BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 19860
[Redacted],	)	
	)	DECISION
Petitioner.	)	
	)	

This case arises from a timely protest of a State Tax Commission staff decision adjusting the property tax reduction benefit for 2006. 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.

All property within the jurisdiction of this state is subject to property tax. A property tax reduction benefit is available to certain qualifying individuals. The benefit is in the form of payment of all or a portion of the applicant's property tax on the dwelling he/she owns and occupies. The payment is funded by state sales tax. The amount of property tax reduction depends on income--the greater the income, the smaller the benefit.

[Redacted] (petitioner) filed an application for a property tax reduction benefit [Redacted] April 7, 2006. In her application, the petitioner listed social security income of $14,234 and pensions of $1,364 less medical expenses of $4,428 for a total net income of $11,170. The resulting property tax reduction benefit would be an amount not to exceed $1,320.

The Tax Commission staff sent the petitioner a notice advising her of the intent to increase her income by including capital gains from the sale of real property in the total amount of $149,000 and an agriculture payment of $986. The petitioner appealed the intended action, and her file was transferred to the Legal/Tax Policy Division for administrative review.

Income for property tax reduction benefit purposes is defined in Idaho Code § 63-701(5):

> (5) "Income" means the sum of federal adjusted gross income as defined in the Internal Revenue Code, as defined in section 63-3004, Idaho Code, and to the extent not already included in federal adjusted gross income:
> (a) Alimony;
> (b) Support money;
> (c) Nontaxable strike benefits;
> (d) The nontaxable amount of any individual retirement account, pension or annuity, (including railroad retirement benefits, all payments received under the federal social security act except the social security death benefit as specified in this subsection, state unemployment insurance laws, and veterans disability pensions and compensation, excluding any return of principal paid by the recipient of an annuity and excluding rollovers as provided in section 402 or 403 of the Internal Revenue Code);
> (e) Nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities;
> (f) Worker's compensation; and
> (g) The gross amount of loss of earnings insurance.
> It does not include gifts from nongovernmental sources or inheritances. To the extent not reimbursed, the cost of medical care as defined in section 213(d) of the Internal Revenue Code, incurred or paid by the claimant and, if married, the claimant's spouse, may be deducted from income. To the extent not reimbursed, personal funeral expenses, including prepaid funeral expenses and premiums on funeral insurance, of the claimant and claimant's spouse only, may be deducted from income up to an annual maximum of five thousand dollars ($5,000) per claim. "Income" does not include veterans disability pensions received by a person described in subsection (1)(e) who is a claimant or a claimant's spouse if the disability pension is received pursuant to a service-connected disability of a degree of forty percent (40%) or more. "Income" does not include dependency and indemnity compensation or death benefits paid to a person described in subsection (1) of this section by the United States department of veterans affairs and arising from a service-connected death or disability. "Income" does not include lump sum death benefits made by the social security administration pursuant to 42 U.S.C. section 402(i). Documentation of medical expenses may be required by the county assessor, board of equalization and state tax commission in such form as the county assessor, board of equalization or state tax commission shall determine. "Income" shall

> be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant and/or the claimant's spouse does not file a federal tax return, the claimant's and/or the claimant's spouse's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gross income had the claimant and/or the claimant's spouse filed a federal tax return, as determined by the county assessor. The county assessor, board of equalization or state tax commission may require documentation of income in such form as each shall determine, including, but not limited to: copies of federal or state tax returns and any attachments thereto; and income reporting forms such as the W2 and 1099.

When the petitioner received the Intent to Deny Property Tax Reduction Benefit letter, she telephoned the Tax Commission staff. The petitioner said she did not receive any of the proceeds from the two sales of real property [Redacted]. The petitioner said she sold the properties because she could not make the payments. She was advised to file a protest to the intent to deny her the benefit.

Subsequently, the State Tax Commission received a letter from a person who described himself as a person who assists the petitioner when her daughter is out of town. He said the petitioner did not receive any of the proceeds from the sales as the funds were used to pay off lien holders, taxes, irrigation, and closing fees. He included copies of two Closing Statements from the sales.

In response to the letter advising the petitioner of her rights regarding her appeal, the petitioner sent copies of various documents she received from the title company when she sold the two properties. None of the information had any bearing on the capital gains from the sales. At least one of the documents referred to the property as "investment property."

Internal Revenue Code § 121 provides for excluding the gain from the sale of a person's primary residence. There has been no suggestion that either of the properties the petitioner sold in 2005 was her primary residence.

No additional information has been received that would clarify the petitioner's gains from her 2005 property sales. Absent financial information regarding the properties, the State Tax Commission is unable to determine the portion of the funds that is considered to be the capital gains.

The petitioner did not object to including the $986 agriculture payment in her income for the purpose of determining the petitioner's eligibility for the property tax reduction benefit and the amount of the benefit.

When the income of $11,170 that was reported by the petitioner in her application is increased by the $149,000 gain from the sale of real property and the $986 agriculture payment, the petitioner's total net income for the purpose of the property tax reduction benefit is $161,156. The maximum amount allowed for a 2006 minimum benefit is $28,000. The petitioner must be denied the 2006 property tax reduction benefit.

WHEREFORE, the Intent to Deny Property Tax Reduction Benefit letter dated October 17, 2006, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

DATED this ________ day of ________________________, 2007.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ________ day of _________________________, 2007, 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. _________________________________