

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of



Petitioners.

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DOCKET NO. 1-061-943-296

DECISION

 (Petitioners) protested the Notice of Deficiency Determination dated May 9, 2019 for tax year 2018. Petitioners disagreed with the disallowance of the Idaho child tax credit claimed on their Idaho income tax return. The Tax Commission reviewed the file and issues its decision upholding the Notice of Deficiency Determination.

**BACKGROUND**

Petitioners electronically filed their 2018 Idaho individual income tax return. Petitioners filed their return as Idaho nonresidents. Petitioners reported their filing status as married filing joint with six dependents. Petitioners claimed the Idaho child tax credit on all their dependents. During the processing of Petitioners' return the Taxpayer Accounting Section (Taxpayer Accounting) found that Petitioners' claim of the child tax credit was in error because they were nonresidents of Idaho. Taxpayer Accounting corrected Petitioners' return and sent them a Notice of Deficiency Determination.

Petitioners protested Taxpayer Accounting's determination. Petitioners stated the Idaho law violates the United States Constitution because it discriminates between resident and nonresidents. Petitioners stated the Idaho law violates the privileges and immunities clause, the equal protection clause, and the commerce clause of the Constitution. Petitioners quoted a publication prepared for the Minnesota State Legislature by Joel Michael titled *Constitutional Restrictions on Taxation of Nonresidents*. From that publication, Petitioners quoted, the privileges

and immunities clause provides that the citizen of each State shall be entitled to all the privileges and immunities of citizens of the several States. The privilege and immunities clause generally prohibits a state from imposing higher tax rates or taxes on nonresidents than it imposes on residents. Regarding the equal protection clause, Petitioners quoted, the equal protection clause prohibits states from denying “the equal protection of the law.” In referencing the commerce clause, Petitioners quoted, the commerce clause prohibits states from imposing undue burdens on or interfering with interstate commerce. Within the publication were a number of cases cited for each of the clauses where the U.S. Supreme Court found various taxes unconstitutional. Petitioners stated the quoted material and cited case law clearly shows the Supreme Court sees a State’s tax laws must treat resident and nonresidents in an equitable manner, and the laws must not discriminate based on residency or other protected classes of U.S. citizens.

Petitioners also appealed to the Tax Commission sense of reason. Petitioners stated they are no different than an Idaho family, except that when they pay their Idaho taxes, they do not get to share in the benefits received by residents. Lastly, Petitioners stated because they are nonresidents they have no representation, and as such are an easy class to discriminate against.

Taxpayer Accounting acknowledged Petitioners’ protest and sent the matter for administrative review. The Tax Commission’s Appeals Unit (Appeals) reviewed the matter and sent Petitioners a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioners did not respond to Appeals’ letter but rather made inquiry with Idaho’s Attorney General. Apparently, Petitioners thought, from the language in Appeals’ letter, that their protest was denied. However, Appeals intended the letter to bring out any other argument Petitioners had on the disallowance of the child tax credit. Seeing that Petitioners’

position rests solely on the constitutional violation of the statute, the Tax Commission decided the matter on that basis.

### 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.

Petitioners argued that Idaho Code section 63-3029L is unconstitutional in that it discriminates against nonresident Idaho taxpayers. Petitioners argued the Idaho Code violates the privileges and immunities clause, the equal protection clause, and the commerce clause of the United States Constitution. However, Petitioners 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 Deficiency Determination.

**CONCLUSION**

Petitioners are nonresidents of Idaho who were required to file an Idaho individual income tax return for tax year 2018. Petitioners had qualifying children 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 Petitioners are nonresidents of Idaho, Petitioners cannot claim the child tax credit. Therefore, the Tax Commission finds the Notice of Deficiency Determination is correct.

WHEREFORE, the Notice of Deficiency Determination dated May 9, 2019, directed to [REDACTED] is AFFIRMED.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2018	\$1,230	\$3	\$1,233
		LESS PAYMENT	<u>1,233</u>
		BALANCE DUE	<u>\$0</u>

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 31 day of March 2020.

IDAHO STATE TAX COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31 day of March 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:

[Redacted]

Receipt No.

[Redacted]

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[Redacted]