

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 0-478-468-096
[REDACTED] ,)	
)	
Petitioners.)	DECISION
)	

On May 8, 2019, the Revenue Operations Division (Division) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [REDACTED] [REDACTED] (Petitioners). The Division determined Petitioners owed additional tax, in the amount of \$171, for taxable year 2018.

On July 10, 2019, Petitioners filed a timely appeal of the Notice and their file was forwarded to the Commission’s Tax Appeals Unit for administrative review. The Commission sent Petitioners a letter on December 26, 2019, outlining their options for redetermination of the Notice. Petitioners did not respond. Therefore, the Commission decides this matter based on the information currently available.

Petitioners filed a joint 2018 Idaho part-year resident individual income tax return claiming a \$205 Idaho child tax credit. The Division reviewed the return and determined that Petitioners did not qualify for the entire amount of Idaho child tax credit claimed because they were not residents of Idaho for the entire 2018 tax year. Petitioners objected, arguing the following:

- The Notice creates a financial hardship.
- Making Idaho Code section 63-3029L retroactive is a violation of the 5th Amendment of the Constitution of the United States of America.
- Retroactive tax legislation violates numerous principles of sound jurisprudence including fairness, equality, certainty, reliance and finality.

Deductions and credits are a matter of legislative grace. *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84, 112 S.Ct. 1039, 117 L.Ed.2d 226 (1992); *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440, 54 S.Ct. 788, 78 L.Ed. 1348 (1934).

In 2018, the Idaho legislature adopted and passed Idaho Code section 63-3029L which provided a credit for qualifying children. In 2019, the Idaho legislature amended Idaho Code section 63-3029L to restrict the credit to Idaho residents and Idaho part-year residents. The Idaho legislature, seeing the urgency of this amendment passed it in early February 2019 and made it retroactive to January 1, 2018.

Changing or amending tax law is nothing new. Amending a tax law and making it retroactive is also a common practice. However, it is not as common that a tax law is amended and made retroactive to a previous tax year. Nevertheless, both state and federal law makers do this. In addressing the retroactive application of a law, the U.S. Supreme Court stated,

[A] tax is not necessarily unconstitutional because retroactive. . . Taxation is neither a penalty imposed on the taxpayer nor a liability which he assumes by contract. It is but a way of apportioning the cost of government among those who in some measure are privileged to enjoy its benefits and must bear its burdens. Since no citizen enjoys immunity from that burden, its retroactive imposition does not necessarily infringe due process, and to challenge the present tax it is not enough to point out that the taxable event, the receipt of income, antedated the statute.

. . .

For more than seventy-five years it has been the familiar legislative practice of Congress in the enactment of revenue laws to tax retroactively income or profits received during the year of the session in which the taxing statute is enacted, and in some instances during the year of the preceding session. See *Untermeyer v. Anderson*, *supra*, Footnote 1. These statutes not only increased the tax burden by laying new taxes and increasing the rates of old ones or both, but they redistributed retroactively the tax burdens imposed by preexisting laws. This was notably the case with the 'Revenue Act of 1918,' enacted February 24, 1919, 40 Stat. 1057, and made applicable to the calendar year 1918, which cut down exemptions and deductions, increased, in varying degrees, income, excess profits and capital stock taxes, altered the basis of surtaxes, and increased in progressive ratio the rates applicable to the higher brackets. . . . The contention that the retroactive application of the Revenue Acts is a denial of the due process guaranteed by the Fifth Amendment, U.S.C.A. Const. Amend. 5, has been uniformly rejected.

The equitable distribution of the costs of government through the medium of an income tax is a delicate and difficult task. In its performance experience has shown the importance of reasonable opportunity for the legislative body, in the revision of tax laws, to distribute increased costs of government among its taxpayers in the light of present need for revenue and with knowledge of the sources and amounts of the various classes of taxable income during the taxable period preceding revision. Without that opportunity accommodation of the legislative purpose to the need may be seriously obstructed if not defeated. We cannot say that the due process which the Constitution exacts denies that opportunity to legislatures; that it withholds from them, more than in the case of a prospective tax, authority to distribute the increased tax burden in the light of experience and in conformity with accepted notions of the requirements of equal protection; or that in view of well established legislative practice, both state and national, taxpayers can justly assert surprise or complain of arbitrary action in the retroactive apportionment of tax burdens to income at the first opportunity after knowledge of the nature and amount of the income is available. And we think that the ‘recent transactions’ to which this Court has declared a tax law may be retroactively applied, *Cooper v. United States*, 280 U.S. 409, 411, 50 S.Ct. 164, 74 L.Ed. 516, must be taken to include the receipt of income during the year of the legislative session preceding that of its enactment. *Welch v. Henry*, 305 U.S. 134 (1938).

In addition, the Idaho Supreme Court has recognized that questions regarding the constitutionality of statutes are “a judicial problem that only the courts have power to decide. It is not a proper question for determination by an administrative board even though it may in its normal proceedings exercise quasi-judicial powers.” *Wanke v. Ziebarth Const. Co.*, 69 Idaho 64, 75, 202 P.2d 384, 391 (1948). Accordingly, determining whether the retroactive amendment to Idaho Code section 63-3029L is constitutionally problematic is not a decision that falls within the purview of the Idaho State Tax Commission—this question must be raised with the proper judicial authority.

The Commission acknowledges that at the time Petitioners filed their 2018 Idaho income tax return, Idaho Code section 63-3029L was not amended and their return correctly reflected the credit available. However, the Idaho legislature did amend, and the governor signed into law the current version of Idaho Code section 63-3029L and made it retroactive to encompass tax year 2018. Even though the legislature acted quickly in amending section 63-3029L, their action was

not timely for early filers like Petitioners. Unfortunately, Petitioners were caught between the effective dates of the original law and the amended law.

Petitioners were part-year residents of Idaho in taxable year 2018 and had a requirement to file an Idaho individual income tax return. Petitioners had a qualifying child in tax year 2018. However, because they were part-year residents, they can only claim a portion of the child tax credit. Therefore, the Commission finds the Notice is correct.

THEREFORE, the Notice dated May 8, 2019, and directed to [REDACTED]

[REDACTED], is hereby APPROVED and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2018	\$171	\$10	\$181

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

An explanation of Petitioners' 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.
