

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 39145
[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 year 2013 for his children.

On November 7, 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. This NODD was based on a denial of the dependency exemption deductions for said taxable year. The Taxpayer protested the NODD.

As part of his appeal, the Taxpayer provided a section of a divorce decree stating that the Taxpayer shall have the right to claim “His minor children as dependence exemptions on his taxes.”

The Commission acknowledged receipt of the Taxpayer’s protest by letter dated March 3, 2015, and outlined his alternatives for redetermining 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. On July 28, 2015, after not hearing from the Taxpayer regarding redetermination, the Commission sent a letter allowing the Taxpayer an additional ten days to respond. The letter stated that if no reply was received by the Commission, the Commission may issue a decision based upon the record as it stood. The Commission, having not received a reply, has reviewed the file and 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 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.

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).

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 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 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.

The taxpayer has the burden of providing his entitlement to claim the dependency exemption. INDOPCO, Inc., 503 U.S. at 84. Here, the Taxpayer has not provided adequate evidence showing that any of his children are a “qualifying child” or “qualifying relative.” 26 U.S.C. § 152. The 26 U.S.C. § 152(c)(1) defines “qualifying child” as an “individual who has the same principal place of abode as the Taxpayer for more than one-half of such taxable year.” In the present case, the Taxpayer both declared and provided a calendar claiming that his children stayed with him for 182.5 days. However, the calendar submitted by the Taxpayer as evidence of the number of nights his children stayed with him does not coincide with compelling evidence available to the Tax Commission that was found to be more detailed and appears to have been kept contemporaneously. Therefore, in order to claim the dependency exemptions for his children, the Taxpayer must comply with the requirement to supply the required written declaration of release from the custodial parent. 26 U.S.C. § 152(e)(2).

Here, no Form 8332 was attached to either the 2013 tax return as required in 26 U.S.C. § 152(e)(2). Without Form 8332, 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. The Taxpayer never submitted a document that satisfies this requirement. Instead, the Taxpayer attached a small portion of a divorce decree stating that the dependency exemption for the minor children is assigned to the Taxpayer. However, that is where conformity to Form 8332 ends. The one page of the decree 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.

The pertinent regulation clearly provides that a “court order or decree or a separation agreement may not serve as a written declaration.” 26 C.F.R. § 152(e)(1)(ii). Additionally, 26 U.S.C section 152(e)(2) unmistakably necessitates that the custodial parent affirmatively release the tax exemption by signing a written declaration. Unless such a written declaration is produced and executed, there is no basis for the noncustodial parent to claim the child dependency exemption. 26 U.S.C. § 152(e)(4).

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 a marriage. 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. Comm’r of Internal Revenue, 114 T.C. 184, 195-6 (2000) (internal citations omitted).

CONCLUSION

Because the Taxpayer is not the custodial parent of the children at issue, he is not entitled to claim the dependency exemption deduction because the custodial parent did not provide a sufficient written declaration releasing the exemption to him. Therefore, the Taxpayer does not qualify to claim the dependent exemption for his children for taxable year 2013.

THEREFORE, the Notice of Deficiency Determination dated November 7, 2014, and directed to **[Redacted]**, is hereby APPROVED and MADE FINAL.

IT IS ORDRED that the Taxpayer pays the following tax, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2013	\$726	\$76	\$802

Interest is computed through November 23, 2016.

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.