

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-031-190-528
[Redacted])	
)	
Petitioner.)	DECISION
_____)	

This case arises from your timely protest of an Idaho State Tax Commission (Commission) decision adjusting your property tax reduction benefit for 2015 and 2017. The Commission reviewed the information in the file and this is our final decision. The Commission upholds the Notice of Deficiency Determination (Notice). This means you must pay \$1,000.22, DEMAND for immediate payment of this amount is hereby made and given.

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 part of the applicant's property tax on the dwelling he/she owns and occupies. State sales tax funds these payments. The amount of the property tax reduction depends on income—the greater the income, the smaller the benefit.

[Redacted] (Petitioner) filed 2015 and 2017 applications for property tax reduction benefits with [Redacted]. The Commission approved the applications and Petitioner received a benefit for payment of the property taxes on her homestead.

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. During review of Petitioner's applications, and records available to the Commission, the staff discovered omitted income. The omitted income for tax year 2015 was interest and dividends, and for 2017, capital gains from the sale of an asset, in this case, stock.

The Commission issued a Notice on March 19, 2018, requesting Petitioner repay a portion

of the benefit received plus interest. Petitioner protested the Notice. The file was transferred to the Appeals unit for administrative review.

Income for property tax reduction benefit purposes is defined in Idaho Code § 63-701(5). A complete copy accompanies this decision.

In the present case, for 2015, Petitioner's application shows a net household income of \$26,430, which consists of social security income and retirement income, less medical expenses. However, Commission records show interest income of \$51 from U.S. Bank, and dividend income of \$145 from Stancorp. When the additional \$196 of income is added, Petitioner qualifies to receive a benefit not to exceed \$290 rather than the \$320 she received.

For 2017, Petitioner's application shows a net household income of \$17,147, made up of social security income and retirement income, minus medical and funeral expenses. Commission records show income from the sale of stocks in the amount of \$12,880, which Petitioner did not include.

In 1999 Petitioner received stock due to the change of form of Standard Insurance. The company had been a mutual insurance company (owned by the policy holders) but converted to a stock company (owned by the stockholders). In this process, the company exchanged stock for the ownership rights of the policyholders. Petitioner sold this stock in 2016 and a Form 1009-B for \$12,880 was issued to Petitioner.

Generally, the amount of gain from the sale of a stock is the sales price, less what the stock was bought for, the cost basis. However, determining the basis of stock in situations like Petitioner's (the demutualization of the insurance company) has been the subject of federal litigation. The determinations from the courts ran the gamut from having no basis (e.g. *Dorrance v. United States*, 809 F.3d 479 (9th Cir. 2015), to having the same basis as the selling price (e.g.

Fisher v. United States, 82 Fed. Cl. 780, 799 (2008) aff'd, 333 Fed.Appx. 572 (Fed.Cir.2009)), and some falling somewhere in between (e.g. *Dorrance v. United States*, No. CV-09-1284-PHX-GMS, 2013 WL 1704907 (D. Ariz. April 19, 2013)).

The position of the Internal Revenue Service has long been that the recipients of stock in such instances have a basis of zero in the stock. Revenue Ruling 71-233. This is consistent with the last court rulings on this issue. *Dorrance v. U.S.*, 809 F.3d 479 (2015, CA9); *Reuben, Timothy D. v. U.S.*, (2016, CA9) 117 AFTR 2d 2016-333 (unpublished), affg (2013, DC CA) 111 AFTR 2d 2013-620.

When the Form 1099-B income of \$12,880 is added to Petitioner's net household income of \$17,147, the resulting net income for the 2017 property tax reduction benefit purposes is \$30,027, which exceeds the maximum amount to receive a benefit.

THEREFORE, the Notice dated March 19, 2018, is hereby APPROVED and MADE FINAL.

IT IS ORDERED that Petitioner repay the following 2015 and 2017 property tax reduction benefits plus interest:

<u>YEAR</u>	<u>BENEFIT</u>	<u>INTEREST</u>	<u>TOTAL</u>
2015	\$30	\$2.86	\$32.86
2017	960	7.36	<u>967.36</u>
		TOTAL DUE	<u>\$1,000.22</u>

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

DATED this _____ day of _____ 2018.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2018,
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.

Idaho Code Section 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 26 U.S.C. 402 or 403, and excluding the nontaxable portion of a Roth individual retirement account distribution, as provided in 26 U.S.C. 408A;
- (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 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. 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 provisions of sections 2(c) and 7703(b) of the Internal Revenue Code shall apply

History:

[63-701, added 1996, ch. 98, sec. 8, p. 362; am. 1997, ch. 24, sec. 1, p. 33; am. 1997, ch. 117, sec. 23, p. 323; am. 1998, ch. 352, sec. 1, p. 1108; am. 1999, ch. 40, sec. 1, p. 77; am. 1999, ch. 382, sec. 2, p. 1049; am. 2000, ch. 20, sec. 1, p. 38; am. 2000, ch. 109, sec. 1, p. 239; am. 2000, ch. 154, sec. 1, p. 390; am. 2000, ch. 274, sec. 149, p. 883; am. 2001, ch. 69, sec. 2, p. 131; am. 2001, ch. 325, sec. 1, p. 1140; am. 2004, ch. 156, sec. 2, p. 497; am. 2005, ch. 31, sec. 1, p. 143; am. 2005, ch. 241, sec. 1, p. 749; am. 2005, ch. 280, sec. 58, p. 912; am. 2006, ch. 350, sec. 2, p. 1066; am. 2008, ch. 117, sec. 1, p. 323; am. 2010, ch. 235, sec. 55, p. 591; am. 2011, ch. 85, sec. 1, p. 176; am. 2015, ch. 224, sec. 1, p. 687; am. 2017, ch. 14, sec. 1, p. 22.]