

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 1-346-631-680
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	)	
	)	DECISION
Petitioners.	)	

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On March 27, 2019, the Revenue Operations Division (Division) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to  (Petitioners). The Division determined Petitioners had an income tax deficiency of \$127 for tax year 2018.

On April 30, 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 November 8, 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 nonresident individual income tax return claiming a \$410 Idaho child tax credit. The Division reviewed the return and determined that Petitioners did not qualify for the Idaho child tax credit because they were nonresidents of Idaho. Petitioners objected, arguing that, “.... we correctly completed the proper tax form by the instructions provided by the Idaho State Tax Commission website.” Petitioners also argue the instructions available on February 2, 2019, when they began preparing their return, made no distinction between residents and nonresidents and their ability to claim the credit.

Petitioners' statement about the instructions is accurate as the law pertaining to the Idaho child tax credit changed after their return was filed.<sup>1</sup> However, retroactive tax law changes are not illegal or unconstitutional and the Commission must follow the law as written. Also, the Commission does not have authority to review the constitutionality of tax statutes. This 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." *Wanke v. Ziebarth Const. Co.*, 69 Idaho 64, 75, 202 P.2d 384, 391 (1948).

On appeal, a deficiency determination issued by the 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 Commission requires Petitioners provide adequate evidence to establish they are entitled to the Idaho child tax credit, both as to law and fact, which they have not done.

THEREFORE, the Notice dated March 27, 2019, is hereby APPROVED and MADE FINAL.

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<sup>1</sup>Idaho Code § 63-3029L, was adopted on March 12, 2018, and allowed a nonrefundable child tax credit for each qualifying child of a taxpayer. On February 12, 2019, Idaho Code § 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."

IT IS ORDERED that Petitioners pay the following tax and interest for tax year 2018:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2018	\$127	\$6	\$133

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

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COMMISSIONER

**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:

[REDACTED]

Receipt No.

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