

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-158-800-384
██████████ ████ ██████████ ██████████)	
)	
Petitioners.)	DECISION
)	

██████████ ████ ██████████ ██████████ (Petitioner-husband and Petitioner-wife, respectively; Petitioners, collectively) were issued a Notice of Deficiency Determination (Notice) for tax years 2020, 2021, and 2022 on July 19, 2024. A protest was received. The Tax Commission reviewed the matter and hereby issues its final decision to uphold the Notice.

Background

Petitioners filed joint federal and Idaho income tax returns for tax years 2020, 2021, and 2022. On their 2020 Idaho return, Petitioners claimed that they earned \$19,200 of investment tax credit (ITC) for qualifying property placed in service during the year, along with \$42,622 of unused ITC carried forward from prior years. On their 2021 and 2022 Idaho returns, Petitioners used ITC from prior years to reduce their tax, but they did not claim to earn any additional credit in either year. The Tax Commission’s Income Tax Audit Division (Audit) selected these returns for examination. Audit determined three things regarding ITC:

- First, Petitioners were not entitled to the carryover of ITC from prior years because they had not filed an Idaho return for any tax year before 2020.
- Second, Petitioners did not earn ITC in 2020 because the property listed on Form 49 does not meet the requirements in Idaho Code and was not used in their business operations.
- Third, Petitioners were not eligible to claim any carryover of unused credit to tax years 2021 or 2022 because the amounts reported as earned in prior years were disallowed.

On June 20, 2024, Audit sent Petitioners a Billing Letter outlining these findings, along with an adjustment to the Idaho Child Tax Credit for tax year 2022. Petitioners did not respond to

the Billing Letter, so Audit issued the Notice on July 19, 2024, to the same address used on the Billing Letter. On July 31, 2024, Petitioner-wife informed Audit that she and Petitioner-husband were now divorced. Petitioner-wife claimed she was an innocent spouse eligible for relief. Audit informed her that innocent spouse relief is applicable only if she can prove that the IRS granted relief for the same year. Petitioner-wife sent Audit an email providing an updated address for Petitioner-husband but did not protest the Notice.

On August 2, 2024, Audit issued a second identical Notice to the address Petitioner-wife provided for Petitioner-husband.

On August 8, 2024, Petitioner-wife sent Audit an email to which was attached a document written by [REDACTED] [REDACTED] the Parenting Coordinator assigned to her and Petitioner-husband's divorce. This document addresses many issues, including taxes from during the marriage. Petitioner-wife did not protest the Notice.

On August 29, 2024, Petitioner-wife sent Audit an email, attached to which were multiple documents showing financial transactions. The email included a protest of the Notice. Petitioner-wife does not mention disagreeing with the adjustments in the Notice, but rather states that her divorce decree says any expenses will be paid on a pro-rata basis (Petitioner-husband 75%, Petitioner-wife 25%). She stated that this division of responsibility is reiterated in the document written by the Parenting Coordinator. On September 3, 2024, Audit sent both Petitioners letters acknowledging the protest, stating that the matter was being transferred to the Tax Commission's Tax Appeals unit (Appeals) to continue the redetermination process.

On September 23, 2024, Appeals attempted to contact Petitioner-wife by phone to discuss her protest. Appeals left a voicemail when there was no answer and followed up with an email requesting a call to discuss the issues at hand. There was no response. On September 30, 2024,

Appeals sent both Petitioners letters explaining the options available for redetermining a protested Notice. On October 8, 2024, Appeals spoke with Petitioner-wife via telephone about the ITC claimed as earned in 2020. Petitioner-wife said the \$640,000 purchase in 2020 was bare land to be developed for rental properties. Appeals mentioned that the 2020 ITC form shows carryover of credit from prior years, but the Tax Commission has no returns from before 2020. The amount of carryover credit listed on the 2020 Form 49 equates to \$1,420,733 of qualifying property. At no point during the conversation did Petitioner-wife indicate disagreement with the disallowance of ITC. Instead, she focused on the portion of the total due she felt she should be responsible for. She suggested Appeals talk with her accountant.

On October 21, 2024, Appeals held a similar conversation with Petitioner-wife's appointed representative as with Petitioner-wife on October 8. The representative indicated she would contact Petitioner-wife and recommend withdrawing the protest. Petitioner-wife has not withdrawn her protest. Therefore, the Tax Commission now renders its decision based on the information currently available.

During the entire examination and redetermination process, Petitioner-husband has not responded to any correspondence sent by Audit or Appeals. Petitioner-wife did not request an informal hearing.

Law & Analysis

Idaho Code section 63-3029B allows taxpayers to claim ITC equal to 3% of the value of "qualifying investments." Qualifying investments must be used in Idaho in a trade or business, have a useful life of at least three years, be property that can be depreciated or amortized, and fall into one of these categories:

- Tangible personal property – machinery and equipment
- Other tangible property

- Property used as an integral part of manufacturing, production, extraction
- Furnishing transportation, communications, or utility services
- Research facilities and bulk storage facilities used in connection with those businesses
- Elevators and escalators
- Single-purpose agricultural or horticultural structures
- Qualified timber property
- Petroleum storage facilities
- Qualified broadband equipment as approved by the Idaho Public Utilities Commission

Nonqualifying property includes, but is not necessarily limited to, the following:

- Buildings and their structural components
- Property used in lodging facilities that rent 50% or more of their lodging units for periods of 30 days or longer, such as apartment houses or rental homes
- The cost of property expensed under IRC section 179
- Used property not acquired by purchase
- The portion of property used for personal use
- Used property in excess of \$150,000 (total of all properties)
- Horses
- Property not used in Idaho
- Vehicles under 8,000 pounds gross vehicle weight (GVW)
- Property previously used by the same taxpayer or an affiliate of the taxpayer

Neither Petitioner-wife nor Petitioner-husband have provided any evidence that they made qualifying investments during tax year 2020. According to Petitioner-wife's statement, the property purchased in 2020 and used to calculate new ITC was bare land. Land is not a depreciable asset and is therefore not qualifying property for earning ITC. As such, the Tax Commission determined that Petitioners did not earn any new ITC in tax year 2020.

Idaho Code section 63-3029B allows taxpayers who earn ITC in one year – but are unable to utilize all of it in that year because of limitations – to carry any unused credit forward to subsequent years to offset future tax liabilities. Petitioners claimed to have ITC carryover from prior years onto their 2020 Idaho income tax return, but they did not file any Idaho returns prior to the 2020 tax year. Without an actual return showing ITC earned in a prior year, the Tax

Commission determined that Audit properly disallowed Petitioners' carryover of ITC to tax years 2020, 2021, and 2022.

Based on these determinations, neither Petitioner-husband nor Petitioner-wife are entitled to claim any ITC carryover stemming from tax years ending before January 1, 2023, on any future returns.

Audit changed the amount of Idaho Child Tax Credit allowed on Petitioners' Idaho income tax return for tax year 2022. Idaho Code section 63-3029L allows taxpayers to claim a non-refundable credit up to \$205 per qualifying child. A nonrefundable credit may only reduce a taxpayer's tax liability. Therefore, the allowable amount of Idaho Child Tax Credit is limited to the tax liability after other nonrefundable credits are applied first.¹

ITC is also a non-refundable credit. It may be used to offset up to 50% of a taxpayer's Idaho income tax. Petitioners reported Idaho income tax of \$152 on their 2022 Idaho return. They claimed \$76 of ITC and \$76 of Idaho Child Tax Credit. The Tax Commission has disallowed the ITC Petitioners claimed, but Petitioners have unutilized Idaho Child Tax Credit to take its place in offsetting Idaho income tax.

Petitioner-wife's consistent argument has been that she is required to pay only 25% of any additional tax, and Petitioner-husband is required to pay 75%. She points to the divorce decree from March 2023 as support for this position. Several sections of the divorce decree dictate that Petitioner-wife shall pay 25% of costs and Petitioner-husband shall pay 75%. Those sections specifically relate to health insurance (section 6), medical expenses (section 7), and school supplies (section 11). Section 23, specifically related to tax returns, reads in pertinent part, "The parties

¹ For tax year 2021, there are 14 nonrefundable credits available to Idaho residents. The Idaho Child Tax Credit is 13th in the line of application. See Idaho Income Tax Administrative Rule 799.02.

[Petitioner-husband and Petitioner-wife] shall file taxes as married, filing jointly for the 2021 and 2022 tax years, and equally divide any resulting liability or refund.” The Tax Commission determined that “any resulting liability” includes additional amounts owed after corrections or adjustments.

Petitioner-wife also points to the separate report written by the Parenting Coordinator in August 2024 as support for her position. This “August 2024 Decision” addresses seven issues, one of which is who is responsible for paying taxes due to not filing in 2019. In describing his role related to each issue, the Parenting Coordinator writes “This Parenting Coordinator ... can decide this matter,” except for the issue of taxes. On this item, he writes “This Parenting Coordinator ... may only make a non-binding recommendation on this matter.” He further states “The parties are reminded that this Parenting Coordinator cannot decide on taxes but can make recommendations.” His recommendation was for each to pay their pro-rata share as determined by their Idaho Child Support percentages (the 25%-75% split). As this is related to a civil matter between Petitioner-husband, Petitioner-wife, and the Court, the Tax Commission is under no obligation to abide by the parenting Coordinator’s recommendation.

Idaho Code section 63-3031 relates to jointly filed income tax returns. Subsection (b)(3) states “If a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.” Joint and several liability means that both spouses on a joint return are responsible for the full amount due, and any tax, penalty, or interest can be collected from either spouse who signed the return.

Petitioner-wife mentioned to Audit that she was seeking innocent spouse relief for the additional taxes due to Idaho. Idaho Code section 63-3050A provides that, when the IRS grants relief to an individual from joint and several liability, the state tax commission will recognize and

honor it for state income tax purposes, as well. Petitioners filed joint federal returns for 2020, 2021, and 2022. All three years resulted in Petitioners owing nothing. The 2021 return resulted in an overpayment of tax and a refund. The Tax Commission does not anticipate that the IRS will grant any relief from joint and several liability for these years and has therefore determined that no such relief is available for state income tax purposes.

In Idaho, it is well established that a Tax Commission Notice is presumed to be correct, and the taxpayer bears the burden of showing the deficiency is erroneous. *See Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986) (citing *Albertson's Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814 (1984)). The Tax Commission requires Petitioners to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Petitioners have failed to do so. Whatever percentage of the amount due either Petitioner may ultimately pay, the Tax Commission has received no documentation or information to show that the adjustments in the Notice and the total additional tax due are incorrect.

The Bureau added interest and penalty to Petitioners' tax deficiency. The Tax Commission reviewed those additions and finds them to be appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046, respectively.

Conclusion

Petitioner-wife protested the Notice but provided no legal or factual basis to show the Notice was incorrect. Petitioner-husband has not responded to any correspondence related to the Notice.

THEREFORE, the Notice dated July 19, 2024, and directed to [REDACTED] [REDACTED] [REDACTED] [REDACTED] is hereby UPHeld and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2020	\$0	\$0	\$0	\$0
2021	836	42	96	974
2022	0	0	0	<u>0</u>
				<u>\$974</u>

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

Interest is calculated in accordance with Idaho Code section 63-3045.

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

DATED this _____ day of _____ 2025.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2025,
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.

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2025,
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.

[REDACTED]

[REDACTED]