

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20550
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

This case arises from a timely protest of a State Tax Commission staff decision to deny the property tax reduction benefit for 2007. 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.

[Redacted] filed a property tax reduction benefit application on March 26, 2007. During review of that application and comparison of the information with State Tax Commission records, the staff identified nontaxable pensions or annuities and Social Security that had not been included in the application.

The staff sent the petitioner a letter advising her that her income total for the purpose of the property tax reduction benefit was going to be increased to include the gross amount of the petitioner's Social Security benefit and the nontaxable portion of her annuities. The petitioner protested the intended action that would result in denial of her benefit.

All property within the jurisdiction of this state is subject to property tax. A property tax reduction benefit program is available to certain qualifying individuals throughout the state. The benefit is in the form of payment (either total or partial) 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. However, income is defined differently for the property tax reduction benefit program than it is described in the income tax code. 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. (Emphasis added.)

The calculation of income starts with federal adjusted gross income and, thereafter, makes certain additions and deductions. The nontaxable portion of pensions and annuities is specifically required to be included in income to determine the benefit amount a qualified applicant is to receive. The only exceptions are if the annuities are determined to be qualified as “return of principal paid by the recipient of an annuity” or “rollovers as provided in section 402 or 403 of the Internal Revenue Code.”

The petitioner’s federal Form 1099-R shows she received gross distribution of annuities in the amount of \$132,460. The taxable portion, \$6,022, was included in the petitioner’s application as part of her federal adjusted gross income.

The petitioner submitted a copy of a federal Form 1099-R showing the petitioner rolled \$126,165.73 into another account pursuant to Internal Revenue Code. The petitioner submitted a second Form 1099-R that identifies a \$6,294.66 pension she received from PERSI. Of that amount, \$6,021.78 was taxable and included in the petitioner’s federal adjusted gross income. However, the remaining \$272.88 was not included in the petitioner’s federal adjusted gross income and was not accounted for in her application for the benefit.

In response to a letter from the Tax Commission advising the petitioner of her appeal rights, the petitioner said the \$272.88 was a return of her principal. She included a copy of her Form 1099-R from PERSI.

The property tax reduction benefit is not federal or state income tax—it is payment of property tax based on certain qualifying factors including income. Pursuant to the definition of income as stated in Idaho Code § 63-701(5), the nontaxable portion of annuities is required to be included in income to determine the benefit amount a qualified applicant receives.

The Idaho Legislature gave the Idaho State Tax Commission authority to promulgate rules to implement the provisions of the Idaho statutes relating to the property tax laws under Property Tax Administrative Rule 000:

000. LEGAL AUTHORITY (RULE 000).

In accordance with Section 63-105 and 63-105A, Idaho Code, the State Tax Commission shall promulgate rules implementing the provisions of the Idaho Statutes relating to the property tax laws and related statutes, Chapters 1 through 22 and Chapters 28 and 35, Title 63, Idaho Code. Rules relating to the market value of recreational vehicles are authorized by Section 49-445, Idaho Code. Rules relating to taxation of newly constructed improvements are authorized by Section 63-105A, Idaho Code. (7-1-98)

Idaho Property Tax Administrative Rule 700.03 provides guidelines for determining any return of principal paid by the recipient of an annuity:

03. Claimant's Income. All income defined in Section 63-701(5), Idaho Code, that is received by either spouse is included in household income even if one spouse lives in a medical care facility or otherwise lives outside the home except as provided in Rule 709 of these rules. For the purposes of excluding from claimant's income any return of principal paid by the recipient of an annuity, follow these guidelines. (1-1-06)

a. An annuity means a contract sold by an insurance company to the claimant or claimant's spouse and designed to provide

payments to the holder at specified equally spaced intervals or as a lump sum payment with the following conditions: (1-1-06)

i. The annuity must not be part of any pension plan available to an employee; (1-1-06)

ii. No tax preference is given to the money spent to purchase the annuity (purchase payments must not reduce the buyer's taxable income); (1-1-06)

iii. The buyer of the annuity must have purchased the annuity voluntary and not as a condition of employment or participation in an employer provided pension system; and (1-1-06)

iv. Earnings from investments in the annuity must be tax-deferred prior to withdrawal. (1-1-06)

b. Annuities do not include KEOGH plans, Individual Retirement Accounts (IRAs), employer provided pensions, and similar financial instruments. Life insurance premiums shall not be treated as the principal of an annuity. (1-1-06)

c. The recipient of the annuity payment(s), the claimant or claimant's spouse, has the burden of proving the income is the principal paid by the recipient. Such proof includes copies of the holder's annuity contract and any other documentation clearly indicating the conditions listed in Subparagraphs 700.03.a.i. through 700.03.a.iv. of this Rule are met. IRS form 1099 does not provide sufficient proof. (1-1-06)

The petitioner's federal Form 1099-R does not provide sufficient proof that the nontaxable portion of the annuities the petitioner received in 2006 were return of principal as described in the above Rule 700.03. The petitioner did not provide a copy of an annuity contract or other documentation that clearly indicates the conditions listed in Subparagraphs 700.03.a.i through 700.03.a.iv of the above Rule. In fact, the 1099-R suggests the distribution was part of an employer provided pension system.

The Tax Commission finds the nontaxable portion of the distribution the petitioner received from PERSI in 2006 should be included in income for the purpose of the 2007 property tax reduction benefit.

When the petitioner completed her application for the property tax reduction benefit, she listed the amount of Social Security she received by check. She did not include the Medicare portion of the benefit she received in her income. However, when she deducted her medical expenses, she used the amount claimed in schedule A of her federal income tax return. Because her Medicare premiums are deductible medical expenses, her Medicare was included in the total shown in Schedule A that the petitioner used as the amount of her total medical expense claimed in her application for this benefit. To not include the Medicare portion of the petitioner's benefit in the Social Security income would result in a double deduction for Medicare.

The petitioner's income for the purpose of the property tax reduction benefit is:

Federal adjusted gross	\$15,851
Social security	12,342
Pensions	<u>273</u>
Sub total	\$27,404
Medical expenses	<u>-5,130</u>
Net total income	\$22,274

The petitioner qualifies to receive a 2007 property tax reduction benefit of an amount not to exceed \$520.

The State Tax Commission is aware there is some potential this decision could cause a hardship to the property tax reduction benefit applicant. 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 to deny the property tax reduction benefit is MODIFIED and, as so modified, is 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 _____, 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.
