

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17109
[Redacted])	
)	DECISION
Petitioners.)	
_____)	

On January 13, 2003, the Revenue Operations Bureau (RevOp) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing Idaho individual income tax and interest in the amount of \$4,520.59 for tax year 2001.

The taxpayers filed a timely protest and petition for redetermination. They did not request a conference. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

The taxpayers filed their 2001 Idaho individual income tax return showing a deduction for retirement income that had been included in federal adjusted gross income. RevOp determined the taxpayers were not entitled to the deduction and sent the taxpayers a letter advising them of the change to their return. When the taxpayers objected to the determination, RevOp issued a Notice of Deficiency Determination and forwarded their file to the Legal/Tax Policy Division for administrative review.

Idaho Code § 63-3022A describes certain retirements that can be deducted from taxable income as follows:

63-3022A. Deduction of certain retirement benefits. (a)

An amount specified by subsection (b) of this section of the following retirement benefits may be deducted by an individual from taxable income if such individual has either attained age sixty-five (65) years, or has attained age sixty-two (62) years and is classified as disabled:

- (1) Retirement annuities paid by the United States of America to a retired civil service employee or the unremarried widow of a retired

civil service employee.

(2) Retirement benefits paid from the firemen's retirement fund of the state of Idaho to a retired fireman or the unremarried widow of a retired fireman.

(3) Retirement benefits paid from the policemen's retirement fund of a city within this state to a retired policeman or the unremarried widow of a retired policeman.

(4) Retirement benefits paid by the United States of America to a retired member of the military services of the United States or the unremarried widow of such member.

In the taxpayers' letter of protest, [Redacted] said his wife's pension was actually in lieu of Social Security not in addition to Social Security. He said the way the pension worked in California was similar to the way the pension plans that Idaho allows to be deducted work. He pointed out that this pension would not have been taxed in California. He wrote: "I believe this pension should be exempt from tax. Either we should not have to claim it as Idaho income, or it should be deductible under the provision of the tax plan that allows for pension exclusion."

Deductions from gross income are a matter of legislative grace and taxpayers must be able to show they fall within the terms of the deduction. New Colonial Ice Co. v. Helvering, 292 U.S. 435, 54 S.Ct. 788, (1934). Idaho Code § 63-3022A lists specific pension plans that can be deducted from gross income. [Redacted] AT & T pension and [Redacted] California Teachers Association pension are not included in that list. It appears these two particular pension plans do not qualify as deductions.

One might feel that the statutory treatment is unfair or otherwise unreasonable. The Idaho Supreme Court has addressed such circumstances. The Court stated, in part:

[3][4][5][6] Taxpayer urges that ambiguous language of the statute should be so construed as to avoid socially undesirable or oppressive results. It may be agreed, where legislative language is ambiguous, and other rules of statutory construction do not control, the court should consider social and economic results. But in the instance we

do not find the statutes involved to be ambiguous; no exemption is granted and the legislative intent is to impose a tax on residents of this state measured by taxable income wherever derived. In such case our duty is clear. We must follow the law as written. If it is socially or economically unsound, the power to correct it is legislative, not judicial. John Hancock Mutual Life Insurance Co. v. Neill 79 Idaho 385, 319 P2d 195 (1957). (Emphasis added.)

Herndon v. West, 87 Idaho 335, 339 (1964).

The law lists certain retirement benefits that can be deducted from gross income. The taxpayers' benefits are not listed. Based upon the forgoing discussion, the taxpayers' retirement benefits are not allowed as deductions from their taxable income.

WHEREFORE, the Notice of Deficiency Determination dated January 13, 2003, is hereby APPROVED, AFFIRMED, and MADE FINAL.

The taxpayers have paid the total amount due. No demand for payment is made.

An explanation of taxpayers' right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this _____ day of _____, 2003, 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]
[Redacted]

[Redacted]
