

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 22140
[Redacted]	)	
	)	DECISION
Petitioners.	)	
<hr style="width: 40%; margin-left: 0;"/>		

[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated October 21, 2009. The Notice of Deficiency Determination asserted additional Idaho income tax and interest in the total amounts of \$2,021.55, \$1,319.99, and \$1,468.39 for 2006, 2007, and 2008, respectively. The petitioners have paid the amounts asserted.

The sole issue is whether a pension paid to Mr. [Redacted] qualified for the deduction provided by Idaho Code § 63-3022A, which stated in part:

Deduction of certain retirement benefits. (a) An amount specified by subsection (b) of this section of the following retirement benefits may be deducted by an individual from taxable income if such individual has either attained age sixty five (65) years, or has attained age sixty two (62) years and is classified as disabled:

\* \* \*

(3) Retirement benefits paid from the policemen’s retirement fund of a city within this state to a retired policeman or the unremarried widow of a retired policeman.

Idaho Income Tax Administrative Rule 130.01.c. further addresses the qualifying retirement from a policeman’s retirement fund:

Retirement benefits paid as a result of participating in a policeman’s retirement fund of an Idaho city as previously authorized by Sections 50-1501 through 50-1524, Idaho Code. A policeman is entitled to benefits from a city policeman’s retirement fund if he was employed by a city as a policeman prior to April 12, 1967, or if he was required to participate in the fund by city ordinance. Retirement benefits paid by the public employee’s retirement system do not qualify for the deduction. (4-6-05)

The petitioners contend that Mr. [Redacted] retired from a city police department in 2003 after having served in such department for 28 years. Therefore, they argue that they are entitled to the deduction provided by Idaho Code § 63-3022A. However, it appears that, if Mr. [Redacted] started with the city police department 28 years prior to 2003, in 1975, he would not qualify pursuant to Idaho Administrative Rule 130 (above).

Mr. [Redacted] pension is paid by the Public Employee Retirement System of Idaho (PERSI). While PERSI now also administers the city policemen's retirement funds, the funds are accounted for separately. Since Mr. [Redacted] pension is paid from the state's retirement fund, and not by a city's retirement fund, it does not qualify for the deduction sought by the petitioners.

WHEREFORE, the Notice of Deficiency Determination dated October 21, 2009, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

An explanation of the petitioners' right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

IDAHO STATE TAX COMMISSION

---

COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2010, 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.

---