

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16112
[REDACTED],)	
)	DECISION
Petitioners.)	
)	

On September 5, 2001, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing additional income tax, penalty, and interest for the taxable year 1998 in the total amount of \$1,832.

On November 1, 2001, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but rather chose to rely on the information they provided with their protest letter. The Tax Commission, having reviewed the file, hereby issues its decision.

[Redacted] [Redacted]The Bureau adjusted the taxpayers' 1998 Idaho income tax return and sent them a Notice of Deficiency Determination. The taxpayers appealed the Bureau's determination.

[Redacted] Consequently, the taxpayers ended up paying the additional federal tax even though they felt they were legally and morally right.

The Bureau referred the matter for administrative review and the Tax Commission sent the taxpayers a letter giving them two options for having the Notice of Deficiency Determination redetermined. The taxpayers chose to have the Tax Commission decide the matter based upon the information they presented with their protest letter.

In August 1995, the taxpayers' daughter broke her neck. For the next year, their daughter was in direct hospital care because of a six-month coma and her tetraplegic condition. She was released to the taxpayers' care and they provided in-home care for the next 18 months. During that time, Medicaid-paid CNAs assisted the taxpayers in the care of their daughter.

The taxpayers stated that [Redacted] and their daughter desired to leave the [Redacted] area and return home to [Redacted]. Apparently, the taxpayers' daughter's injury happened in the [Redacted] area or she was transported to [Redacted] for medical treatment. The taxpayers stated they were told by the Department of Health and Welfare that they would qualify for in-home care and that they could provide it themselves. At this time, [Redacted] became certified as a CNA and took over the care of their daughter.

The taxpayers' daughter required full care 24 hours a day. This included attending to every bodily function, providing a full range of motion and exercises, administering medications, transporting to outside therapies, and getting to doctor appointments. The taxpayers believed that the payments they received from the Department of Health and Welfare for giving this type of care qualified for the exclusion from income provided for in IRC section 131.

IRC section 131 states,

(a) General rule

Gross income shall not include amounts received by a foster care provider during the taxable year as qualified foster care payments.

The taxpayers further qualified the payments as being difficulty of care payments, which are specifically addressed in IRC section 131(c). The taxpayers did not provide anything from a government agency that stated the payments were for difficult care. They relied solely on the definition of difficulty of care payments in the Internal Revenue Code.

IRC section 131(c) states,

(c) Difficulty of care payments

For purposes of this section –

(c)(1) Difficulty of care payments

The term 'difficulty of care payments' means payments to individuals which are not described in subsection (b)(1)(B)(i), and which –

(A) are compensation for providing the additional care of a qualified foster individual which is –

(i) required by reason of a physical, mental, or emotional handicap of such individual with respect to which the State has determined that there is a need for additional compensation, and

(ii) provided in the home of the foster care provider, and

(B) are designated by the payor as compensation described in subparagraph (A).

The taxpayers believe that the 24-hour care of their tetraplegic daughter meets the definition of the additional compensation for difficulty of care payments.

IRC section 131 deals with the treatment of certain foster care payments. The general rule as quoted above states that a foster care provider does not include in gross income qualified foster care payments. Qualified foster care payments are defined in subsection (b) of IRC section 131. It states,

(b)(1) In general

The term 'qualified foster care payment' means any amount –

(A) which is paid by a State or political subdivision thereof or by a placement agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and

(B) which is –

(i) paid to the foster care provider for caring for a qualified foster individual in the foster care provider's home, or

(ii) a difficulty of care payment.

Therefore, for payments to be excluded from gross income, there must be a foster care provider and a qualified foster individual. A qualified foster individual is defined in IRC section 131(b)(2) as follows.

(b)(2) Qualified foster individual

The term 'qualified foster individual' means any individual who is living in a foster family home in which such individual was placed by –

(A) an agency of a State or political subdivision thereof, or

(B) in the case of an individual who has not attained age 19, an organization which is licensed by a State (or political subdivision thereof) as a placement agency and which is described in section 501(c)(3) and exempt from tax under section 501(a).

The Internal Revenue Code is very specific that in order for payments from a State or political subdivision thereof or from a placement agency to be excluded from gross income, a qualified foster individual has to be placed with a foster care provider by a State or political subdivision thereof. Micorescu v. Commissioner of Internal Revenue, T.C. Memo 1998-398, (1998). The taxpayers stated their daughter was released to their care from the hospital. There is no indication in the record that the State, a political subdivision thereof, or a placement agency placed the taxpayers' daughter with a foster care provider.

In addition to the placement of the taxpayers' daughter, there is a question of whether the taxpayers were foster care providers. Idaho Code section 39-1202 defines foster care and foster home. It states in pertinent part,

(12) "Foster care" means child care by a person not related to the child, in lieu of parental care, in a foster home.

(13) "Foster home" means a home which accepts, for any period of time, with or without compensation, one (1) or more children who are not related to the foster parent as members of the household for the purpose of providing substitute parental care.

The record provides a single statement that gives a little insight as to whether the taxpayers were foster care providers. [Redacted] Although it is unclear what is meant by the term "pre adoption-children", this statement provides some evidence that the taxpayers opened their home for foster care placement.

However, as stated in Idaho Code section 39-1202(12), foster care is care for a child not related to the foster care provider. Therefore, it would seem the taxpayers were not giving their daughter foster care as defined in the Idaho Code. If the taxpayers were not giving their daughter

foster care, the payments they received from the Department of Health and Welfare to assist in the care of their daughter did not qualify as foster care payments under IRC section 131.

The Tax Commission finds that the taxpayers' position fails in two areas. First, there is nothing in the record to show that the taxpayers' daughter was placed with a foster care provider by the State, a political subdivision thereof, or a placement agency. Second, the daughter does not qualify as a qualified foster individual because she is living with and being cared for by her parents rather than living in a foster family home. IRC section 131 requires that the daughter be a qualified foster individual and that the qualified foster individual be placed by the State or a political subdivision thereof or a placement agency. If either of these is missing, the payments received cannot be considered qualified foster care payments and they cannot be excluded from gross income. Therefore, the Tax Commission upholds the Notice of Deficiency Determination.

WHEREFORE, the Notice of Deficiency Determination dated September 5, 2001, is hereby APPROVED, AFFIRMED, and MADE FINAL.

The taxpayers paid the tax, penalty, and interest as stated in the Notice of Deficiency Determination so no further demand for payment is necessary.

An explanation of the taxpayer's right to appeal this decision is included with this decision.

DATED this ____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2002, 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]
