

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 18308
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

This case arises from a timely protest of a State Tax Commission staff (staff) decision adjusting property tax reduction benefits for 2004. This matter was submitted for a decision based on the documents in the file. The State Tax Commission has reviewed the file and makes its decision thereon.

The amount of property tax reduction benefit depends on the income received by a claimant and the claimant's spouse--the greater the income, the smaller the benefit. [Redacted] (petitioner) filed a property tax reduction application with [Redacted] County on or about April 2, 2004. The staff examined the petitioner's application and the attached documents pursuant to Idaho Code § 63-707 providing for the Tax Commission to review all submitted applications.

State and county records showed the petitioner as a married woman. However, she had not included her husband's income in her total income. Because the income information did not appear to be complete, the staff notified the petitioner of the intent to deny her benefit for 2004.

The petitioner sent a letter of protest dated August 26, 2004, explaining she and her husband have been legally separated since 1991 and have separate income and bank accounts. Additionally, her husband's name has been taken off of the ownership of the property. She included a copy of a Quitclaim Deed and a Complaint for Separate Maintenance. The petitioner's file was transferred to the Legal/Tax Policy Division for administrative review.

Idaho Code § 63-701 uses a series of definitions to state the requirements for qualifying to receive the property tax reduction benefit. Idaho Code § 63-701 states in pertinent part:

63-701. DEFINITIONS. As used in this chapter:

(1) **"Claimant" means a person who has filed a claim** under the provisions of sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1 of the year or before April 15 in which the claim was filed a claimant must be an owner of a homestead and be:

(a) Not less than sixty-five (65) years old; or

(b) A child under the age of eighteen (18) years who is fatherless or motherless or who has been abandoned by any surviving parent or parents; or

(c) A widow or widower; or

(d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; or

(e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States veterans administration; or

(f) A person, as specified in 42 U.S.C. 1701, who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage or otherwise; or

(g) Blind.

(2) "Homestead" means the dwelling, owner-occupied by the claimant as described in this chapter and used as the primary dwelling place of the claimant and may be 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.

(3) **"Household" means the claimant and the claimant's spouse.** The term does not include bona fide lessees, tenants, or roomers and

boarders on contract. "Household" includes persons described in subsection (8)(b) of this section.

(4) **"Household income" means all income received by the claimant and, if married, all income received by the claimant's spouse, in a calendar year.** (Emphasis added.)

The section of Idaho Code providing for the property tax reduction benefit uses definitions to state eligibility and income requirements. The definitions are very specific. The law must be followed as written. If it is socially or economically unsound, the power to correct it is legislative, and not within the powers of the Tax Commission. John Hancock Mutual Life Insurance Co. v. Neill, 79 Idaho 385, 319 P.2d 195 (1957).

In the present case, the petitioner filed a claim. She is the claimant. The household is defined as the claimant and the claimant's spouse. Household income is defined as the income received by the claimant and, if the claimant is married, the claimant's spouse.

The petitioner provided a copy of a Complaint for Separate Maintenance that was signed on April 13, 2004 and, during the appeals process, she provided a copy of a Decree of Separate Maintenance that was signed on October 12, 2004. Until that Decree was signed, the income received by the petitioner and her husband was community income. The Decree provides for monthly support to be paid to the petitioner by her husband as "a fair division of the income differential between the parties. This is separate maintenance."

Clearly, the petitioner, her husband, and the Court recognized the petitioner had an interest in her husband's income. Prior to the Decree, the income of the parties was community income. After the Decree, the community income became the separate income of each party. As community

income, the petitioner's spouse's 2003 income is required to be included for the determination of income for property tax reduction benefit purposes. Without complete income information, the Tax Commission must deny the petitioner the property tax reduction benefit for 2004.

The State Tax Commission is aware there is some potential this decision could cause a hardship to the property tax reduction applicant. The proper jurisdiction to handle such hardship situations falls with the Boundary County Commissioners pursuant to Idaho Code § 63-711.

WHEREFORE, the decision of the State Tax Commission staff 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 \_\_\_\_\_, 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]

Receipt No.

\_\_\_\_\_