

KELLER DENNIS HC10248 061985 TAC

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STATE OF WISCONSIN
TAX APPEALS COMMISSION

R JUN 20 1985 **U**
LEGAL DIVISION

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DENNIS G. KELLER
1801 South 64th
West Allis, Wisconsin 53214

DOCKET NO. HC-10248
DECISION AND ORDER

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8933
Madison, Wisconsin 53708

Respondent.

* * * * *

The above-entitled matter having come on to be heard before this Commission, the petitioner, Dennis G. Keller, having appeared in person; the respondent, Wisconsin Department of Revenue, having appeared by Robert C. Junceau, its attorney.

Being fully advised in the premises, having considered all of the testimony, evidence, records and proceedings herein, this Commission hereby finds and decides as

FINDINGS OF FACT

1. This is a timely appeal to this Commission for review as to the respondent's decision on the petitioner's appeal for redetermination of the adjustment made to the homestead credit claim for the year 1981.

2. During the period under review, 1981, the petitioner, Dennis G. Keller, was a resident of West Allis, Wisconsin, and therefore was subject to the income and franchise tax provisions of Chapter 71 of the Wisconsin Statutes.

3. The only issue pending before the Wisconsin Tax Appeals Commission is whether the respondent correctly adjusted petitioner's 1981 Homestead Credit Claim.

4. The petitioner filed with the respondent a 1981 Homestead Credit Claim (hereinafter claim) dated December 12, 1982. According to petitioner's 1981 claim, the total rent paid during that year was \$3,120.00. The claim also indicated that two people rented the apartment.

5. Under the date of February 24, 1983, the respondent issued a notice of refund to the petitioner in the amount of \$316.00. The respondent adjusted petitioner's 1981 claim because as a joint occupant, petitioner could only claim his share of the rent paid for occupancy. The respondent allowed petitioner to claim his share of the rent, 50% since the two occupants of the dwelling shared living expenses.

6. Under the postmark date of May 3, 1983, the petitioner filed his petition for redetermination with the Wisconsin Department of Revenue. Petitioner objected to receiving credit for only 50% of the total rent paid.

7. Under the date of September 30, 1983, the respondent issued a notice of action letter denying petitioner's petition for redetermination.

8. Petitioner resides at 1801 South 64th in West Allis with his mother. They both contribute to the rent and other living expenses, although petitioner's mother actually pays the rent. Petitioner contributes to the rent by performing maintenance and repair services.

9. It is respondent's position that it correctly adjusted petitioner's 1981 Homestead Credit Claim and allowed him his one-half share of the rent paid. Respondent submits that its assessment is correct since petitioner has not proven more than a 50% contribution. Since petitioner and his mother constitute two separate households and each is responsible for one-half of the living expenses, each is entitled to claim one-half of the rent paid.

10. The burden of proof is on the petitioner to show the respondent's assessment was in error. The petitioner failed to prove that he paid more than 50% of the rent to justify an allowance of more than 50% of the rent in determining the Homestead Credit due him.

WISCONSIN STATUTES INVOLVED

Section 71.09(7)(a)2 and 6

WISCONSIN ADMINISTRATIVE CODE INVOLVED

ss. Tax 14.05(7)(a) and (c)

ss. Tax 14.05(2)(a)2

CONCLUSIONS OF LAW

1. During the period involved herein, the petitioner was deemed to have contributed to 50% of the living expenses for the apartment in question.

2. Respondent, Wisconsin Department of Revenue, acted properly when it adjusted petitioner's 1981 Homestead Credit Claim to reflect a 50% rent contribution by each household.

Therefore,

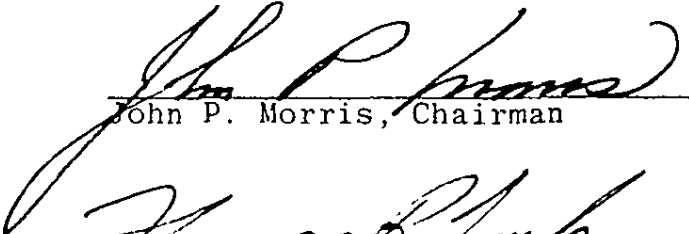
IT IS ORDERED

That the respondent's action on petitioner's petition is hereby affirmed.


Dated at Madison, Wisconsin, this 19th day of June,

1985.

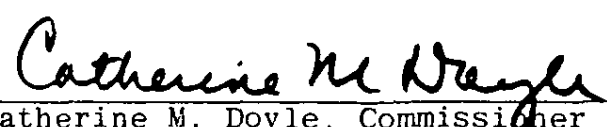
WISCONSIN TAX APPEALS COMMISSION




John P. Morris, Chairman



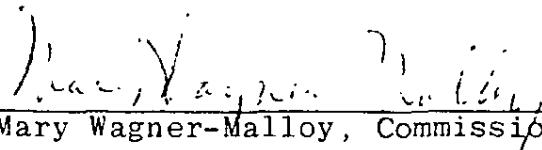
Thomas R. Timken, Commissioner



Catherine M. Doyle, Commissioner



William Bradford Smith, Commissioner



Mary Wagner-Malloy, Commissioner

Attachment: "NOTICE OF APPEAL INFORMATION"