

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 0-307-709-952
)	
)	
Petitioner.)	DECISION
_____)	

The Idaho State Tax Commission (Commission) upholds the Notice of Deficiency Determination (Notice) issued to _____ (Petitioner). Revenue Operations Division Taxpayer Accounting Section (Accounting) disallowed Petitioner’s dependent exemption for taxable year 2017.

THEREFORE, the Notice dated January 7, 2019, 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	\$300	\$30	\$330

Interest computed through October 1, 2019.

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

The Commission upheld the decision made by Accounting for the following reasons.

BACKGROUND

Petitioner filed his 2017 Idaho individual income tax return claiming a dependency exemption 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. Petitioner did not respond to Accounting’s request for more information. Accounting determined that Petitioner was not qualified for the dependent exemption and issued the Notice. Petitioner protested the Notice. 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. After receiving the letter from the Commission, Petitioner called and spoke to the person handling his case. During this conversation Petitioner refused a hearing and declined to provide additional 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 Petitioner to prove the amount asserted in the Notice is incorrect. Here, Petitioner did not prove the Notice is incorrect.

Idaho’s Income Tax Act uses the Internal Revenue Code’s calculation of taxable income as the starting point for calculating Idaho Taxable Income. The 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.”¹ In this case, Petitioner submitted for the Commission’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

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 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).

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.

In the case of divorced parents, I.R.C. § 152(e) provides that the parent who has custody of the child for more than one-half of the year is allowed to claim the child as a dependent. The non-custodial parent is allowed to claim the child as a dependent only if the custodial parent signs a written declaration saying that they won't claim the child as a dependent. Though the court intended Petitioner to get the dependency exemption for his daughter, the court order does not meet the requirement of I.R.C. § 152(e) and Treasury Regulation 1.152-4 to be a written declaration² of the custodial parent that they 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 declaration³ requirements needed to release the dependency exemption for his daughter from the custodial parent. *See 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 requirements⁴ of either a qualifying child or qualifying relative. Since his daughter was neither a qualifying child nor qualifying relative for Petitioner in taxable year 2017, and because Petitioner did not provide a written declaration signed by the custodial parent, Petitioner does not get the benefit of the dependent exemption for his daughter.

² 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).

³ See footnote 2.

⁴ See footnote 1.

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

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:

Receipt No.
