

prohibits a state from imposing higher tax rates or taxes on nonresidents than it imposes on residents. Petitioner stated the equal protection clause prohibits states from denying “the equal protection of the law.” Petitioner stated the commerce clause prohibits states from imposing undue burdens on or interfering with interstate commerce. Petitioner cited a number of cases for each of the clauses wherein the Supreme Court found various taxes unconstitutional.

Taxpayer Accounting acknowledged Petitioner’s protest and sent the matter for administrative review. The Tax Commission’s Appeals Unit (Appeals) reviewed the matter and sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Refund Determination. Petitioner did not respond. Seeing that Petitioner had opportunity to further his position but chose not to, the Tax Commission reviewed Petitioner’s case and issues its decision on the matter.

LAW AND ANALYSIS

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.

Petitioner argued that Idaho Code section 63-3029L is unconstitutional in that it discriminates against nonresident Idaho taxpayers. Petitioner cited references to the privileges and immunities clause, the equal protection clause, and the commerce clause of the United States

Constitution that the Idaho Code violates. However, in all his discussion of the clauses and the various case citings, Petitioner did not explain or show how the Idaho statute violated each of the clauses.

In *Wanke v. Ziebarth Const. Co.*, 69 Idaho 64, 75, 202 P.2d 384, 391 (1948), the Idaho Supreme Court, in deciding the constitutionality of a statute, did not correct the arguing parties when they both agreed that, “the question of a statute’s constitutionality is 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.” Therefore, considering the Idaho Supreme Court’s acquiescence to the proposition that an administrative body should not decide a statute’s constitutionality, the Tax Commission will not decide the constitutionality of Idaho Code section 63-3029L. Rather, the Tax Commission will fulfill its function to enforce the law as written, (*Bogner v. State Tax Commission*, 107 Idaho 854, 693 P.2d 1056 (1984)) and as so upholds the Notice of Refund Determination.

CONCLUSION

Petitioner is a nonresident of Idaho who was required to file an Idaho individual income tax return for tax year 2018. Petitioner had a qualifying child for tax year 2018. Idaho Code section 63-3029L allows a credit for each qualifying child. However, the credit is only available to Idaho residents. Since Petitioner is a nonresident of Idaho, Petitioner cannot claim the child tax credit. Therefore, the Tax Commission finds the Notice of Refund Determination is correct.

WHEREFORE, the Notice of Refund Determination dated April 9, 2019, directed to [Redacted]

[Redacted] is AFFIRMED.

Since Petitioner’s refund was reduced during processing, an order and demand for payment is not needed.

An explanation of Petitioner's 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.

[Redacted]

