

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

In the Matter of the Protest of )  
[Redacted] ) DOCKET NO. 0-745-674-752  
)  
)  
Petitioners. ) DECISION  
\_\_\_\_\_ )

The issue for this decision is whether [Redacted] (Petitioners), are entitled to claim a dependent exemption deduction for [Redacted] daughter, [Redacted] in taxable year 2017. The Idaho State Tax Commission (Commission) has found they are not.

**BACKGROUND**

On April 17, 2018, the Commission issued a Notice of Deficiency Determination (Notice) to Petitioners proposing additional tax for taxable year 2017 in the total amount of \$392. The Notice denied the dependent exemption deduction claimed for [Redacted] in that tax year. Petitioners protested the Notice.

As part of his appeal, Petitioners provided a copy of [Redacted] Decree of Divorce (Decree) dated [Redacted] 2005, issued by the First Judicial District of Idaho. The Decree states [Redacted] "... shall be entitled to claim both children as income tax exemptions for each year, provided he is current in child support by December 31<sup>st</sup> of each year."

The Commission acknowledged Petitioners protest in a letter. Petitioners were also sent a letter outlining their alternatives for redetermining a protested Notice. Petitioners contacted the Commission in response to the letter but did not request an informal hearing.

**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

(I.R.C.) 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.<sup>1</sup> A special rule exists for divorced or separated parents regarding 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, the I.R.C. provides a special rule. The rules states: 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). This is the only way the noncustodial parent may claim a dependent exemption deduction.

In addition, 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

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<sup>1</sup> "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. I.R.C. § 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). I.R.C. § 152(d)(1).

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. Treas. Reg. § 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.*

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. Treas. Reg. § 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 § 152(e) “written declaration” requirements. *Id.*

A taxpayer is not required to use Form 8332 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.” Treas. Reg. § 1.152-4(e)(1)(ii). Even more, Treas. Reg. § 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 dependent 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 (10<sup>th</sup> Cir. 1986); *Nieto v. Commissioner*, T.C.M. 1992-296.

In the present case, Petitioners did not provide a Form 8332. However, the regulations indicate that Petitioners could still comply with the “written declaration” requirement by providing

an alternative to Form 8332. Treas. Reg. § 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.* Petitioners never submitted a document that satisfies this requirement. The Decree provided does state that a dependent exemption will be assigned to [Redacted] but that is where the conformity to Form 8332 ends. The Decree does not specify the year or years, it does not state the custodial parent will not claim the dependent exemption, and neither parent signed the document. In addition, the fact that entitlement to the dependent exemption is conditional also makes the document insufficient.

The Decree states that the dependent exemption for the minor child is assigned to [Redacted] however, while this document is binding as to [Redacted] obligation to pay his child support, this court document does not satisfy the requirements of the tax law. *Id.*

### CONCLUSION

Because [Redacted] is not the custodial parent of [Redacted] he is not entitled to claim the dependent exemption deduction unless and until the custodial parent provides a sufficient written declaration releasing the exemption to him. That has not happened here. Therefore, Petitioners do not qualify to claim the dependent exemption for [Redacted] for taxable years 2017.

THEREFORE, the Notice dated April 3, 2018, and directed to [Redacted]

is APPROVED and MADE FINAL.

IT IS ORDERED that Petitioners pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2017	\$329	\$6	\$335

Interest computed through October 12, 2018.

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

An explanation of Petitioners' right to appeal this Decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2018,  
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.

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