

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23876
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination (NODD) issued by the auditor for the Idaho State Tax Commission (Commission) dated January 21, 2011, asserting additional liabilities for Idaho income tax and interest in the total amounts of \$193, \$61, and \$698 for 2007, 2008, and 2009, respectively.

Four issues are involved in this appeal:

1. Whether the 2004 purchase of a propane stove qualifies for the alternative energy device deduction provided for in Idaho Code § 63-3022C(3),
2. Whether the 2007 purchase of a propane insert qualifies for the deduction provided for in Idaho Code § 63-3022C(3),
3. Whether the purchase of a furnace by the petitioners qualifies for the deduction provided for in Idaho Code § 63-3022C(3), and
4. Whether the installation of insulated windows in the petitioners' home, which was built in 1978, qualifies the petitioners for a deduction pursuant to Idaho Code § 63-3022B.

It should be noted at the outset that each of these issues involve a deduction sought by the petitioners. The burden of proof is on the taxpayer to show that they are entitled to the deduction sought. The U.S. Supreme Court stated, in part:

Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed.

\* \* \*

Obviously, therefore, a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms.

New Colonial Ice Company, Inc. v. Helvering, 292 U. S. 435, 440 (1934).

Idaho Code § 63-3022C(3) stated in pertinent part:

As used in this section, "alternative energy device" means any system or mechanism or series of mechanisms using solar radiation, wind or geothermal resource as defined in section 42-4002, Idaho Code, primarily to provide heating, to provide cooling, to produce electrical power, or any combination thereof. Alternative energy device includes a fluid to air heat pump operating on a fluid reservoir heated by solar radiation or geothermal resource. Alternative energy device shall also include either a natural gas heating unit, or a propane heating unit, or a wood burning stove which meets the most current environmental protection agency certification, or a pellet stove which meets the most current industry and state standards, and which natural gas heating unit, or propane heating unit, or wood burning stove which meets the most current environmental protection agency certification, or pellet stove which meets the most current industry and state standards is used to replace during the same tax year a wood burning stove designed for residential heating and that does not meet environmental protection agency requirements for certification, provided the wood burning stove is surrendered to the department of environmental quality or its agent for destruction in accordance with applicable federal and state rules.

The Idaho Supreme Court stated the following:

The Stangs urge this Court to "construe" the Idaho Income Tax Code in a manner that would permit the Stangs to avoid paying Idaho income tax on the \$8,000 distribution. They argue that because the Idaho Income Tax Code does not expressly address this situation, this Court should be free to construe the tax code in a manner that would prevent the Stangs from having to pay taxes to both California and Idaho on the same monies. When construing the provisions of the Idaho Income Tax Code, however, we must enforce the law as written. Potlatch Corp. v. Idaho State Tax Comm'n, 128 Idaho 387, 913 P.2d 1157 (1996). If there is any ambiguity in the law concerning tax deductions, the law is to be construed strongly against the taxpayer. *Id.* This Court has no authority to rewrite the tax code. Bogner v. State Dep't of Revenue and Taxation, 107 Idaho 854, 693 P.2d 1056 (1984). Any exemption from taxation must be created or conferred in clear and plain language and cannot be made out by inference or implication. Herndon v. West, 87 Idaho 335, 393 P.2d 35 (1964). This Court does not have the authority to create deductions, exemptions, or tax credits. If the provisions of the

tax code are socially or economically unsound, the power to correct it is legislative, not judicial. *Id.*

Idaho State Tax Commission v. Stang, 135 Idaho 800, 802-803. (2001)

Issues 1 and 2. The propane stove would qualify if the requirements of the statute are met. Criteria that must be established by the petitioners include the following:

1. That the new unit meets the most recent requirements,
2. That the old unit did not meet the most recent standards, and
3. That the old stove was “surrendered to the department of environmental quality or its agent for destruction in accordance with applicable federal and state rules.

The petitioners indicated that the vendor that supplied their new units also removed the old units from their home. However, they could not establish that it was surrendered to the Department of Environmental Quality (DEQ). Presumably, they also could not establish that the old unit did not meet the most recent standards. The auditor contacted the DEQ to verify whether a non-certified wood burning stove had been surrendered by the taxpayer. DEQ provided the auditor with a list of individuals who had surrendered nonqualifying units; however, the taxpayer’s name did not appear on the list. Accordingly, the auditor’s adjustments must be affirmed.

Issue 3. The petitioners contend that they replaced their old furnace with a new unit that included an air heat pump. When asked to explain how the heat pump used a fluid reservoir, solar radiation, or geothermal resource, they responded that it did not use any of these. From the petitioners’ argument, it appears that this unit does not meet the requirements of the statute. Accordingly, the auditor’s adjustment must be affirmed.

Issue 4. The petitioners state that they replaced the windows in their residence and therefore seek the deduction for insulating their house as provided in Idaho Code § 63-3022B.

That section of the Idaho Code stated:

Deduction for insulation of residences. For taxable years commencing on and after January 1, 1976, an individual taxpayer may deduct from taxable income an amount actually paid or accrued by the individual taxpayer during the taxable year for the actual installation, but not replacement, of insulation within any existing building in the state of Idaho which serves as a place of residence of the individual taxpayer. As used in this section, "insulation" means any material commonly used in the building industry and actually installed for the purpose of retarding the passage of heat energy into or out of a building, including but not limited to, such items as fiberglass insulation, weather stripping, double pane windows, and storm doors and windows. As used in this section, "existing building" means any building in being, under construction, or subject to an outstanding legal building permit on the effective date of this act. (Underlining added.)

Idaho Code § 63-3022B was enacted in 1976 and was effective on January 1, 1976. The record before the Commission indicates that the petitioners' home was constructed in 1978. The petitioners contend that the statute is wrong and that the date of construction should have been changed as time passed and that it was unreasonable for insulation placed in a house a few years older than the petitioners' home to qualify for this deduction while the petitioners are denied the deduction.

Arguably, it may be more desirable to have the age of the home based upon some criteria other than that set out in the statute. The Commission is faced with the clear language of the law which, given the information in the file, precludes the petitioners from being allowed this deduction based upon the year of the construction of the petitioners' home. The law is clear. The deduction is denied.

WHEREFORE, the Notice of Deficiency Determination dated January 21, 2011, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax and interest (computed to October 15, 2011):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$167	\$29	\$196
2008	55	7	62
2009	668	45	<u>713</u>
		TOTAL DUE	<u>\$971</u>

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

An explanation of the petitioners' right 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.