August 1, 2013. Section 16 on page 6 of the Decree states he is awarded the right to claim the dependency exemptions for his daughters. The Decree also states that the mother is required to provide the IRS Form 8332 releasing the claim to the exemption for the children annually.

The file was referred to the Legal/Tax Policy Division for administrative review. A letter outlining the alternatives for redetermining a protested NODD, including his rights to an informal hearing, was sent to the taxpayer. He responded that he realized that the IRS Form 8332 was required, but the mother will not provide it. He explained why the amended return was

filed and requested the commission reconsider his protest based on the additional information. The taxpayer declined an informal hearing, stating that he had provided all the pertinent information.

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. *See* 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. *See* 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 decree 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).

The taxpayer reports that his children were in his care for 176 days, but he does not claim to be the custodial parent. He relies on the Decree to claim the dependents for tax purposes. He adds that he is aware that the IRS Form 8332 is required for tax purposes, but the mother refuses to provide the required form. Even though the Decree provides that the taxpayer is entitled to the dependency exemption deductions for his daughters, 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 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 2014, the taxpayer has not demonstrated he is the custodial parent of the children 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>INTEREST</u>	<u>TOTAL</u>
2014	\$451	\$20	\$471

Interest is calculated through May 31, 2016.

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 \_\_\_\_\_ 2016.

IDAHO STATE TAX COMMISSION

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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.