

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25034
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

This case arises from a timely protest of a State Tax Commission (Commission) staff decision adjusting the property tax reduction benefit for 2011. 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.

[Redacted] (petitioner), filed a property tax reduction application with the [Redacted] County Assessor’s office on April 8, 2011. The application was approved, and the petitioner received a benefit for payment of the property tax on her homestead for 2011.

Idaho Code §§ 63-707 and 63-708 provide for an audit of all claims and recovery of benefits that have been paid in error. During review and audit of the prior year’s applications, the staff discovered that the petitioner passed away on March 21, 2011. A Notice of Deficiency Determination (NODD) was issued, and the Estate of [Redacted] was asked to repay the benefit received plus interest.

The Estate protested the intended action, and the file was transferred to the Legal/Tax Policy Division for further consideration.

The letter of protest received from the Estate stated that the petitioner’s income tax return and her property tax reduction benefit applications have always been filed together each year close to the April 15 deadline. This same process was followed in 2011 even though the petitioner had passed away in March.

Idaho Code § 63-702 states:

CLAIM IS PERSONAL -- EXCEPTIONS. (1) The right to file a claim under the provisions of sections 63-701 through 63-710, Idaho Code, shall be personal to the claimant and shall not survive his death except as otherwise provided in this section. A property tax reduction shall be allowed pursuant to the provisions of sections 63-701 and 63-710, Idaho Code, if the owner occupies the residential improvements after January 1 but before April 15, and if no other property tax reductions have been claimed. Such right may be exercised on behalf of a living claimant by an agent authorized in writing to so act, by a guardian or other representative acting pursuant to judicial authority or by any person or entity described in section 63-711(3), Idaho Code. If a claimant dies after having filed a timely claim, the amount thereof shall be allowed to his personal representative, if one is appointed, or to surviving heirs or to the trust or other entity owning the property, as appropriate.

(2) In the case of property owned by an estate, revocable trust, irrevocable trust, limited partnership, limited liability company or corporation, where the deceased person's widow or widower succeeds to the interest of the deceased person in that entity and occupies the dwelling as required in this chapter, the deceased owner's widow or widower, or any person or entity described in section 63-711(3), Idaho Code, on behalf of that widow or widower:

(a) May file a claim on behalf of the deceased spouse if the deceased spouse qualified or would have qualified as a claimant on January 1 or before April 15 of the year in which the claim is filed; or

(b) The widow or widower shall be deemed the owner of the property in any year after the year of the death of the spouse.

In the present case, the claim for benefit was filed after the petitioner's passing by her daughter. Because the right to file does not survive death, except in certain situations not present here, the benefit must be denied. The repayment of the petitioner's 2011 property tax reduction benefit is appropriate.

THEREFORE, the NODD dated April 24, 2012, and directed to the Estate of [Redacted], is hereby APPROVED and MADE FINAL.

It is ordered and this does order that the Estate pay the following 2011 property tax reduction benefit reimbursement and interest.

<u>YEAR</u>	<u>BENEFIT</u>	<u>INTEREST</u>	<u>TOTAL</u>
2011	\$770.48	\$7.65	\$778.13

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 \_\_\_\_\_ 2012.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2012, 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.  
  
\_\_\_\_\_