

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23437
[Redacted]	)	
	)	DECISION
Petitioners.	)	
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On September 7, 2010, the Idaho State Tax Commission’s (Commission) Income Tax Audit Bureau (ITA) issued a Notice of Deficiency Determination (NODD) to [Redacted] (petitioners) proposing additional income tax and interest for taxable years 2007 and 2008 in the total amount of \$1,422. The petitioners filed a timely protest and petition for redetermination. The Idaho Code section 63-3045(2) hearing was held on February 17, 2011. The Commission, having reviewed the file, hereby issues its decision.

When the petitioners filed their Idaho resident income tax returns for taxable years 2007 and 2008, the petitioners claimed retirement benefits the husband received [Redacted] as being eligible for the Idaho Code section 63-3022A Deduction of Certain Retirement Benefits. Upon audit, the ITA disallowed the retirement benefit deduction claimed by the petitioners associated with the [Redacted] retirement benefits.

For taxable years 2007 and 2008, Idaho Code section 63-3022A identified four categories of retirement benefits that are eligible for the retirement benefit deduction as follows:

**63-3022A. 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.

During the years at-issue, Idaho's Income Tax Administrative Rule 130.01.a. (Rule 130.01.a.) provided that, subject to limitations, "Civil service retirement annuities paid by the United States Government" may qualify for the deduction. IDAPA 35.01.01.130.01.b. (2007 and 2008 versions).

After reviewing the Idaho statute and rules, in its NODD, the ITA informed the petitioners that the \$8,264 and \$8,528 of retirement benefits received from the [Redacted] Public Employees Retirement System,<sup>1</sup> respectively, was not "qualifying retirement income" for purposes of the retirement benefits deduction.

In the petition for redetermination, as well as during the Idaho Code section 63-3045(2) hearing, the petitioners' representative argued that under a "hierarchy of law" concept, authoritative weight is determined in the following order: statutes, rules, court cases, and published instructions. However, since it not practical to expect taxpayers to research every statute and rule when filing their income tax returns, a taxpayer should be allowed to rely upon the plain language of a state's published instructions. For the case at hand, the representative is referring to the language contained in the Commission's 2007 and 2008 Idaho Individual Income Tax Instruction Booklet pages 20 and 22, respectively It reads as follows:<sup>2</sup>

**Civil Service Employees:** Retirement annuities paid by the Civil Service Retirement System to a retired civil service employee or the unremarried widow of the employee if the recipient is age 65 or older, or disabled and age 62 or older.

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<sup>1</sup> Effective September 20, 2007, the Maine State retirement System became the Maine Public Employees retirement System, or MainePERS. Chapter 58 of the Public Laws of 2007.

<sup>2</sup> See pages 20 and 22 of the Idaho Income Tax Instruction Booklet for taxable years 2007 and 2008, respectively.

Retirement annuities paid by the Federal Employees Retirement System don't qualify.

The representative argues that the plain language of the instruction booklet allows retirement benefits received by a civil servant ([Redacted] or otherwise) to qualify for the deduction.

The Commission disagrees. The authors of the language found in the Idaho Individual Income Tax Instruction booklet for taxable years 2007 and 2008 apparently felt that the use of a proper name (i.e., the capitalizing each of the words in "Civil Service Retirement System") in and of itself would be sufficient to alert the reader that the retirement benefits referred to were the retirement benefits paid by the United States Government under the Civil Service Retirement System (a defined benefit, contributory retirement system) established August 1920.<sup>3</sup>

Idaho Code section 63-3022A(a)(1) states "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." Emphasis added. Similarly, Idaho Income Tax Administrative Rule 130(a) stated "Civil service retirement annuities paid by the United States Government."<sup>4</sup> Emphasis added. The law enacted by the Idaho Legislature unequivocally requires that the civil service retirement benefits be "paid by the United States Government;" thus, the instructions published by the Commission do not create or modify the Idaho tax law. Given the plain language of the Idaho statute requiring the retirement benefits be paid by the United States of America, the ITA was correct in disallowing the petitioners' inclusion of their retirement benefits received from the [Redacted] Public Employees Retirement System.

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<sup>3</sup> On page 94, section 303, under "Proper Nouns," the Gregg Reference Manual (10th edition, authored by William A. Sabin) instructs readers to "Capitalize every *proper noun*, that is, the official name of a particular person, place, or thing." The Gregg Reference Manual is a standard business reference manual which forms the basis for the Commission's agency style guide.

<sup>4</sup> IDAPA 35.01.01.130.01.b. (2007 and 2008 versions).

As of the date of this decision, the petitioners have not provided any information that would resolve this case in the petitioners' favor for taxable years 2007 and 2008. It is the petitioners' burden of proving error on the part of the deficiency determination. Albertson's, Inc. v. State Dept. of Revenue, 106 Idaho 810, 814, (1984); Parsons v. Idaho State Tax Comm'n, 110 Idaho 572, 574 (Ct. App. 1986). Since the petitioners have not met this burden of proof showing that the NODD prepared by the ITA is incorrect, the Commission upholds the ITA's determination for the taxable years at issue. Interest was included in the NODD in accordance with Idaho Code section 63-3045.

WHEREFORE, the Notice of Deficiency Determination dated September 7, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED, and THIS DOES ORDER, that the petitioners pay the following tax, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$631	\$106	\$ 737
2008	650	67	<u>717</u>
		TOTAL DUE	<u>\$1,454</u>

Interest is calculated through June 15, 2011, and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6)(c).

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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

DATED this \_\_\_\_ day of \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2011, 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.

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