

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)

[Redacted])

Petitioners.)

DOCKET NO. 1-296-082-944

DECISION

On May 10, 2019, the Revenue Operations Division (Division) of the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] (Petitioners), proposing income tax for tax year 2018 in the amount of \$94.

On May 16, 2019, Petitioners filed a timely appeal and petition for redetermination of the Notice. 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, a final decision was made based on the information currently available. The Tax Commission hereby issues its decision to uphold the Notice.

The issues for decision are: (1) whether Petitioners are entitled to the Idaho child tax credit in accordance with Idaho Code section 63-3029L and (2) whether retroactive tax changes to Idaho Code section 63-3029L are legal.

The Idaho child tax credit is only available to residents of Idaho. Nonresidents do not qualify for the credit. Credits are allowed only as a result of specific acts of legislation and any relief granted in the form of a credit must be applied and interpreted strictly. Whether and to what extent tax credit shall be allowed in computing income taxes depends upon legislative grace; and only as there is clear statutory provision therefore can any particular credit be allowed. It is well established in Idaho law, as well as federal income tax law, that a taxpayer claiming a deduction, exemption or credit bears the burden of establishing his or its entitlement to the same, both as to law and fact.

In this case, Petitioners are nonresidents of Idaho and Idaho Code section 63-3029L is clear the credit is only available to Idaho residents. Therefore, Petitioners are not entitled to the Idaho child tax credit.

Petitioners filed their Idaho individual income tax return on February 23, 2019. On February 12, 2019, Idaho Code section 63-3029L was amended to clarify the Idaho child tax credit is only available to residents of Idaho and that nonresidents do not qualify. The amendment was made effective as if it had been contained in the statute as originally enacted in March 2018.

Petitioners contend the retroactive tax changes to Idaho Code section 63-3029L are unconstitutional. Additionally, that the changes to the statute do not meet “the first two-prong Carlton Test (*United States v. Carlton*).”

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 Commission does not have authority to review the constitutionality of tax statutes. The Tax Commission must follow Idaho law as written. In this case, Idaho Code section 63-3029L clearly states nonresidents do not qualify for the Idaho child tax credit.

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 the Petitioner to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Here, the Petitioners did not provide adequate evidence.

THEREFORE, the Notice of Deficiency Determination dated May 10, 2019, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

| <u>YEAR</u> | <u>TAX</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|-------------|------------|-----------------|--------------|
| 2018 | \$94 | \$5 | \$99 |

Interest is calculated through July 10, 2020 and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6) until paid.

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

An explanation of Petitioner's 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.

[Redacted]
