

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

In the Matter of the Protest of	)	
[Redacted]	)	DOCKET NO. 0-978-008-064
	)	
Petitioners.	)	DECISION
_____	)	

This case arises from a timely protest of a Notice of Deficiency Determination (Notice) issued to [Redacted] (Petitioners). Revenue Operations Division (Revenue Operations) disallowed Petitioners' dependent exemption for taxable year 2017. The Idaho State Tax Commission (Commission) after a thorough review of the matter upholds the Notice issued to Petitioners.

THEREFORE, the Notice dated June 18, 2018, and directed to Petitioners, is AFFIRMED.

Since Petitioners' refund was reduced and no additional tax is owed, a DEMAND for payment is not required or necessary.

**BACKGROUND**

Petitioners filed their 2017 Idaho individual income tax return claiming dependency exemption for their son. Petitioners' tax return was one of two returns claiming the same dependent. Revenue Operations sent a request to Petitioners for more information to verify their eligibility for the exemption. Accounting reviewed Petitioners' response and determined they were not qualified for the dependent exemption. Revenue Operations sent Petitioners a letter showing the tax effects of the removal of the dependent exemption. Petitioners protested the decision to deny them the exemption. Revenue Operations accepted Petitioners' protest and sent them a Notice. Revenue Operations

with no further communications from Petitioners transferred the matter for administrative review.

The Commission reviewed the matter and sent Petitioners a letter giving them two options for addressing a protested Notice. Petitioners did not request a hearing nor did they provide more information.

### **LAW AND ANALYSIS**

On appeal, a deficiency determination issued by the Commission “is presumed to be correct, and the burden is on the taxpayer to show that the Commission’s decision is erroneous.” See *Parker v. Idaho State Tax Comm’n*, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010) (citing *Albertson’s Inc. v. State Dep’t of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)). The Commission requires Petitioners to prove the amount asserted in the Notice is incorrect. Here, Petitioners did not prove the Notice is incorrect.

Internal Revenue Code (I.R.C.) allows a taxpayer a deduction of the exemption amount for each dependent as defined in I.R.C. § 152 who is either a “qualifying child” or a “qualifying relative<sup>1</sup>.” In this case, Petitioners submitted for the Commission’s consideration a copy of a court order by the District Court of the state of Idaho granting Petitioners authority to claim the dependency exemption for their son on their Idaho individual income tax return. Although Petitioners’ court order provides that Petitioners are entitled to the dependency exemption for their son, state courts, by their decisions,

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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 the taxable year, 3) meets the age requirements, 4) who has not provided over-half of the individual’s own support for the taxable 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. I.R.C. § 152(d)(1).

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.M. 1992-296. Also, though the court intended Petitioners to get the dependency exemption for their son, the court order does not meet the requirement of Treasury Regulation § 1.152-4 to be a written declaration<sup>2</sup> that the custodial parent will not claim the child.

The Commission must adhere to the I.R.C. and the Idaho Code in resolving tax issues; therefore, in this case the court order falls short of the written declaration<sup>3</sup> requirements needed to release the dependency exemption for their son from the custodial parent. See *T.C.M. 1996-438*, 1996 WL 540111 (U.S. Tax Ct.)

### **CONCLUSION**

For taxable year 2017, Petitioners did not show that their son met the requirements<sup>4</sup> of either a qualifying child or qualifying relative. Since their son was neither a qualifying child nor qualifying relative for Petitioners in taxable year 2017, Petitioners do not get the benefit of the dependent exemption for their son. In addition, because Petitioners cannot claim the dependent exemption, Petitioners cannot claim the additional grocery credit per Idaho Code § 63-3024A.

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

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<sup>2</sup> Written declaration is an unconditional release of the custodial parent's claim to the child as a dependent for the year or years for which the declaration is effective. A declaration is not unconditional if the custodial parent's release of the right to claim the child as a dependent requires the satisfaction of any condition, including the noncustodial parent's meeting of an obligation such as the payment of support. A written declaration must name the noncustodial parent to whom the exemption is released. A written declaration must specify the year or years for which it is effective. A written declaration may be made on Form 8332. A court order or decree or a separation agreement may not serve as a written declaration (unless it conforms to the substance of Form 8332).

<sup>3</sup> See footnote 2.

<sup>4</sup> See footnote 1.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

## CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2019,  
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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