

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 21513
)
) DECISION
Petitioner.)
_____)

This case arises from a timely protest of a State Tax Commission (Commission) staff decision to deny the property tax reduction benefit for 2008. An informal conference was requested by [Redacted] (petitioner) and held on March 12, 2009. This matter was submitted for decision based on the documents in the file. The Commission has reviewed the file and makes its decision thereon.

[Redacted] (petitioner) filed a property tax reduction benefit application on March 25, 2008. Idaho Code § 63-707(5) provides for the Commission to review applications the petitioners submit to their county assessors. When the staff examined the petitioner’s application and the records available to the Commission, it did not appear the petitioner was an Idaho resident.

The staff sent a letter to the petitioner advising him of the intent to deny him the 2008 benefit. He responded on October 22, 2008, by letter, appealing that determination. The petitioner stated in his appeal letter that he has been in [Redacted] for the last few months helping his nephew open a [Redacted]. His 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 the property tax reduction benefit. 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.

...

(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 by clear and convincing evidence that his home in Idaho was his primary dwelling place on January 1, 2008, or before April 15, 2008, and for at least six months of 2007.

To support his claim, the petitioner supplied a copy of a utility bill in his name for the property located in [Redacted] County. The bill was sent to an address in [Redacted]. The petitioner also provided an affidavit from [Redacted], the mother of his nephew that states she maintains the home for the petitioner as he is working all the time. The affidavit further states,

“Every thing [SIC] is on, electric, gas, water and has been, as he lives there. I and my husband [Redacted] have kept it up for years while [Redacted] is working in [Redacted] for my son.”

According to records available to the Commission, the petitioner does not possess an Idaho driver’s license, a resident fish and game license, and has not registered to vote in Idaho. In addition, all mail is delivered to a [Redacted] address, the petitioner’s phone number is a Washington area code, and the address of record for the Social Security Administration is in Washington. The petitioner does have a vehicle registered in Idaho; however, the registration information shows a [Redacted] address. [Redacted]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 his primary dwelling place on January 1, 2008, or before April 15, 2008, and for at least six months of 2007, or he must establish that the dwelling was his primary dwelling place during the prior year by clear and convincing evidence.

The Commission is not persuaded that the petitioner has established that his house [Redacted], Idaho, was his primary dwelling place by clear and convincing evidence or by actually occupying the property as required by the definition of primary dwelling place--on January 1, 2008, or before April 15, 2008, and for six months during 2007.

Idaho Property Tax Administrative Rule 600 states: “The burden of proof of entitlement to the exemption is on the person claiming exemption for the property.” The petitioner has not met his burden. The petitioner’s application to receive the property tax reduction benefit for 2008 must be denied.

WHEREFORE, the decision of the Commission staff to deny the property tax reduction benefit for 2008 is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

DATED this _____ day of _____, 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2009, 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]

Receipt No.
