FILED
WV SECRETARY OF STATE
JULY 02, 2026 09:39 AM

REDACTED DECISION – DK#'S 18-338

BY: CRYSTAL S. FLANIGAN, DEPUTY ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON APRIL 22, 2025
ISSUED ON OCTOBER 20, 2025

FINAL DECISION

On June 25, 2018, the Compliance Division of the West Virginia State Tax Commissioner's Office (hereinafter "Tax Department" or "Respondent") issued a denial refund for tax year 2016 and 2017 against AAA (hereinafter "Petitioner").[1] This refund denials were issued pursuant to the authority of the State Tax Commissioner, granted to him by the provisions of Chapter 11, Article 10 *et seq*, of the West Virginia Code. The refund requested was in the amount of $346.00 and reduced to $1.00 for tax year 2016 and the refund requested for tax year 2017 was in the amount of $127.00 and reduced to $82.00.

The Petitioner timely filed his Petition for Appeal with this Tribunal on July 23, 2018. Subsequently, notice of a hearing on the petition was sent to the parties and in accordance with the

[1]A denial of refund for tax year 2017 was not provided by either party during the evidentiary hearing as an exhibit but had been filed with the Petition for Appeal. The Respondent provided a statement of account for 2017, a personal income tax inquiry for 2017, and a summary of changes for 2017. Resp't's Ex. 4, 5, and 6.

provisions of West Virginia Code 11-10A-10, an evidentiary hearing was held *de novo* on January 21, 2025. The evidence closed on April 22, 2025, and the matter became ripe for decision at that time.

FINDINGS OF FACT

1. The Petitioner filed a petition for appeal with this Tribunal disputing the Respondent's denial of refund for tax years 2016 and 2017 for exemptions for his children. Tr. 1-2.
2. The I.R.S. allowed him the four exemptions for his children on his 2016 and 2017 federal income tax returns. Pet'r's Ex. 4 & 5.
3. The Petitioner originally filed his 2016 West Virginia person income tax return with two exemptions based upon the two children that were living with him at the time. He later amended his 2016 return to include all four children as four exemptions. In his 2017 West Virginia personal income tax return, he claimed personal exemptions for all four children as dependents. Tr. 36, 40-44, 48-50, 54.
4. BBB (hereinafter "Ms. BBB") filed her 2016 West Virginia personal income tax return and claimed the two children who were living with her at time. In her 2017 West Virginia personal income tax return, she claimed all four exemptions. Tr. *Id*.
5. Ms. BBB was originally denied the four exemptions for 2017 because the Petitioner had claimed them on his 2017 return. Ms. BBB then provided the Respondent with the February 12, 2018, Mason County Family Court Order (hereinafter "Supplemental Order"). Tr. 50, 54-55.
6. The Supplemental Order granted her as the primary residential and custodial parent of CCC, DDD, EEE, and FFF and further allowed her to claim the four minor children as

dependents for income tax purposes pursuant to West Virginia Code Section 48-13-801. Resp't's Ex. 1 at 6, paragraph 16.

7. The Respondent sought further information from the Petitioner to support his claim of the four exemptions, but he did not provide any documentation to support his claims for 2016 and 2017. Tr. 27, 48-50.

8. The Mason County Family Court had entered a Temporary Court Order (hereinafter "Temporary Order") on December 16, 2016, that allocated temporary residential custody of CCC and DDD to the Petitioner. The Temporary Order further allocated temporary residential custody of EEE and FFF to Ms. BBB. Pet'r's Ex. 2.

9. The Respondent's witness, Canishia Shepherd (hereinafter "Ms. Shepherd") testified that the Respondent was unaware of the existence of the Temporary Order when Ms. BBB was granted all four exemptions. Tr. 36 L:7, 39: L:1-9. 42 L:13-15, 48, L16-21, 49, L:10-12.

10. Ms. Shepherd further testified that had the Respondent been aware of the Temporary Order at the time of the tax return filings the Petitioner would have received two exemptions for the two children residing with him and Ms. BBB would have received two exemptions for the children residing with her for 2016 and 2017. Tr. 43, L: 9-12.

11. Ms. BBB has been held as the mother of the children in several West Virginia Supreme Court cases. [2]

12. Upon the denial of the two additional exemptions for the Petitioner's 2016 return, he contacted the Respondent where he was informed by the Respondent that he needed to

[2] The West Virginia Supreme Court of Appeals reaffirmed Ms. BBB as the mother of the children and invalidated the surrogacy contracts surrounding her parentage in *XXX*. The Court also cited to its prior decisions on these issues in *XXX* (memorandum decision). *See also*, *XXX* (memorandum decision); *XXX* (memorandum decision); *XXX* (memorandum decision); *XXX* This Tribunal notes that the Petitioner failed to cite these cases in his post-hearing brief despite being directed to do so during the evidentiary hearing. The Petitioner provided only the cases listed in footnote four of this Decision.

provide additional documentation, such as a court order, to substantiate his claim for all four children. Tr. 27, 48-50.

13. The Petitioner informed the Respondent that there was no such court order providing for the four exemptions and he did not send them any court order. Tr. 34-36, 55-56, 58-59.
14. Because the Petitioner did not provide any additional information to the Respondent and Ms. BBB had provided the Supplemental Order, the Respondent denied the Petitioner the four exemptions. Resp't's Ex. 1, Tr. 35, 50.
15. Ms. Shepherd testified that the Supplemental Order was the only documentation provided by either party to support who was entitled to the four exemptions. She further testified that the Petitioner never provided any court order or any other additional documentation to support his claim to the four exemptions. Tr. 35, 50, 54.
16. The Supplemental Order did not include a provision for tax years prior to 2018. Resp't's Ex. 1.
17. The Petitioner appealed Mason County Family Court docket number XXX to the West Virginia Supreme Court of Appeals where he was unsuccessful.[3]
18. The Petitioner sought relief in the Federal Courts regarding Mason County Family Court docket number XXX and the underlying substantive issues he claimed would impact the outcome of this matter. He has been unsuccessful in all those appeals. *See* footnote 4.

DISCUSSION

The primary issue before this Tribunal is whether the Petitioner is entitled to claim four exemptions for his children when another party is claiming the same exemptions.[4] A brief history

[3] *XXX*.

[4] The Petitioner represented to this Tribunal that several substantive legal issues in state and federal courts would impact the outcome of this matter. As such, he consistently sought for renewed continuances for this matter. The

of how the parties arrived at this point is necessary. The Petitioner and Ms. BBB filed their 2016 state returns, each claiming two exemptions.[5] The Petitioner later amended his 2016 return to claim all four exemptions. The Petitioner also filed his 2017 return claiming four exemptions. Ms. BBB filed her 2017 return and claimed four exemptions.

These competing exemptions triggered the Respondent to issue a refund denial to Ms. BBB because the children had already been claimed on Petitioner's return. Upon receiving the refund denial, Ms. BBB contacted the Respondent claiming her entitlement to the four exemptions. The Respondent requested further documentation, such as a court order from Ms. BBB to support the four exemptions because they had already been claimed on another return. Ms. BBB then provided the Supplemental Order which specifically provided her with the four exemptions. Ms. Sheppard testified that the Petitioner informed the Respondent that there was no such court order determining tax exemptions for the children nor did the Petitioner provide any documentation.[6] Thereafter, the Respondent denied the Petitioner's refund for the 2016 and 2017 tax years.

Petitioner stated in his post-hearing brief that he had filed the following matters during the pendency of this appeal: XXX in Kanawha County Circuit Court; XXX pending; Mason County Family Court XXX-appealed though state and federal courts, Petition for Writ of Certiorari to the United States Supreme Court in this matter was denied; XXX in Kanawha County Circuit Court, pending; XXX in Kanawha County Circuit Court, pending; XXX District Court, affirmed by the Fourth Circuit; XXX, Petition for Writ of Certiorari to the United States Supreme Court, denied; XXX Kanawha County Circuit Court pending before the West Virginia Supreme Court on the Writ of Mandamus XXX appeal pending before the West Viriginia Intermediate Court; XXX in Kanawha County Circuit Court, appeal pending XXX. The Petitioner argued in his post-hearing brief that the Respondent has delayed and overcomplicated this case. This Tribunal finds that to be disingenuous, at best. The Petitioner filed this appeal in 2018 and has continuously sought to hold this matter in abeyance due to litigating the other substantive issues in state and federal courts. This Tribunal has been especially flexible in this matter due to the underlying substantive issues and allowing the Petitioner time to fully litigate them. The Respondent has never objected one time to holding this matter in abeyance to allow the Petitioner an opportunity to pursue state and federal appellate remedies. Based upon the representations of the Petitioner that a ruling in his favor from a higher court would support his position before this Tribunal, we held this matter in abeyance to provide the Petitioner with an opportunity to litigate his appeals in federal and state courts. The underlying issues in the matter concern surrogacy, parentage, the alleged fraud of Ms. BBB, the constitutionality of the West Virginia Code Section 16-5-10(e), contract breach, etc. As the Petitioner has not prevailed in any of those matters and did not show any further reason to hold this matter in abeyance, this Tribunal held an evidentiary hearing. There is no evidence that the Respondent has held up this appeal in any way.

[5] In December 2016, two of the children were living with the Petitioner and two of the children were living with Ms. BBB according to the Temporary Order entered December 16, 2016.

[6] The Temporary Order was entered by the Mason County Family Court Judge on December 16, 2016, and the Supplemental Order was entered on February 12, 2018, therefore, the Petitioner was on notice of these court orders.

The Respondent now concedes that the Temporary Order should control and not the Supplemental Order as it was entered in 2018 which is after the tax years at issue. We agree that the Temporary Order should control this matter. Ms. Sheppard testified that Respondent was unaware of the Temporary Order until a week before the evidentiary hearing.

A starting point for the controlling law in this matter is West Virginia Code State Rule § 110-21-16.1 which states that:

> In General. - A resident individual is allowed a West Virginia exemption of two thousand dollars ($2,000) for each exemption for which said individual is entitled to a deduction for the taxable year for federal income tax purposes. The number of personal exemptions to be claimed on a resident individual's State income tax return shall be the same as the number of personal exemptions claimed on his or her federal income tax return **unless otherwise provided in this regulation.**

W. Va. Code R. 110-21-16.1 (West). Emphasis added.

West Virginia Code State Rule § 110-21-16.4.1 prohibits one taxpayer from claiming an exemption to the exclusion of another, as follows:

> As a general rule, a resident individual is entitled to claim the same number of exemptions on his or her State income tax return as claimed on the federal income tax return for the taxable year. Under Section 151(d)(2) of the Internal Revenue Code of 1986, as amended, an individual with respect to whom a deduction is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins is prohibited from claiming an exemption for himself or herself on his or her federal return. Where Section 151(d)(2) of the Internal Revenue Code is applicable, a West Virginia exemption of five hundred dollars ($500) shall be allowed.

W. Va. Code R. 110-21-16.4.1 (West).

The Petitioner essentially argues three issues: parentage; the family court's lack of jurisdiction over tax matters; and that federal law should control exemptions and not state law. He seeks the following relief: 1) allow him to claim all four exemptions for tax years 2016 and 2017; 2) order the correction of his taxes for all subsequent years where the Respondent disallowed the four exemptions; and 3) grant any other just relief.

The first issue is moot. He continues to argue that Ms. BBB is not the mother of the children and fraudulently named herself as the mother on the birth certificate. For these reasons he believes that she is not entitled to ever claim them as exemptions on her income taxes. However, this issue has been repeatedly adjudicated before the West Virginia Supreme Court of Appeals as provided in footnote two of this Decision and is binding precedent on this Tribunal. Accordingly, as Ms. BBB has been adjudicated as the mother, she is entitled to claim the children for income tax purposes.

Receiving the same federal and state exemptions is generally true except when there are competing claims, as there are in this matter.[7] As cited *supra*, the West Virginia Code State Rules § 110-21-16.1 states that exemptions shall be the same "UNLESS OTHERWISE PROVIDED IN THIS REGULATION." West Virginia Code State Rules § 110-21-16.4.1 provides that two taxpayers cannot file separately and claim the same exemptions, the very situation we have here.

Secondly, the Petitioner claims that the family court does not have jurisdiction over tax matters because the Internal Revenue Service controls exemptions. However, West Virginia Code Section 48-13-801 *Tax Exemption for Child Support Due* provides the family court with this very authority:

> Unless otherwise agreed to by the parties, the court shall allocate the right to claim dependent children for income tax purposes to the payee parent except in cases of extended shared parenting. In

[7] This Tribunal has no jurisdiction over federal tax returns or any determination of the Internal Revenue Service.

> extended shared parenting cases, these rights shall be allocated between the parties in proportion to their adjusted gross incomes for child support calculations. In a situation where allocation would be of no tax benefit to a party, the court need make no allocation to that party. However, the tax exemptions for the minor child or children should be granted to the payor parent only if the total of the payee parent's income and child support is greater when the exemption is awarded to the payor parent.

W. Va. Code Ann. § 48-13-801 (West 2001).

He further argues that the Supplemental Order did not give Ms. BBB the right to claim the children on her taxes. This is blatantly false. Paragraph 16 on page 6 of the Supplemental Order states “[R]espondent shall be entitled to claim the minor children as dependents for income tax purposes pursuant to West Virginia Code 48-13-801.”

We find that West Virginia Code Section 48-13-801 does provide the family court jurisdiction to determine custodial allocation and tax exemptions for dependent children as in the Temporary Order and the Supplemental Order. Accordingly, the Petitioner’s argument as to the family court’s jurisdiction is without merit.

The Petitioner misapplies federal law and state law regarding exemptions. The Petitioner argues that federal exemptions supersede state exemptions, and he should be entitled to them on his state returns under 26 USC Section 151. As custody and temporary custody of children are controlled by West Virginia state law, federal law does not control. West Virginia Code Section 48-13-801 would be rendered a nullity if the Petitioner’s theory were followed. Furthermore, there is a presumption that Congress does not intend to preempt state law, especially in an area that states traditionally occupy. *See* Syl. Pt. , Morgan v. Ford Motor Co., 224 W.Va. 61, 680 S.E.2d 77 (2009) at 80, *Metro Tristate Inc., v. The Public Service Comm’n of West Virginia Cmty Pastor Care,* LLC 345 W.Va. 495, 503, 859 S.E,2d 438, 446, 2021 W.Va. LEXIS 316, 14.

Despite what the Petitioner contends throughout his case, federal law does not preempt West Virginia tax law in this matter. Accordingly, the Petitioner's argument regarding this issue is without merit.

Therefore, West Virginia law and the Temporary Order control the 2016 and 2017 tax years in this matter. At the entry of the Temporary Order, two of the children, CCC and DDD, were residing with the Petitioner and the other two children, EEE and FFF, were residing with Ms. BBB. While the Temporary Order does not specifically order that each parent is permitted to claim two children as exemptions on their respective state tax returns for 2016 and 2017, it does allocate custody of the children to the respective residential parents. The Temporary Order does not find, nor has the Petitioner claimed, that all four children were residing with him during the 2016 and 2017 tax years. He appears to be arguing that he is entitled to all four exemptions despite having custody of only two children under the Temporary Order. The Petitioner's argument to claim all four exemptions has no factual support.

The Petitioner is also seeking corrections for tax years subsequent to the 2016 and 2017 tax years. This Tribunal finds that the Supplemental Order controls tax year 2018 and any subsequent tax years unless later modified by the family court. Accordingly, this Tribunal finds that the Petitioner's request to correct subsequent tax years to be without merit.

Upon consideration of the evidentiary transcript, the exhibits, the post-hearing briefs, and the record in its entirety, this Tribunal finds that the Petitioner has failed to prove his case to claim all four children for the 2016 and 2017 tax years. However, he has prevailed to claim the two children CCC and DDD who were residing with him during the time of the Temporary Order for the 2016 and 2017 tax years.

Accordingly, the Petitioner is entitled to claim CCC and DDD on his 2016 and 2017 tax returns as he was designated as the temporary residential parent in the Temporary Order. Likewise, Ms. BBB is entitled to claim EEE and FFF for the 2016 and 2017 tax years as she was their temporary residential parent as set out in the Temporary Order.

CONCLUSIONS OF LAW

Based upon all the above, this Tribunal **FINDS** and **CONCLUDES** that:

1. It is the duty of the Tax Commissioner to see that the laws concerning the assessment and collection of all taxes and levies are faithfully enforced. *See* W.Va. Code Ann. §11-1-2 (West 2010).

2. All hearings before the Office of Tax Appeals are held *de novo*. W.Va. Code Ann. § 11-3-25b (West 2021).

3. For all appeals before the Office of Tax Appeals, the standard of proof which a taxpayer must meet at all levels of review and appeal shall be a preponderance of the evidence standard. W.Va. Code Ann. § 11-10A-10(h) (West 2021), W.Va. Code Ann. § 11-3-24(k) (West 2021).

4. A resident individual is allowed a West Virginia exemption of two thousand dollars ($2,000) for each exemption for which said individual is entitled to a deduction for the taxable year for federal income tax purposes. The number of personal exemptions to be claimed on a resident individual's State income tax return shall be the same as the number of personal exemptions claimed on his or her federal income tax return unless otherwise provided in this regulation. W. Va. Code R. 110-21-16.1 (West).

5. As a general rule, a resident individual is entitled to claim the same number of exemptions on his or her State income tax return as claimed on the federal income tax return for the taxable

year. Under Section 151(d)(2) of the Internal Revenue Code of 1986, as amended, an individual with respect to whom a deduction is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins is prohibited from claiming an exemption for himself or herself on his or her federal return. Where Section 151(d)(2) of the Internal Revenue Code is applicable, a West Virginia exemption of five hundred dollars ($500) shall be allowed. W. Va. Code R. 110-21-16.4.1 (West).

6. Unless otherwise agreed to by the parties, the court shall allocate the right to claim dependent children for income tax purposes to the payee parent except in cases of extended shared parenting. In extended shared parenting cases, these rights shall be allocated between the parties in proportion to their adjusted gross incomes for child support calculations. In a situation where allocation would be of no tax benefit to a party, the court need make no allocation to that party. However, the tax exemptions for the minor child or children should be granted to the payor parent only if the total of the payee parent's income and child support is greater when the exemption is awarded to the payor parent. W. Va. Code Ann. § 48-13-801 (West 2001).

7. In a hearing before the Office of Tax Appeals on a Petition for Tax Appeal, the burden of proof is on the Petitioner to show the Tax Commissioner's actions are erroneous, unlawful, void or otherwise invalid. W.Va. Code Ann. § 11-10A-10(e) (West 2002), W.Va. Code R. § 121-1-63.1 (West 2003).

8. The Petitioner has not met his burden of proof under the preponderance of the evidence standard to show that the Tax Commissioner's actions were erroneous, unlawful, void or otherwise invalid regarding the four total exemptions. The Petitioner has been granted two of the four exemptions.

DISPOSITION

Based upon the above, it is the **FINAL DECISION** of the West Virginia Office of Tax Appeals that the Petitioner be allowed two exemptions for CCC and DDD for tax years 2016 and 2017. Ms. BBB shall also be entitled to claim two exemptions for EEE and FFF for tax years 2016 and 2017. Accordingly, the Petitioner's claim of all four exemptions regarding the four children for tax years 2016 and 2017 is hereby **DENIED.**

WEST VIRGINIA OFFICE OF TAX APPEALS

By: ______________________________
Crystal S. Flanigan
Deputy Chief Administrative Law Judge

____
Date Entered