

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23271
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

This case arises from a timely protest of a State Tax Commission (Commission) decision to deny a property tax reduction benefit for taxable year 2010. The Commission has reviewed the file and makes its decision thereon.

[Redacted] (petitioner) filed a property tax reduction benefit application on April 13, 2010. 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 address of the property for which the benefit was applied, [Redacted], was the petitioner’s primary residence.

The staff sent a letter to the petitioner advising her of the intent to deny her the 2010 benefit. She responded on August 18, 2010, by letter, appealing that determination. The petitioner stated in her appeal letter that she hoped to move into the house on [Redacted] within a month or two after she bought it but it needed more repairs than anticipated. Her 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 her home at [Redacted] was her primary dwelling place on January 1, 2010, or before April 15, 2010, and for at least six months of taxable year 2009.

A review of the petitioner's records available to the Commission all show addresses other than the [Redacted] address. In addition, the petitioner's address of record for the Social Security Administration is an address other than the home on [Redacted] In a brief phone conversation with the petitioner; she stated she did not occupy the home on [Redacted] until sometime in August 2010.

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 her primary dwelling place on January 1, 2010, or before April 15, 2010, and for at least six months of taxable year 2009, or she must establish that the dwelling was her primary dwelling place during the prior year by clear and convincing evidence.

The Commission is not persuaded that the petitioner has established that her house at [Redacted] was her 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, 2010, or before April 15, 2010, and for six months during taxable year 2009.

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 her burden. The petitioner’s application to receive the property tax reduction benefit for taxable year 2010 must be denied.

WHEREFORE, the decision of the Commission to deny the property tax reduction benefit for taxable year 2010 is hereby APPROVED, AFFIRMED, and MADE FINAL.

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.
