

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18112
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

On March 29, 2004, the Income Tax Audit Bureau (Audit) of the Idaho State Tax Commission issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers), asserting income tax and interest in the total amount of \$3,833 for the 2001 and 2002 taxable years.

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

In both their 2001 and 2002 Idaho individual income tax returns, the taxpayers claimed the Idaho retirement benefits deduction. Audit reviewed those returns and determined the taxpayers' retirement benefits did not qualify for the retirement deduction defined in Idaho Code § 63-3022A(a). The taxpayers were notified of the determination, and they protested the adjustment to their returns.

The taxpayers' file was transferred to the Legal/Tax Policy Division for administrative review. They did not respond to a letter outlining their right to request a hearing or submit additional information.

Subsequent to the taxpayers receiving the NODD, the taxpayers' tax preparer telephoned the auditor. In the ensuing conversation, the taxpayers' representative expressed her view that the retirement was a qualified deduction. The auditor explained the specifics of the tax code section allowing deduction of certain retirement benefits; however, the conversation was cut short because the taxpayers had not provided a Power of Attorney that would allow the auditor to talk with a third party. All further conversation and correspondence was with the taxpayers.

In his petition for redetermination, [Redacted] asked the Tax Commission to reconsider Audit's decision to disallow deduction of his pension because he was a "civil service" employee. He explained: "When I was hired as a fire engineer, I was required to take and pass all of the civil service examinations, as this was considered to be a civil service position." He said all people receiving civil service pensions are allowed the retirement exemptions no matter what state they retired from. He stated his belief that, because he receives no Social Security benefits and his pension is his only income, he is entitled to the maximum social security benefit deduction that others receive. He attached a copy of a letter from the Manager for the Service Pensions Section of the [Redacted] Department of Fire and Police Pensions to verify his eligibility to receive their pension.

Idaho Code § 63-3022A(a) allows a deduction from taxable income for certain retirement benefits from specific sources:

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. (Emphasis added.)

[Redacted] retirement benefits were not paid by the United States of America, the State of Idaho, or any city within the state of Idaho. His annual pension was paid by the City of [Redacted] retirement fund.

It is well established that the allowance of deductions is a matter of legislative grace and that a taxpayer has the burden of establishing his right to the deductions. *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84, 112 S.Ct. 1039, 1043 (1992); *Interstate Transit Lines v. Commissioner*, 319 U.S. 590, 593, 63 S.Ct. 1279 1281 (1943); *Deputy v. Du Pont*, 308 U.S. 488, 493, 60 S.Ct. 363, 366 (1940); *New Colonial Ice v. Helvering*, 292 U.S. 435, 440, 54 S.Ct. 788, 790 (1934). In this case, the taxpayers have not met their burden of establishing their right to the deduction of the retirement income from the [Redacted] Fire and Police Pension System. The Tax Commission denies any deduction of retirement benefits from the taxpayers' 2001 and 2002 Idaho taxable income.

WHEREFORE, the Notice of Deficiency Determination dated March 29, 2004, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax and interest.

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2001	\$1,686	\$240	\$1,926
2002	1,826	143	<u>1,969</u>
		TOTAL	<u>\$3,895</u>

Interest is computed through September 15, 2004.

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

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

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2004, 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]

[REDACTED]

[Redacted]

[Redacted]