

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

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|---------------------------------|---|------------------|
| In the Matter of the Protest of |) | |
| |) | DOCKET NO. 15870 |
| [Redacted], |) | |
| |) | DECISION |
| Petitioner. |) | |
| _____ |) | |

This case arises from a timely protest of a State Tax Commission staff (staff) decision adjusting property tax reduction benefits for 2001. This matter was submitted for decision based on the documents in the file. The State Tax Commission has reviewed the file and makes its decision thereon.

[Redacted] (petitioner) filed a property tax reduction benefit application on or about April 10, 2001. Idaho Code § 63-707(5) provides for an audit of each and every claim that is submitted. When the staff examined the petitioner’s application and his Idaho income tax return, they found evidence that the petitioner did not live in the home at the time he applied for the benefit, did not live in the home at any time during 2000, and had not lived in the home for several years. Therefore, the subject property was not the petitioner’s primary dwelling place and had not been owner-occupied for at least six months during the prior year.

The staff sent a letter to the petitioner advising him of the intent to deny him benefits for the year 2001. He responded by telephoning the staff and then by sending a letter appealing that determination. The petitioner’s appeal file was transferred to the Legal/Tax Policy Division for administrative review.

Idaho Code § 63-701 uses definitions to describe the conditions that must exist for an applicant to qualify to receive property tax reduction benefits. The Code states in pertinent part:

(2) **"Homestead" means the dwelling, owner-occupied** by the claimant and used as the primary dwelling place of the claimant and occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home. It may consist of a part of a multidwelling or multipurpose building and part of the land upon which it is built. Homestead does not include personal property such as furniture, furnishings or appliances, but a manufactured home may be a homestead.

...

(9) (a) **"Primary dwelling place" means the claimant's dwelling place on January 1 of the year for which the claim is made.** The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. **A claimant must establish the dwelling to which the claim relates as his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 and:**

(i) At least six (6) months during the prior year; or

(ii) The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or

(iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant less than one (1) year.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration to occupy the dwelling. A claimant's spouse who resides in a care facility shall be deemed to reside at the claimant's primary dwelling place and to be a part of the claimant's household. A care facility is a hospital, nursing facility or intermediate care facility for the mentally retarded as defined in section 39-1301, Idaho Code, or a facility as defined in section 39-3302(16), Idaho Code, or a dwelling other than the one upon which the applicant makes application where a claimant who is unable to reside in the dwelling upon which the application is made lives and receives help in daily living, protection and security.

(Emphasis added.)

To receive benefits, the petitioner must meet one of several conditions in addition to owning

the homestead. As the claimant, the petitioner must have actually occupied the property as his primary dwelling place on January 1, 2001 and for at least six months of 2000, or he must establish that the dwelling was his primary dwelling place during 2000 by clear and convincing evidence.

In telephone conversations the petitioner had with the staff and the Tax Appeals Specialist, the petitioner went into great detail regarding the circumstances that resulted in a court order requiring him to refrain from visiting the property or contacting his ex-wife who lives in the dwelling. He said it was not by choice that he did not live in the home. Rather, the choice was taken from him more than four years prior. He sent several documents with his protest letter, including a divorce decree and a quitclaim deed showing his ex-wife signed over the property to the petitioner. The divorce decree granted the petitioner's ex-wife the right to live in the house with the children.

The Tax Commission acknowledges the difficult position in which the petitioner presently finds himself. However, the law is not unclear when it directs that a homestead must be owner-occupied in order for a claimant to qualify to receive the property tax reduction benefits. The petitioner's application to receive benefits for 2001 must be denied.

The Tax Commission is aware there is some potential this decision could cause a hardship to the property tax reduction applicant in certain circumstances. The proper jurisdiction to handle such hardship situations falls with the county commissioners.

WHEREFORE, the decision of the State Tax Commission staff to deny the petitioner property tax reduction benefits is hereby APPROVED, AFFIRMED, and MADE FINAL.

An explanation of the petitioner's right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2001.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this _____ day of _____, 2001, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

ADMINISTRATIVE ASSISTANT 1