

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 22764  
 )  
 )  
Petitioner. ) DECISION  
 )  
\_\_\_\_\_ )

This case arises from a timely protest of an Idaho State Tax Commission (Commission) staff's decision adjusting a property tax reduction benefit for taxable year 2008. This matter was submitted for a decision based on the documents in the file. The Commission has reviewed the file and makes its decision based on the contents in the file.

All property within the jurisdiction of this state is subject to property tax. A property tax reduction benefit is available to certain qualifying individuals. The benefit is in the form of payment of all or a portion 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.

[Redacted] (petitioner) filed an application for a property tax reduction benefit [Redacted]. The application was approved, and the petitioner received a benefit for payment of the property tax on her homestead.

Idaho Code §§ 63-707 and 63-708 provide for an audit of all claims and recovery of benefits that have been paid in error. In conjunction with the audit, the staff identified interest income along with income from pensions, annuities, and/or retirement accounts that had not been included in the application. A Notice of Deficiency Determination (NODD) was issued, and the petitioner was asked to repay a portion of the amount of the benefit received plus interest. The petitioner, through her appointed representative, protested the determination.

The petitioner's protest received on April 14, 2010, stated the NODD was in error because it did not account for medical expenses paid by the petitioner in 2007 and the amount reported for Social Security income was incorrect. The interest asserted in the NODD was also appealed by the petitioner.

The protest was accompanied by a list of medical expenses but no documentation. The petitioner's file was transferred to the Legal/Tax Policy Division for administrative review.

The petitioner was sent a letter by the tax policy specialist that outlined her appeal rights and requested documentation of the medical expenses. The petitioner did not request a hearing but instead provided documentation for consideration.

Income for property tax reduction benefit purposes is defined in Idaho Code § 63-701(5) as follows:

(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 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 capital gains, 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/or, if applicable, 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 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. (Emphasis added.)

For property tax reduction benefit purposes, medical expenses defined in the Internal Revenue Code are deducted from income. The Commission has reviewed the receipts and additional documentation the petitioner provided and determined a total of \$3,586 of medical expenses qualifies for exclusion from income. The petitioner did not dispute the inclusion of the interest income and the income received from pensions, annuities, and/or retirement accounts. When interest income of \$6,854 and income from pensions, annuities, and/or retirement accounts of \$454 is added to the petitioner's Social Security income of \$10,554 and unreimbursed medical expenses of \$3,586 are subtracted, the petitioner's total income for the purpose of the property tax reduction benefit is \$14, 280. The petitioner qualifies to receive a benefit of an amount not to exceed **\$1,090** for 2008.

Idaho Code section 63-3045 provides for the addition of interest to any tax deficiency. The specific wording of the Idaho Code is "interest upon any deficiency shall be assessed." The addition of interest has also been addressed in the courts. In hearing Union Pacific R. Co. v. State Tax Com'n, 105 Idaho 471, 670 P.2d 878 (1983), the Idaho Supreme Court addressed whether the taxpayer was required to pay interest, stating:

The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. American Airlines, Inc. v. City of St. Louis, 368 S.W.2d 161 (Mo. 1963); see generally 85 C.J.S. Taxation, § 1031(c) (1954). We agree with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that 'interest ... shall be assessed' and 'shall be collected.' This section

is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute.

Accordingly, the Commission finds interest is a statutory addition to tax deficiencies of which the Commission has no discretion. Therefore, the Commission must uphold the addition of interest to the petitioner's tax deficiency.

WHEREFORE, the Notice of Deficiency Determination dated March 30, 2010, is hereby MODIFIED, and as modified, APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner repay the following 2008 property tax reduction benefit plus interest.

<u>BENEFIT</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$230.00	\$16.29	\$246.29

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.

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.

---