

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-765-060-608
[Redacted])	
)	
Petitioner.)	DECISION
<hr style="width: 40%; margin-left: 0;"/>)	

BACKGROUND

The issue for this decision is whether the taxpayer, **[Redacted]**, is entitled to claim a dependency exemption deduction for taxable years 2012, 2013, and 2014, for his daughter, **[Redacted]**.

On February 18, 2016, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to **[Redacted]** (taxpayer) proposing additional tax, penalty, and interest for taxable years 2012, 2013, and 2014, in the total amount of \$1,675.04. This NODD was based on a denial of the dependency exemption deduction for those taxable years. The taxpayer protested the NODD.

As part of his appeal, the taxpayer provided a copy of a Judgment and Order for Child Support (Order) dated March 7, 2005, issued by the Third Judicial District of Idaho which states that “a dependency exemption shall be assigned to” the taxpayer, and that his child support obligation is adjusted to provide for the pro rata payment of the value of the exemption.

The Commission acknowledged receipt of the taxpayer’s protest by letter dated March 3, 2016, and outlined his alternatives for re-determining a protested NODD. The Commission gave the taxpayer an additional thirty days to either schedule a hearing or arrange for additional submissions to the Commission. The taxpayer responded to the letter and requested an informal hearing that took place on May 3, 2016, by telephone. At the hearing, the taxpayer communicated that he believes even though he is not the custodial parent of **[Redacted]**, he

is entitled to claim the dependency exemption for her based on the language contained in his Order. The taxpayer also noted that his federal tax returns had been accepted by the Internal Revenue Service (IRS) with the dependency exemption. The Commission, having reviewed the file, hereby issues its decision.

ANALYSIS

It is a “familiar rule” that “an income tax deduction is a matter of legislative grace and that the burden of clearly showing the right to the claimed deduction is on the taxpayer.” INDOPCO, Inc. v. C.I.R., 503 U.S. 79, 84 (1992) (internal citations omitted). The Internal Revenue Code (IRC) allows a taxpayer to claim a deduction of the exemption amount for each of the taxpayer’s dependents. 26 U.S.C. § 151(c). The term “dependent” is defined as either a “qualifying child” or a “qualifying relative.” 26 U.S.C. § 152.¹ There exists a special rule for divorced or separated parents with regard to which parent may claim a dependent exemption deduction.

If the parents claiming a qualifying child do not file a joint return together, the child shall be treated as the qualifying child of the parent with whom the child resided for the longest period of time during the taxable year. 26 U.S.C. § 152(c)(4)(b)(i). Typically, the parent who does not have custody of a child for the greater portion of the calendar year (the noncustodial parent) would not be able to claim a dependent exemption deduction. 26 U.S.C. § 152(e). In the case of divorced or separated parents, however, the IRC provides a special rule: if a child receives over

¹ “Qualifying child” means 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 such taxable year, 3) meets the age requirements, 4) who has not provided over one-half of such individual’s own support for the calendar year in which the taxable year of the taxpayer begins, and 5) has not filed a joint return with the individual’s spouse for the taxable year. IRC § 152(c)(1).

“Qualifying relative” means 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.* (emphasis added). IRC § 152(d)(1).

one-half of the child's support during the calendar year from the child's parents who are either divorced or separated, and the child is in the custody of at least one of the child's parents for more than half of the year, such child shall be treated as being the "qualifying child" or "qualifying relative" of the *noncustodial* parent only if the custodial parent "releases" any claim to the dependency exemption. 26 U.S.C. § 152(e)(2). Only in this way may the noncustodial parent claim a dependent exemption deduction.

Further, the release by the custodial parent must be accomplished in a specific way. The custodial parent must sign a written declaration that s/he will not claim the child as a dependent for any taxable year beginning in such calendar year and the noncustodial parent must attach such written declaration to his or her return for the taxable year beginning during such calendar year. 26 U.S.C. § 152(e)(2). The applicable regulations indicate that the required written declaration must be an "unconditional release" of the custodial parent's claim to the dependency exemption deduction. 26 C.F.R. § 1.152-4(e)(1)(i). It must name the noncustodial parent to whom the exemption applies, and it must specify the year(s) for which it is effective. Id. The noncustodial parent must attach it to the return for the applicable taxable year(s). 26 C.F.R. § 1.152-4(e)(2).

To facilitate the statutory requirement for a written release, the Treasury Regulations provide that the written declaration may be made on a particular form designated by the Internal Revenue Service (IRS), known as Form 8332. 26 C.F.R. § 1.152-4(e)(1)(ii). Form 8332 (known as "Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent") provides all of the required information to comply with the 26 U.S.C section 152(e) "written declaration" requirements. Id.

A taxpayer is not required to use Form 8332 in order to comply with the "written declaration" requirement; however, any 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 a written declaration under this section.” 26 C.F.R. § 1.152-4(e)(1)(ii). Even more, Treasury Regulation section 1.152-4(e) unequivocally states that a “court order or decree or a separation agreement may not serve as a written declaration.” Id. (emphasis added).

The mere fact that a 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. 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.

In the present case, a Form 8332 was never provided. In turn, the regulations indicate that the taxpayer could still comply with the “written declaration” requirement by providing an alternative to Form 8332. 26 C.F.R. § 1.152-4(e)(1)(ii). That substitute “must conform to the substance of [Form 8332] and must be a document executed for the sole purpose of serving as a written declaration under this section.” Id. However, the taxpayer never submitted a document that satisfies this requirement. The Order provided does state that a dependency exemption will be assigned to the taxpayer but that is where the conformity to Form 8332 ends. The Order does not specify the year or years, it does not state the custodial parent will not claim the dependent exemption, and the custodial parent is not properly identified, nor is the document signed by either parent.

Instead, the taxpayer attached a Form 2120 indicating that **[Redacted]** paid over 10 percent of the support for **[Redacted]** . This form indicates the taxpayer had a signed statement from **[Redacted]** waiving her right to claim **[Redacted]** as a dependent. The taxpayer did not, however, attach the signed statement to the tax return as required. 26 C.F.R. § 1.152-4(e)(1)(i)(2). The taxpayer did attach a Judgment and Order for Child Support issued by the Third Judicial District Court of Idaho on March 7, 2005. That document states that the

dependency exemption for the minor child is assigned to the taxpayer; however, while this document is binding as to the taxpayer's obligation to pay his child support, this court document fails to satisfy the requirements of the tax law. Id.

Additionally, the taxpayer contends that because the IRS "accepted" his returns and issued a refund, his Idaho returns must match the federal return. Idaho code requires that a taxpayer calculate his or her state tax liability by starting with federal "taxable income," and adding/subtracting certain state-specific adjustments. See Idaho Code § 63-3022. Because Idaho uses the federal taxable income as its starting point in assessing Idaho tax liability, it is imperative that the Commission review and verify the basis for which the federal taxable income has been calculated. The IRS has three years from the date the return was filed to audit the return to verify the accuracy of the information within. 26 U.S.C. § 6501(a). Further, the IRS processing a return without audit is not the equivalent of the IRS having made a decision on the matter.

CONCLUSION

Because the taxpayer is not the custodial parent of his daughter, he is not entitled to claim the dependency exemption deduction unless and until the custodial parent provides a sufficient written declaration releasing the exemption to him. That has not happened here. Therefore, the taxpayer does not qualify to claim the dependent exemption for his daughter for taxable years 2012, 2013, and 2014.

THEREFORE, the Notice of Deficiency Determination dated February 18, 2016, and directed to **[Redacted]** , is APPROVED and MADE FINAL.

IT IS ORDERED that the taxpayer pays the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$321	\$41	\$362
2013	551	53	604
2014	694	38	<u>732</u>
TOTAL DUE:			<u>\$1,698</u>

Interest is computed through September 1, 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

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.

[Redacted]