

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 31140
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

This case arises from a timely protest of a State Tax Commission (Commission) staff decision adjusting a 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 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 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 property tax reduction depends on income-the greater the income, the smaller the benefit.

[Redacted] (petitioner) filed an application for a property tax reduction benefit with [Redacted] County for 2011. The application was approved and the petitioner received a benefit for payment of the property tax on his homestead for that year.

Idaho Code §§ 63-707 and 63-708 provide for an audit of all claims and recovery of benefits that have been paid in error. The petitioner submitted a 2013 application indicating he was separated from his spouse. This prompted a review and audit of prior year’s applications where the staff discovered that the petitioner was also married, but separated from his spouse in 2011. However, no income information was included for the petitioner’s spouse.

A Notice of Deficiency Determination (NODD) was issued and the petitioner was asked to repay the benefit he received in 2011 plus interest.

The petitioner protested the deficiency determination, stating that he is legally separated and while he realizes Idaho considers legal separation the same as marriage, he does not believe he should have to include his wife's portion of his pension in income for the purpose of the property tax reduction benefit.

The amount of the property tax reduction benefit depends on the income received by a claimant and, if married, the claimant's spouse-the greater the income, the smaller the benefit.

Idaho Code § 63-701 states, in pertinent part:

63-701. Definitions. As used in this chapter:

(1) "Claimant" means a person who has filed an application under section 63-602G, Idaho Code, and has filed a claim under the provisions of sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1, or before April 15, of the year in which the claimant on the homestead in question, a claimant must be an owner of the homestead and on January 1 of said year a claimant must be:

(a) Not less than sixty-five (65) years old; or

(b) A child under the age of eighteen (18) years who is fatherless or motherless or who has been abandoned by any surviving parent or parents; or

(c) A widow or widower; or

(d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; or

(e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States department of veterans affairs; or

(f) A person, as specified in 42 U.S.C. 1701, who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage or otherwise; or

(g) Blind.

(2) "Homestead" means the dwelling, owner-occupied by the claimant as described in this chapter and used as the primary dwelling place of the claimant and may be occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably

necessary for the use of the dwelling as a home. It may consist of a part of a multidwelling or multipurpose building and part of the land upon which it is built. "Homestead" does not include personal property such as furniture, furnishings or appliances, but a manufactured home may be a homestead.

(3) "Household" means the claimant and the claimant's spouse. The term does not include bona fide lessees, tenants, or roomers and boarders on contract. "Household" includes persons described in subsection (8)(b) of this section.

(4) **"Household income" means all income received by the claimant and, if married, all income received by the claimant's spouse, in a calendar year.**
(Emphasis added.)

Idaho Code § 63-701 uses definitions to describe eligibility and income requirements for an applicant to qualify for the property tax reduction benefit. These definitions are not the same definitions used in other sections of the Idaho Code or even in the common dictionary. However, the definitions are very specific. The law must be followed as written, if the law is socially or economically unsound, the power to correct it is legislative, not within the powers of the Tax Commission. John Hancock Mutual Life Insurance Co. v. Neill, 79 Idaho 385, 319 P.2d 195 (1957).

In the present case, the petitioner filed a claim. He is the claimant. The household is defined as the claimant and the claimant's spouse. Household income is defined as the income received by the claimant and, if the claimant is married, the claimant's spouse. The fact that the petitioner and his wife are legally separated and live apart does not change the requirement to include all income received by both spouses when considering eligibility for the benefit. Without complete income information, the petitioner must be denied the property tax reduction benefit for 2011.

THEREFORE, the Notice of Deficiency Determination dated April 4, 2014, is APPROVED and MADE FINAL.

It is ordered that the petitioner repay the following property tax reduction benefit reimbursement and interest.

<u>YEAR</u>	<u>BENEFIT</u>	<u>INTEREST</u>	<u>TOTAL</u>
2011	\$426.08	\$35.28	<u>\$461.36</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 _____ 2014.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2014, 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.
