

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 1-673-246-720
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	)	
Petitioners.	)	DECISION
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On March 11, 2019, the Revenue Operations Division (Division) at the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination (Notice) to  (Petitioners), proposing additional income tax for tax year 2018 in the amount of \$615.

On April 3, 2019, Petitioners filed a timely appeal and petition for redetermination of the Notice. On August 8, 2019, an informal telephone hearing occurred. Petitioners requested time to research and supply legal authority to support their arguments. Petitioners never submitted additional documents or legal authority to support their arguments.

Idaho Code section 63-3029L, as amended on February 12, 2019, and made retroactive to January 1, 2018, provides an Idaho child tax credit to Idaho residents. This credit is available only to Idaho residents, nonresidents do not qualify. The Division disallowed the \$615 credit claimed by Petitioners on the ground that they were nonresidents of Idaho. Petitioners appealed the determination and requested an informal hearing in accordance with Idaho Code section 63-3045 and Tax Commission Administration and Enforcement Rule 325.

Petitioners conceded that they did not qualify for the Idaho Child Credit under the 2019 amendment to Idaho Code section 63-3029L. However, Petitioners appealed asserting retroactive tax changes are unconstitutional and that limiting the credit to Idaho residents is tax discrimination. Petitioners argued that there should be equality and certainty in the tax law, that they relied on the

tax law as it existed at the time, and the State of Idaho gave a tax cut to Idaho residents by shifting the tax burden to nonresidents.

The Tax Commission does not have the authority to review the constitutionality of tax statutes. The 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 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 Commission requires Petitioners to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Here, the Petitioners did not provide adequate evidence.

As stated above, the Commission does not have the authority to review the constitutionality of tax statutes. The Commission must enforce the laws as written. Idaho Code section 63-3029L states the Idaho child tax credit is available only to Idaho residents. Petitioners are nonresidents of Idaho. As a result, the Commission will uphold the Notice.

THEREFORE, the Notice of Deficiency Determination dated March 11, 2019, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE

FINAL. Interest is calculated through July 7, 2020 and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6) until paid.

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	\$615	\$35	\$650

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

**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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