

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 25074  
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Petitioner. ) DECISION  
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\_\_\_\_\_ )

This case arises from a timely protest of a State Tax Commission (Commission) decision adjusting a property tax reduction benefit for taxable years 2010 and 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 in the file.

All property within the jurisdiction of this state is subject to property tax. A property tax reduction benefit is available to certain qualifying individuals. The benefit is in the form of a payment of all or a portion of the applicant’s property tax on the dwelling he/she owns and occupies. The payment is funded by state sales tax. The amount of the property tax reduction depends on income--the greater the income, the smaller the benefit.

The petitioner filed an application for a 2010 and 2011 property tax reduction benefit [Redacted]. The applications were approved, and the petitioner received a benefit for payment of the property tax on his homestead for each year.

During an audit of the applications submitted by the petitioner for these years, the staff became aware of income that had not been included in the petitioner’s applications for property tax years 2010 and 2011. For property tax year 2010, the omitted income was capital gains from stock sales reported to the petitioner on form 1099-B in the total amount of \$6,002,297. For property tax year 2011, the omitted income was from a distribution of a pension in the amount of \$7,288.

Idaho Code §§ 63-707 and 63-708 provide for an audit of all claims and the recovery of benefits that have been paid in error. Once the additional income was discovered, a Notice of Deficiency Determination (NODD) was issued on April 24, 2012, and the petitioner was asked to repay the taxable year 2010 benefit received plus interest and a portion of the taxable year 2011 benefit received plus interest.

In response to the NODD, the petitioner submitted an appeal letter stating he was not in agreement with the determination. The petitioner requested a copy of the documents used to arrive at this determination and stated he had no record of having been involved in the amount of money shown as capital gains for taxable year 2009 (property tax year 2010). Due to the large volume of 1099-Bs issued to the petitioner for taxable year 2009, only a sample was sent to the petitioner along with a letter informing him his file was being transferred to the Legal/Tax Policy Division for administrative review.

Income for property tax reduction benefit purposes is defined in Idaho Code § 63-701(5):

(5) "Income" means the sum of federal adjusted gross income as defined in the Internal Revenue Code, as defined in section 63-3004, Idaho Code, and to the extent not already included in federal adjusted gross income:

(a) Alimony;

(b) Support money;

(c) Nontaxable strike benefits;

(d) The nontaxable amount of any individual retirement account, pension or annuity, (including railroad retirement benefits, all payments received under the federal social security act except the social security death benefit as specified in this subsection, state unemployment insurance laws, and veterans disability pensions and compensation, excluding any return of principal paid by the recipient of an annuity and excluding rollovers as provided in section 402 or 403 of the Internal Revenue Code);

(e) Nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities;

(f) Worker's compensation; and

(g) The gross amount of loss of earnings insurance.

It does not include gifts from nongovernmental sources or inheritances. To the extent not reimbursed, the cost of medical care as defined in section 213(d) of the Internal Revenue Code, incurred or paid by the claimant and, if married, the

claimant's spouse, may be deducted from income. To the extent not reimbursed, personal funeral expenses, including prepaid funeral expenses and premiums on funeral insurance, of the claimant and claimant's spouse only, may be deducted from income up to an annual maximum of five thousand dollars (\$5,000) per claim. "Income" does not include veterans disability pensions received by a person described in subsection (1)(e) who is a claimant or a claimant's spouse if the disability pension is received pursuant to a service-connected disability of a degree of forty percent (40%) or more. "Income" does not include dependency and indemnity compensation or death benefits paid to a person described in subsection (1) of this section by the United States department of veterans affairs and arising from a service-connected death or disability. "Income" does not include lump sum death benefits made by the social security administration pursuant to 42 U.S.C. section 402(i). Documentation of medical expenses may be required by the county assessor, board of equalization and state tax commission in such form as the county assessor, board of equalization or state tax commission shall determine. "Income" shall be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant and/or the claimant's spouse does not file a federal tax return, the claimant's and/or the claimant's spouse's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gross income had the claimant and/or the claimant's spouse filed a federal tax return, as determined by the county assessor. The county assessor, board of equalization or state tax commission may require documentation of income in such form as each shall determine, including, but not limited to: copies of federal or state tax returns and any attachments thereto; and income reporting forms such as the W2 and 1099. (Emphasis added.)

Gross income is defined in Internal Revenue Code section 61:

General definition: Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

- (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
- (2) Gross income derived from business;
- (3) Gains derived from dealings in property;
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Alimony and separate maintenance payments;
- (9) Annuities;
- (10) Income from life insurance and endowment contracts;
- (11) Pensions;
- (12) Income from discharge of indebtedness;

- (13) Distributive share of partnership gross income;
- (14) Income in respect of a decedent; and
- (15) Income from an interest in an estate or trust.

The calculation of income for the property tax reduction benefit starts with [Redacted] adjusted gross income, or the equivalent thereof, if the petitioner is not required to file a [Redacted] return and, thereafter, makes certain additions and deductions. The nontaxable portion of pensions/annuities is specifically required to be included in income to determine the benefit amount a qualified applicant is to receive. The only exceptions are if the annuities are determined to be qualified as “return of principal paid by the recipient of an annuity” or “rollovers as provided in section 402 or 403 of the Internal Revenue Code.”

The property tax reduction benefit is not [Redacted] or state income tax – it is payment of property tax based on certain qualifying factors including income. Pursuant to the definition of income as stated in Idaho Code § 63-701(5), the nontaxable portion of annuities, pensions, and retirement accounts is required to be included in income to determine the benefit amount a qualified applicant receives.

In the present case, the petitioner’s 2010 application included social security income of \$15,701 for the petitioner, \$7,721 for his spouse, \$3,600 from pensions/annuities and \$393 in interest income. However, during the re-audit process, the Commission discovered the petitioner received approximately 95 form 1099-Bs for stock sales totaling over six million dollars. The petitioner did not file a [Redacted] tax return and provided no documentation to show if these sales resulted in a gain or loss. For taxable year 2011, the petitioner’s application showed social security income for the petitioner and his spouse totaling \$23,424, interest income of \$56 and income from pensions/annuities of \$3,600. However, based on income information available to the Commission, the petitioner received additional income not shown on the application. The

additional income was an IRA distribution [Redacted] in the amount of \$7,288. The petitioner provided no documentation to establish this distribution was rolled over into another qualifying account.

When the \$6,002,297 of capital gain income is included in the 2010 application and medical expenses are deducted, the petitioner’s net income for property tax reduction benefit purposes exceeds the \$28,000 maximum income allowed to receive a minimum 2010 property tax reduction benefit. The petitioner must be denied the benefit for 2010. When the pension income of \$7,288 is included in the 2011 application and medical expenses are deducted, the petitioner’s net income for the purpose of property tax reduction benefit purposes is \$24,792. The petitioner is entitled to receive a benefit not to exceed \$350 for 2011.

THEREFORE, the NODD dated April 24, 2012, is hereby AFFIRMED and MADE FINAL.

IT IS ORDERED that the petitioner re-pay the following amounts:

<u>YEAR</u>	<u>BENEFITS PAID</u>	<u>BENEFITS ALLOWED</u>	<u>AMOUNT DUE</u>	<u>INTEREST</u>	<u>TOTAL DUE</u>
2010	\$520.00	\$ 0.00	\$520.00	\$38.60	\$ 558.60
2011	620.00	350.00	270.00	3.27	<u>273.27</u>
				TOTAL DUE	<u>\$831.87</u>

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.

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