

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of

████████████████████
████████████████████

Petitioner.

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DOCKET NO. 0-558-102-528

DECISION

On May 9, 2019 the Revenue Operations Division (Division) of the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination (Notice) to ██████████
████████████████████ (Petitioners), proposing income tax and interest for tax year 2018 in the total amount of \$683. On June 6, 2019, Petitioners filed a timely appeal and petition for redetermination of the Notice.

On November 29, 2019, the Tax Appeals Unit at the Tax Commission mailed a letter to Petitioners informing them they could request a hearing or submit additional documents. Petitioners did not respond. Therefore, based on the information available, the Tax Commission hereby issues its decision to uphold the Notice.

Petitioners, who are residents of Washington, filed a 2018 Idaho nonresident individual income tax return. Petitioners claimed two children and \$410 in Idaho child tax credits. Additionally, Petitioners reported their 2017 Idaho wages and withholding instead of their 2018 Idaho wages and withholding. However, since Petitioners provided a copy of their 2018 Form W-2 in response this issue will not be discussed further.

As adopted on March 12, 2018, Idaho Code section 63-3029L allows a nonrefundable child tax credit for each qualifying child of a taxpayer. On February 12, 2019, Idaho Code section 63-3029L was amended to add the language: “This credit is only available to Idaho residents. Any part-year resident entitled to a credit under this section shall receive a proportionate credit reflecting the part of the year in which he [she] was domiciled in this state.” The change to Idaho

Code section 63-3029L was made retroactive to January 1, 2018. On February 25, 2019, Petitioners filed their 2018 Idaho individual income tax return and claimed the child tax credit for their two children. Based on the available information, the tax software Petitioners used was not updated to reflect the change in Idaho Code section 63-3029L.

Accordingly, based on the facts presented, the Division determined Petitioners were not entitled to the Idaho child tax credit. Petitioners appealed contending:

We used a legitimate tax service and were not informed of the supposed change in child tax credit. This is an unfair tax collection targeting non-residence. We also maintain a home for a child with a disability so we should more than qualify for a child tax credit. We paid what we were told we owe. I am submitting a copy of Jordan's W2. In addition, we should not be responsible for any penalties as this was not brought to our attention in a timely matter.

Petitioners are nonresidents of Idaho and therefore do not qualify for the Idaho child tax credit under Idaho Code section 63-3029L. The alleged fact that they maintained a home for a child with a disability does not override the residency requirement of Idaho Code section 63-3029L.

Petitioners state this is an unfair tax collection targeting nonresidents. The Tax Commission finds that the discrimination the taxpayers perceived is the result of the natural differences between Idaho's jurisdiction to tax residents and nonresidents. The Tax Commission's primary function is to enforce the law as written. Any perceived inequity in the law is something that needs to be taken up by the Idaho legislature. In this case, the Tax Commission does not find any ambiguity in Idaho Code section 63-3029L and therefore must follow the law and uphold the determination.

Tax discrimination is a constitutional issue. The Tax Commission does not have the authority to review the constitutionality of tax statutes. The Tax Commission has issued numerous decisions

citing *Wanke v. Ziebarth Const. Co.*, 69 Idaho 64, 75, 202 P.2d 384, 391 (1949) [“...[t]he question of a statute’s constitutionality is a judicial problem that only the courts have 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.”]. Petitioners’ constitutional arguments are not a subject for review in this decision because the Tax Commission does not have authority to review the constitutionality of tax statutes. The tax law must be followed as written.

On appeal, a deficiency determination issued by the Tax 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 Tax Commission requires Petitioners to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Here, Petitioners did not provide adequate evidence. As a result, the Tax Commission will uphold the Notice.

The Division did not add penalty to the tax deficiency, the Division added \$2 of interest. The Tax Commission has reviewed the interest and found it appropriate per Idaho Code section 63-3045 and has updated interest accordingly. Interest is calculated through May 21, 2020 and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated May 9, 2019, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2018	\$683	\$27	\$710

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

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

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.
