

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18981
[REDACTED])	
)	DECISION
Petitioner.)	
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)	

[Redacted] (petitioner) protested the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated June 3, 2005. The Notice of Deficiency Determination asserted an additional liability for Idaho income tax and interest in the total amounts of \$185 and \$90 for 2002 and 2003, respectively.

The only issue is whether the petitioner is entitled to the alternative energy device deduction provided for in Idaho Code § 63-3022C. The petitioner contends that he purchased a qualifying alternative energy device in 2002. The auditor does not challenge the qualification of the device. However, he stated that the petitioner did not dispose of the wood stove which was replaced as required by the statute. Therefore, he denied the deductions claimed by the petitioner in both 2002 and 2003.

Idaho Code § 63-3022C stated, in pertinent part:

- (3) As used in this section, "alternative energy device" means any system or mechanism or series of mechanisms using solar radiation, wind or geothermal resource as defined in section 42-4002, Idaho Code, primarily to provide heating, to provide cooling, to produce electrical power, or any combination thereof. Alternative energy device includes a fluid to air heat pump operating on a fluid reservoir heated by solar radiation or geothermal resource. Alternative energy device shall also include either a natural gas heating unit, or a propane heating unit, or a wood burning stove which meets the most current environmental protection agency certification, or a pellet stove which meets the most current industry and state standards, and which natural gas heating unit, or propane heating unit, or wood burning stove which

meets the most current environmental protection agency certification, or pellet stove which meets the most current industry and state standards is used to replace during the same tax year a wood burning stove designed for residential heating and that does not meet environmental protection agency requirements for certification, provided the wood burning stove is surrendered to the department of environmental quality or its agent for destruction in accordance with applicable federal and state rules. (Underlining added.)

Administrative Rule 150 stated, in pertinent part:

05. Destruction Of Wood Burning Stove. The wood burning stove that does not meet the environmental protection agency requirements for certification shall be surrendered to the Department of Environmental Quality no later than thirty (30) days from the date of purchase of the qualifying alternative energy device. Failure to surrender the wood burning stove within the thirty (30) day period shall result in the new device failing to qualify as an alternative energy device. The thirty (30) day period may be extended only if the taxpayer can show good cause for the delay.

The petitioner has stated that he used the old stove as garden art. To support his position, he submitted a picture of three wood stoves sitting outside. He stated that he is willing to take the old stove to the department of environmental quality at this time if they could receive the deduction sought by doing so. Alternatively, they state that they could pay the state of Idaho and sell the three old wood stoves in the picture so that they could be put back into service.

In addressing statutory construction, the Idaho Supreme Court stated, in part:

It is a basic rule of statutory construction that, unless the result is palpably absurd, we must assume that the legislature means what is clearly stated in the statute. Sherwood v. Carter, 119 Idaho 246, 254, 805 P.2d 452, 460 (1991); Miller v. State, 110 Idaho 298, 715 P.2d 968 (1986); State Dep't of Law Enforcement v. One 1955 Willys Jeep, 100 Idaho 150, 595 P.2d 299 (1979). It is also well established that statutes must be interpreted to mean what the legislature intended the statute to mean, Sherwood v. Carter, 119 Idaho 246,

254, 805 P.2d 452, 460 (1991); Miller v. State, 110 Idaho 298, 715 P.2d 968 (1986); Carpenter v. Twin Falls County, 107 Idaho 575, 691 P.2d 1190 (1984), and the statute must be construed as a whole. Sherwood v. Carter, 119 Idaho 246, 254, 805 P.2d 452, 460 (1991); Lelifeld v. Johnson, 104 Idaho 357, 659 P.2d 111 (1983); Sherwood & Roberts Inc. v. Riplinger, 103 Idaho 535, 650 P.2d 677 (1982). Statutory interpretation always begins with an examination of the literal words of the statute. Local 1494 of the Int'l Ass'n of Firefighters v. City of Coeur d'Alene, 99 Idaho 630, 586 P.2d 1346 (1978). In so doing, every word, clause and sentence should be given effect, if possible. Wright v. Willer, 111 Idaho 474, 725 P.2d 179 (1986); University of Utah Hosp. & Medical Center v. Bethke, 101 Idaho 245, 611 P.2d 1030 (1980). The clearly expressed intent of the legislature must be given effect and there is no occasion for construction where the language of a statute is unambiguous. Sherwood v. Carter, 119 Idaho 246, 254, 805 P.2d 452, 460 (1991); Ottesen ex rel. Edwards v. Board of Comr's of Madison County, 107 Idaho 1099, 695 P.2d 1238 (1985). Finally, when construing a statute, its words must be given their plain, usual and ordinary meaning. Sherwood v. Carter, 119 Idaho 246, 254, 805 P.2d 452, 460 (1991); Walker v. Hensley Trucking, 107 Idaho 572, 691 P.2d 1187 (1984).

Matter of Permit No. 36-7200, 121 Idaho 819, 822-823, 828 P.2d 848, 851-852 (1992)

In addressing the social and economic aspects of enforcing a statute, the Idaho Supreme Court stated:

[10] One of the amici curiae urges that ambiguous language of the statute should be so construed as to avoid socially undesirable or oppressive results, and that the construction contended for by the appellant would retard the economic development of the state. 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 we do not find the statutes involved to be ambiguous. 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 Company v. P. G. Neill, 79 Idaho 385, 404, 319 P.2d 195, 206 (1957).

If there is any ambiguity in the law concerning tax deductions, the law is to be construed strongly against the taxpayer. Potlatch Corp. v. Idaho State Tax Comm'n, 128 Idaho 387, 389, 913 P.2d 1157, 1159 (1996), Idaho State Tax Commission v. Stang, 135 Idaho 800, 802, 25 P.3d 113, 116 (2001).

The Commission finds that the statute is very specific in stating that the replaced stove must have been surrendered to the department of environmental quality or its agent. It was not surrendered. Rule 150 stated that “[t]he thirty (30) day period may be extended only if the taxpayer can show good cause for the delay.” Therefore, the next question is whether the five year delay might be considered “good cause” to allow the petitioner to use the old stove as garden art. The Commission finds that the petitioner’s use of the replaced stove as garden art is not sufficient cause for the delay. Therefore, the Commission further finds that the auditor’s adjustment must be upheld.

WHEREFORE, the Notice of Deficiency Determination dated June 3, 2005, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax and interest (computed to April 15, 2006):

YEAR	TAX	INTEREST	TOTAL
2002	\$163	\$28	\$191
2003	83	10	<u>93</u>
		TOTAL	<u>\$284</u>

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

An explanation of the petitioner's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2006, 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]

Receipt No.