

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 20379
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

This case arises from a timely protest of a State Tax Commission staff decision adjusting the property tax reduction benefit for 2005. 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.

The amount of the 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 benefit application on April 12, 2005. The application was approved, and the petitioner received a benefit for payment of the property tax on her homestead.

Idaho Code §§ 63-707 and 708 provide for audit of all claims and recovery of benefits that have been paid in error. When the Tax Commission staff compared the petitioner's application with the records retained by the Tax Commission, they found the information to be in conflict. Tax Commission records showed the petitioner as a married woman. Her 2005 Idaho income tax return had been filed as "married filing separate."

Idaho Code § 63-701 states in pertinent part:

**63-701. Definitions. As used in this chapter:**

(1) **"Claimant" means a person who has filed an application** under section 63-602G, Idaho Code, and 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, or before April 15, of the year in which the claimant first filed a claim on the

homestead in question, a claimant must be an owner of the homestead and on January 1 of said year a claimant must 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 department of veterans affairs; 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.)

In the petitioner's application for the property tax reduction benefit, no information was filled out for the petitioner's spouse. All sections related to her spouse were left blank including the check boxes to indicate the petitioner's marital status.

A Notice of Deficiency Determination was sent to the petitioner to advise her of the determination that income reported in the application she filed with [Redacted] County was incomplete because it did not include her spouse's income. The inclusion of the petitioner's spouse's income resulted in a total household income that exceeded the maximum income allowed to receive a minimum benefit. The petitioner was advised of the determination that she owed repayment of the 2005 benefit she received in error.

In response to the Notice of Deficiency Determination, the petitioner's accountant sent a letter of protest, copies of correspondence with the Tax Commission regarding the filing status the petitioner used when she filed her 2004 individual income tax return, a copy of a portion of the petitioner's 2005 federal and state income tax returns, and a copy of a Decree of Legal Separation and Division of Property. The fully executed Decree showed the petitioner as the Plaintiff and her spouse as the Defendant.

In the letter protesting the determination that the petitioner should repay the 2005 benefit, the accountant said the petitioner and her husband obtained a legal separation and divided their property in 1998. They do not share income or have contact with each other. She said, "If their tax returns are accepted as correct by the Revenue Operations Division, it is logical to assume they should also be correct with respect to income assertions for property tax reduction."

Property tax reduction benefits are not federal or state income taxes – they are payment of property taxes based on certain qualifying factors including income. Although the petitioner and her

husband are legally separated, they remain married. Pursuant to the definition of household income, “all income received by the claimant and, if married, all income received by the claimant’s spouse, in a calendar year” the petitioner’s husband’s 2004 income must be included in the total income shown in the 2005 application for the property tax reduction benefit.

When that income is added to the income reported in the petitioner’s application, the total 2004 income for the purpose of the property tax reduction benefit exceeds the maximum income allowed for a minimum 2005 benefit. Repayment of the over-paid portion of the petitioner’s benefit is appropriate.

The State 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 pursuant to Idaho Code § 63-711.

WHEREFORE, the decision of the State Tax Commission staff is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pays the following 2005 property tax benefit reimbursement and interest.

BENEFIT	INTEREST	TOTAL
\$750.00	\$59.67	\$809.67

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 \_\_\_\_\_, 2007.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this \_\_\_\_\_ day of \_\_\_\_\_, 2007, 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]

Receipt No.

\_\_\_\_\_

[Redacted]