

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 39065
[Redacted])	
,)	
)	
Petitioner.)	DECISION
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BACKGROUND

The issue for this decision is whether the Taxpayer, **[Redacted]**, is entitled to claim a dependency exemption deduction for taxable year 2013.

On September 26, 2014, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to **[Redacted]** (Taxpayer) proposing additional tax and interest for taxable year 2013. The NODD denied the dependency exemption deduction for **[Redacted]**. Taxpayer protested the NODD. The Commission now affirms the NODD as set forth herein.

In support of his claim, Taxpayer provided an Order Modifying Custody and Child Support, issued on September 10, 2012, by the Sixth Judicial District Court of Idaho. While the Order does state that “[Taxpayer] should be entitled to claim the parties” minor child as a dependent for federal and state income tax purpose,” the order also indicates that Taxpayer is not the custodial parent of the child in question.

The Commission acknowledged receipt of Taxpayer’s protest, and outlined his alternatives for redetermining a protested NODD. The Commission gave Taxpayer thirty days to either schedule a hearing or provide additional information for the Commission to consider. Taxpayer did not respond, so the Commission sent a follow-up letter to Taxpayer. Taxpayer still failed to respond, so the Commission reviewed the file and hereby issues its decision.

ANALYSIS

It is a fundamental principle that “an income tax deduction is a matter of legislative grace and that the burden of showing the right to the claimed deduction is on the taxpayer.” INDOPCO, Inc. v. C.I.R., 503 U.S. 79, 84 (1992). The Internal Revenue Code (IRC) allows a taxpayer to claim a deduction of the exemption amount for each of the taxpayer’s dependents. IRC section 151(c). The term dependent is defined as either a “qualifying child” or a “qualifying relative.” IRC section 152.¹ In the case of divorced or separated parents, the IRC provides a special rule that if a child receives over one-half of the child’s support during the calendar year from the child’s parents, and the child is in the custody of at least one of the parents for more than half of the year, such child shall be treated as being the “qualifying child” of the noncustodial parent only if the custodial parent releases claim to the dependency exemption. IRC section 152(e)(2). The parent with whom the child resides for the greater portion of the calendar year is the custodial parent. IRC section 152(e)(4)(A).

The release of the dependent exemption by the custodial parent must be accomplished in a specific way. The custodial parent must sign a written declaration that he or she will not claim the child as a dependent, and the noncustodial parent must attach such written declaration to his or her return. IRC 152(e)(2). Treasury Regulation section 1.152-4(e)(1)(i) states the requirements of a written declaration. The declaration must be an unconditional release of the

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.* IRC § 152(d)(1). (emphasis added).

custodial parent's claim to the dependency exemption deduction, it must name the noncustodial parent to whom the exemption applies, and it must specify the year(s) for which it is effective.

In lieu of a written declaration, the noncustodial parent can attached, to his income tax return, a completed Internal Revenue Service Form 8332 signed by the custodial parent. If a taxpayer chooses not to use Form 8332, the written declaration "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." Treasury Regulation section 1.152-4(e)(1)(ii). Furthermore, 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." (Emphasis added).

The mere fact that a state court granted 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 this case, Taxpayer relied upon an order of the District Court which states, in addition to other provisions, that the dependency exemption for Taxpayer's minor child is assigned to Taxpayer. However, while this document is binding on Taxpayer, the document falls short of the requirements to satisfy the tax law in addition to being not allowed as a written dependent exemption release on its face. Treasury Regulation section 1.152-4(e).

Taxpayer did provide a Form 8332; however, the form provided is applicable for taxable years 2014 and later. Taxpayer did not provide a Form 8332 for taxable year 2013.

CONCLUSION

Taxpayer is the noncustodial parent of the dependent in question. The dependent does not satisfy the requirements for either a qualifying child or a qualifying relative in order for Taxpayer to claim a dependent exemption. Furthermore, Taxpayer did not provide a valid

release of the dependent exemption from the custodial parent. Therefore, Taxpayer cannot claim the dependent exemption for **[Redacted]** for taxable year 2013.

THEREFORE, the Notice of Deficiency Determination directed to **[Redacted]** dated September 26, 2014, is AFFIRMED.

The additional tax Taxpayer owed as a result of this decision was offset by refunds of subsequent taxable years and has been paid in full. Therefore, no DEMAND for payment is needed or necessary.

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.