

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23497
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On August 26, 2010, the Income Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing Idaho individual income tax and interest in the amount of \$1,305 for taxable year 2007 and \$1,305 for taxable year 2008.

The taxpayer filed a timely protest and petition for redetermination. She did not request a conference. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

The taxpayer filed her 2007 and 2008 Idaho individual income tax returns showing a deduction for retirement income that had been included in [Redacted] adjusted gross income. The Bureau determined the taxpayer was not entitled to the deduction and issued a Notice of Deficiency Determination.

In response to the NODD, the taxpayer, along with her tax preparer, called the auditor for an explanation of why the retirement benefits had been denied. After the discussion, the taxpayer indicated she understood and would like to file amended returns but did not think she could complete them before the NODD became final. On October 15, 2010, the taxpayer submitted a letter stating she was protesting the issue and would be amending her returns for both taxable years 2007 and 2008. The Bureau acknowledged the protest and gave the taxpayer a due date of December 1, 2010, in which to submit the amended returns. When the amended

returns did not arrive and no further communication was received from the taxpayer, her file was forwarded to the Legal/Tax Policy Division for administrative review.

Idaho Code § 63-3022A describes certain retirements that can be deducted from taxable income 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.

The taxpayer turned 65 in taxable year 2007. For both taxable years 2007 and 2008, she claimed a deduction relating to retirement benefits received from [Redacted].

Deductions from gross income are a matter of legislative grace, and taxpayers must be able to show they fall within the terms of the deduction. New Colonial Ice Co. v. Helvering, 292 U.S. 435, 54 S. Ct. 788, (1934). Idaho Code § 63-3022A lists specific pension plans that can be deducted from gross income. In the present case, none of the pension plans for which the taxpayer received benefits are included in that list and, therefore, do not qualify as deductions.

One might feel that the statutory treatment is unfair or otherwise unreasonable. The Idaho Supreme Court has addressed such circumstances. The court stated, in part:

.... Taxpayer urges that ambiguous language of the statute should be so construed as to avoid socially undesirable or oppressive results. It may be agreed, where legislative language is ambiguous, and other rules of statutory construction do not control, the court should consider social and economic results. But in the instance we do not find the statutes involved to be ambiguous; no exemption is granted and

the legislative intent is to impose a tax on residents of this state measured by taxable income wherever derived. In such case our duty is clear. We must follow the law as written. If it is socially or economically unsound, the power to correct it is legislative, not judicial. John Hancock Mutual Life Insurance Co. v. Neill 79 Idaho 385, 319 P2d 195 (1957). (Emphasis added.)

Herndon v. West, 87 Idaho 335, 339 (1964).

The law lists certain retirement benefits that can be deducted from gross income. The taxpayer's benefits are not listed. Based upon the foregoing discussion, the taxpayer's retirement benefits are not allowed as deductions from her taxable income.

THEREFORE, the Notice of Deficiency Determination dated August 26, 2010, and directed to [Redacted], is AFFIRMED.

IT IS ORDERED that the taxpayer pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$1,144	\$161	\$1,305
2008	1,212	93	<u>1,305</u>
		Total Due	<u>\$2,610</u>

The taxpayer has paid the total amount due; therefore, no demand for payment is made or necessary.

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

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

IDAHO STATE TAX COMMISSION

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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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