

KELLER DENNIS HC11058 090485 TAC

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STATE OF WISCONSIN
TAX APPEALS COMMISSION

DENNIS KELLER	:	
8006 W. National Avenue	:	
West Allis, WI 53214	:	DOCKET NO. HC-11058
	:	
Petitioner,	:	RULING AND ORDER
	:	
vs.	:	
	:	
WISCONSIN DEPARTMENT OF REVENUE	:	
P.O. Box 8933	:	
Madison, WI 53708	:	
	:	
Respondent.	:	

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
RECEIVED
SEP 5 1985
LEGAL DIVISION

Pursuant to this Commission's notice, this Commission convened in Room 214, State Office Building, 141 N.W. Barstow Street, Waukesha, Wisconsin, at 9:00 a.m., on August 29, 1985, for the purpose of hearing the above-entitled matter on its merits. At the hearing, the respondent made motion to dismiss the petition for review in this matter on the following grounds:

That the petitioner failed to meet the personal appearance requirements of s. 71.12(3), Wis. Stats., and ss. TA 1.03 and 1.51(2), Wis. Adm. Code; therefore, this Commission lacks jurisdiction to hear the matters of which the petitioner complains in his petition for review.

In the alternative, the respondent moved that the Commission affirm its action on the petitioner's petition for redetermination based on the record presented.

The petitioner, Dennis Keller, failed to appear either in person or by a representative. The respondent, Wisconsin Department

of Revenue, appeared by its attorney, Robert Junceau.

The respondent introduced exhibits, made a motion to dismiss the petition for review on the grounds stated above, made a prima facie case on the merits of the matter, and offered oral arguments in support thereof.

Having considered the pleadings, the record, the motion, the prima facie case presented on the merits, and the arguments of the respondent, this Commission finds as

FINDINGS OF FACT

1. The petitioner, Dennis Keller, filed a 1982 Wisconsin Homestead Credit Claim with the respondent, Wisconsin Department of Revenue, in which he claimed a total of \$724.

2. Under date of February 23, 1984, the respondent reduced said credit to \$682, with the following explanation:

"You have been allowed 25% of the amount of rent paid for occupancy only. Items furnished by the landlord cannot be used in the computation of your Homestead Credit."

3. Under date of April 16, 1984, the petitioner filed a timely petition for redetermination of the respondent's adjustment, which respondent denied on October 12, 1984.

4. On December 18, 1984, the petitioner filed a timely appeal of the respondent's final action with this Commission.

5. The respondent has established a "prima facie" case. Assessments or adjustments made by the respondent are presumptively correct. The petitioner did not appear at the hearing held on this matter to rebut the presumptive correctness of the respondent's action.

6. Section 71.12(3), Wis. Stats., contains the following:

"No person against whom an assessment of income tax has been made shall be allowed in any action, either as plaintiff or defendant or in any other proceeding to question such assessment unless the requirements of sub(1) shall first have been complied with, and unless such person shall have made full disclosure under oath at the hearing before the tax appeals commission of any and all income received by him. The requirements of this subsection may be waived by the department of revenue."

7. The respondent has established a "prima facie" case which the petitioner has not rebutted.

8. The respondent has shown good cause for the granting of its alternative motion that its action in modifying petitioner's homestead credit claim be affirmed.

Therefore,

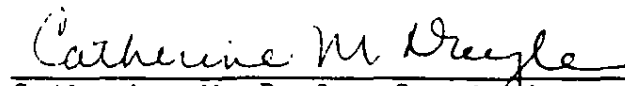
IT IS ORDERED

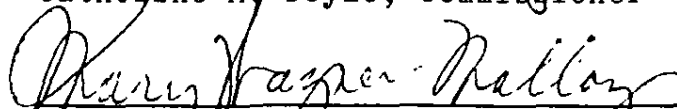
That the respondent's action in adjusting the petitioner's homestead credit claim be and the same is hereby affirmed.

Dated at Madison, Wisconsin, this 4th day of September, 1985.

WISCONSIN TAX APPEALS COMMISSION


Thomas R. Timken, Commissioner


Catherine M. Doyle, Commissioner


Mary Wagner-Malloy, Commissioner

cc: Petitioner
Respondent

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"