

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19101
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

This case arises from a timely protest of a State Tax Commission staff (staff) decision to deny the property tax reduction benefit for 2005. 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 March 23, 2005. Idaho Code § 63-707(5) provides for the Tax Commission to review applications the applicants submit to their county of residency. When the staff examined the petitioner's application and her Idaho income tax return, it was noted the petitioner filed as a part-year resident of Idaho. The return showed the petitioner was a resident of [Redacted] from May 8, 2004, to December 31, 2004. The petitioner provided a copy of her [Redacted] part-year resident income tax return, which was also reviewed.

The staff sent a letter to the petitioner advising her of the intent to deny her the benefit for 2005. She responded 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 circuit breaker benefits. The Code states in pertinent part:

- (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.

...

(6) **“Occupied” means actual use and possession.**

...

(8) (a) **“Primary dwelling place” means the claimant's dwelling place on January 1 or before April 15 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 to be his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 or before April 15 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 for less than one (1) year. The county assessor may require written or other proof of the foregoing in such form as the county assessor may determine. (Emphasis added.)

The burden of proof is on the petitioner to establish her home in Idaho was her primary dwelling place on January 1, 2005, or before April 15, 2005, and at least six months of 2004 or by clear and convincing evidence.

The petitioner’s income tax returns show the petitioner was self-employed during 2004. She reported taxable income to both Idaho and [Redacted]. In her letter of protest, the petitioner explained that she went to [Redacted] to help her daughter who was seriously ill and expected to have surgery. In October of 2004, the petitioner’s daughter gave birth to her third child and the petitioner stayed on in her home to tend to the baby when her daughter went back to work. She advised that her home in Idaho is still her primary residence.

During the appeals process, the Tax Appeals Specialist spoke with the petitioner when she

telephoned from [Redacted]. She explained that she is still living with her daughter in [Redacted] to help her out. She said friends are living in her house rent free to care for the plants and animals. She said she did not stay in the house when she went to [Redacted] to “visit” because the friends live in the house. She said she stayed with her son. She did not claim or occupy the dwelling as her residence.

To receive the benefit, 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 her primary dwelling place on January 1, 2005, or before April 15, 2005, and for at least six months of 2004, or she must establish that the dwelling was her primary dwelling place during the prior year by clear and convincing evidence.

The petitioner stated that she did not live in her home for at least seven months during 2004. She has continued to live away from the dwelling for the entire 2005 calendar year. She did not even claim the dwelling as her home when she returned to Idaho. She was required to seek housing elsewhere because others occupied the homestead.

The Tax Commission is not persuaded the petitioner has established that the dwelling was her primary dwelling place by clear and convincing evidence or by actually occupying the property as required by the definition of primary dwelling place. The petitioner's application to receive the property tax reduction benefit for 2005 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 property tax reduction benefit for 2005 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 _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this _____ day of _____, 2005, 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.
