

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 0-147-206-144
[Redacted] ,	)	
	)	
Petitioner.	)	DECISION
<hr style="width: 50%; margin-left: 0;"/>	)	

This case arises from a timely protest of the Idaho State Tax Commission (Commission) decision denying [Redacted] (Petitioner) a property tax reduction benefit for 2016. An informal conference was requested by Petitioner and held on July 19, 2017. This matter was submitted for decision based on the documents in the file. The Commission has reviewed the file and hereby makes its decision.

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, funded by state sales tax, of all or a portion of the claimant’s property tax on the dwelling the claimant owns and occupies. The amount of property tax reduction depends on income—the greater the income, the smaller the benefit.

Petitioner filed an application for the 2016 property tax reduction benefit on April 7, 2016, with the assistance of the [Redacted] Assessor’s office. The application was approved, and Petitioner received a benefit for payment of the property tax on the homestead.

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 the review and audit of applications, the Commission discovered that Petitioner indicated on the application, by checking a box, that she was married. However, no income information was included for Petitioner’s spouse.

A Notice of Deficiency Determination (NODD) was issued, and Petitioner was asked to repay the benefit received plus interest.

Petitioner filed a timely protest of the NODD stating that she was directed by the clerk with the [Redacted] Assessor's office to not include her spouses income on the application because they were separated, he was not living in the house and the deed to the property was in her name only.

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.

Household income and income for property tax reduction benefit purposes is defined in Idaho Code § 63-701, (4) and (5):

(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.

(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) of this section who is a claimant or a claimant's

Idaho Code § 63-701(4)(5)(2017)

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 and state tax commission in such form as the county assessor 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 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 W-2 and 1099. For determining income for certain married individuals living apart, the provision of sections 2(c) and 7703(b) of the Internal Revenue Code shall apply.

Idaho Code § 63-701(4)(5)(2017)

Section 2( c ) of the Internal Revenue Code states:

(c) Certain married individuals living apart

For purposes of this part, an individual shall be treated as not married at the close of the taxable year if such individual is so treated under the provisions of section 7703(b).

Section 7703(b) of the Internal Revenue Code states:

(b) Certain married individuals living apart

For purposes of those provisions of this title which refer to this subsection, if—

(1) an individual who is married (within the meaning of subsection (a)) and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a child (within the meaning of section 152(f)(1)) with respect to whom such individual is entitled to a deduction for the taxable year under section 151 (or would be so entitled but for section 152(e)),

(2) such individual furnishes over one-half of the cost of maintaining such household during the taxable year, and

(3) during the last 6 months of the taxable year, such individual's spouse is not a member of such household, such individual shall not be considered as married.

Idaho Code § 63-701 uses definitions to describe eligibility and income requirements for a claimant 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 Commission. *John Hancock Mutual Life Insurance Co. v. Neill*, 79 Idaho 385, 319 P.2d 195 (1957).

In the present case, Petitioner filed a claim. She 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 Petitioner and her husband lived apart does not change the requirement to include all income received by both spouses when considering eligibility for the benefit. Without complete income information, Petitioner must be denied the property tax reduction benefit for 2016.

THEREFORE, the Notice of Deficiency Determination dated April 4, 2017, is APPROVED and MADE FINAL.

It is ordered and this does order that [Redacted] repay the following property tax reduction benefit and interest:

<u>BENEFIT</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$1,246.76	\$10.65	\$1,257.41

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2017, a copy of the within and foregoing DECISION was sent by United States mail, postage prepaid, in an envelope addressed to:

**[Redacted]**

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