

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 0-074-696-704
	)	
	)	
Petitioner.	)	DECISION
_____	)	

This case arises from a timely protest of a Notice of Deficiency Determination (Notice) issued to  (Petitioner) for taxable year 2017. The Idaho State Tax Commission (Commission) after a thorough review of the matter upholds the Notice issued to Petitioner.

THEREFORE, the Notice dated November 29, 2018, and directed to Petitioner, is AFFIRMED.

IT IS ORDERED that Petitioner pay the following tax and interest.

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2017	\$386	\$36	\$422

Interest computed through May 26, 2020.

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

The Commission upholds the Notice issued by Revenue Operations Division Taxpayer Accounting Section (Accounting) for the following reasons.

**BACKGROUND**

In the normal processing of returns Accounting determined Petitioner filed his Idaho individual income tax return for taxable year 2017 with a dependency exemption claim for his daughter. Petitioner’s tax return was one of two returns claiming the same dependent. Accounting sent a request to Petitioner for more information to verify his

eligibility for the exemption. Accounting reviewed Petitioner's response and determined he was not qualified for the dependent exemption. Accounting sent letters to Petitioner showing the tax effects of the removal of the dependent exemption culminating with the issuance of Notice. Petitioner protested the decision to deny him the exemption. Accounting accepted Petitioner's protest and transferred the matter for administrative review.

The Commission reviewed the matter and sent Petitioner a letter giving him two options for addressing a protested Notice. Petitioner requested an informal hearing and presented additional information. The Commission decided the matter after a review of all available 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." *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 Petitioner to prove the amount asserted in the Notice is incorrect. Here, Petitioner 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. section 152 who is either a "qualifying child" or a "qualifying relative".<sup>1</sup> In this case, Petitioner submitted for the Commission's

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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 one-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

consideration a copy of a court order by the District Court of the state of Idaho granting Petitioner authority to claim the dependency exemption for his daughter on his Idaho individual income tax return. Although Petitioner's court order provides that Petitioner is entitled to the dependency exemption for his daughter, state courts, by their decisions, cannot determine issues of Federal tax law. *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 Petitioner to get the dependency exemption for his daughter, 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 his daughter from the custodial parent. T.C.M. 1996-438, 1996 WL 540111 (U.S. Tax Ct.)

### **CONCLUSION**

For taxable year 2017, Petitioner did not show that his daughter met the requirements<sup>4</sup> of either a qualifying child or qualifying relative. Since his daughter was

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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).

<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.

neither a qualifying child nor qualifying relative for Petitioner in taxable year 2017, Petitioner does not get the benefit of the dependent exemption for his daughter. In addition, because Petitioner cannot claim the dependent exemption, Petitioner cannot claim the additional grocery credit per Idaho Code section 63-3024A.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

IDAHO STATE TAX COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2020,  
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:



Receipt No.

\_\_\_\_\_

