

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 18225
[REDACTED],	)	
	)	DECISION
Petitioners.	)	
_____	)	

On June 23, 2004, the Income Tax Audit Bureau (Audit) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing additional individual income tax and interest in the total amount of \$1,342 for tax years 2001, 2002, and 2003.

The taxpayers filed a timely appeal 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.

Audit selected the taxpayers 2001, 2002, and 2003 Idaho income tax returns for review. All three years had been filed using a filing status of married filing jointly and small refunds were issued each year. Audit reviewed the returns and found the taxpayers had deducted Mr. [Redacted]'s military retirement/disability pay (he is recognized as 30% disabled) from their Idaho taxable income pursuant to Idaho Code § 63-3022A even though Mr. [Redacted] was under the age of 62 all three years. Audit issued a Notice of Deficiency Determination denying the deductions.

The petitioners objected in a letter of protest dated August 6, 2004. They said they felt they had complied with the law because Idaho is a community property state, and they filed a married filing joint tax return. Therefore, any deduction taken by one of them is a deduction by both of them.

The taxpayers file was transferred to the Legal/Tax Policy Division for administrative review. Upon receipt of a letter advising the taxpayers of their appeal rights, the taxpayers wrote two additional letters restating their position. They argued further that the federal government allows an additional credit if one spouse is 65 or blind, so Idaho should allow similar treatment for a deduction if one spouse is over 65.

Idaho Code § 63-3022A states in pertinent part:

**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.)

Mr. [Redacted] is the individual who is “a retired member of the military services of the United States” and to whom the United States of America is paying benefits. During the years at issue, he was less than 62 years of age although he had a 30% qualified disability. He had not “attained age sixty-five (65), or has attained age sixty-two (62) years and is classified as disabled.”

The Tax Commission finds Idaho Code § 63-3022A, cited above, is controlling with respect to the deduction of Mr. [Redacted]’s military pension. The deductions are not allowable.

WHEREFORE, the Notice of Deficiency Determination dated June 23, 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	\$766	\$117	\$883
2002	251	22	273
2003	194	7	<u>201</u>
		TOTAL	<u>\$1,357</u>

Interest is computed through November 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 enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2004.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

#### CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this \_\_\_\_ day of \_\_\_\_\_, 2004, 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]

[Redacted]  
[Redacted]