

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22204
[Redacted],)	
)	DECISION
Petitioner.)	
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)	

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated July 29, 2009, asserting additional liabilities for Idaho income tax, penalty, and interest in the total amounts of \$951.00 and \$878.54 for 2006 and 2007, respectively.

The only issues in this docket relate to whether the petitioner’s pension qualified for the deduction provided in 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:
- (1) Retirement annuities paid by the United States of America to a retired civil service employee or the unremarried widow of a retired civil service employee.
 - (2) Retirement benefits paid from the firemen’s retirement fund of the state of Idaho to a retired fireman or the unremarried widow of a retired fireman.
 - (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.
 - (4) Retirement benefits paid by the United States of America to a retired member of the military services of the United States or the unremarried widow of such member.

The petitioner was employed [Redacted]. His retirement was paid to him [Redacted]. He contends that the retirement should be considered to have been [Redacted] retirement. Further, he contends that failure to allow him this deduction while allowing the deduction to the retirees from the [Redacted] retirement fund and the [Redacted] retirement fund is unconstitutional.

This docket poses two distinct questions upon which the Commission may rule:

1. Were the retirement benefits paid by the United States of America, and
2. Was the petitioner a “retired Civil Service employee.”

Only if the answer to both questions is “yes” is the petitioner entitled to the deduction sought.

The United States Claims Court has previously addressed the first issue. The Court stated, in part:

It is well established that military nonappropriated fund activities, such as post exchanges, officers' messes, lunchrooms, and even bowling alleys, are instrumentalities of the United States. cf. Standard Oil Co. of California v. Johnson, 316 U.S. 481, 62 S.Ct. 1168, 86 L.Ed. 1611 (1942); Rizzuto v. United States, 298 F.2d 748 (C.A. 10, 1961); Pulaski Cab Co. v. United States, 141 Ct.Cl. 160, 157 F.Supp. 955 (1958); Borden v. United States, 126 Ct.Cl. 902, 116 F.Supp. 873 (1953); Bleuer v. United States, 117 F.Supp. 509 (E.D.S.C.1950); Nimro v. Davis, 92 U.S.App.D.C. 293, 204 F.2d 734 (C.A.D.C.1953) cert. denied 346 U.S. 901, 74 S.Ct. 229, 98 L.Ed. 401. While these cases establish that nonappropriated fund activities are instrumentalities of the United States for certain purposes, these cases do not construe § 911 of the Internal Revenue Act of 1954, and they do not establish the proposition that wages received from such a nonappropriated fund activity are ‘amounts paid by the United States or an agency thereof.’ On the contrary, it is established that employees of nonappropriated fund activities are not employees of the United States. [footnote omitted] In Borden, supra, a suit for salary withheld from an employee of the Army Exchange Service, a nonappropriated fund activity, pursuant to a contract of employment, this court held that the United States could not be sued on a contract of employment signed by the Army Exchange Service. cf. Bleuer, supra; Gradall v. United States, Ct.Cl., 329 F.2d 960. It is scarcely arguable then that such employees are ‘paid by the United States.’

Brummit v. United States, 329 F.2d 966, 967-968 (Cl.Ct. 1964).

Accordingly, the Commission finds that the sums paid to the petitioner were not “paid by the United States of America” as required by Idaho Code § 63-3022A. Due to this finding, the Commission needn’t address the other arguments presented by the petitioner.

WHEREFORE, the Notice of Deficiency Determination dated July 29, 2009, is hereby APPROVED, AFFIRMED, and MADE FINAL.

The amount asserted has been paid in full. Therefore, no further demand is made.

An explanation of the petitioner's 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.