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FILED  
Wisconsin Tax Appeals Commission  
JUL 19 1996  
Dariusz Skowaski  
Deputy Clerk

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STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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DONALD AND JANET GROSCHEL, 14320 Beechwood Avenue Brookfield, WI 53005	*	
	*	DOCKET NO. 95-I-1294
Petitioners,	*	RULING AND ORDER
vs.	*	AWARDING SUMMARY
WISCONSIN DEPARTMENT OF REVENUE P.O. Box 8933 Madison, WI 53708	*	JUDGMENT
	*	
Respondent.	*	

*on*

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DON M. MILLIS, COMMISSIONER, JOINED BY MARK E. MUSOLF,  
COMMISSION CHAIRPERSON, AND JOSEPH P. METTNER, COMMISSIONER:

The above-entitled matter comes before the Commission on the parties' cross-motions for summary judgment. Respondent has filed supporting papers in support of its motion for summary judgment, and both parties have filed briefs in support of their respective positions on the cross-motions for summary judgment. Petitioners are represented by Weiss, Berzowski, Brady & Donahue, by Attorney John A. Sikora. Respondent is represented by Attorney Kevin B. Cronin. For the reasons stated below, the Commission grants respondent's motion.

Based on the entire record in this matter, the Commission finds, rules, and orders as follows:

UNDISPUTED MATERIAL FACTS

1. Petitioners are Wisconsin residents residing at 14320 Beechwood Avenue, Brookfield, Wisconsin 53005.
2. Petitioner Donald Groschel was employed by the City

of Milwaukee Public School system as a teacher from September 1958 until June 1967.

3. Mr. Groschel became a member of the Milwaukee teachers' annuity and retirement fund ("MRF") beginning about September 1958.

4. Mr. Groschel left the Milwaukee Public School system in June 1967 to take a teaching position in the Whitnall Area School District in July 1967.

5. Mr. Groschel became a member of the State Teachers Retirement System ("STRS") on or about July 1, 1967.

6. The MRF and STRS were separate and discrete teacher retirement systems in 1967 and thereafter, until they were merged into the Wisconsin Retirement System ("WRS") in 1982.

7. On June 18, 1968, Mr. Groschel applied to withdraw from the MRF all of his contributions to the MRF. On his application, Mr. Groschel agreed that payment of his contributions "shall constitute a full and complete discharge and release of all right, interest or claim on [his] part to state deposit accumulations which accrued while a member of said fund."

8. The MRF approved Mr. Groschel's application on September 18, 1968, and paid him \$3,823.19 as his full and complete refund, leaving on account for him no contributions from either him or the state.

9. Mr. Groschel had on account with the STRS no deposit from either him or the state attributable to his Milwaukee teaching service.

10. On May 24, 1990, Mr. Groschel purchased nine years of previously forfeited Milwaukee teaching service, upon application to the Wisconsin Retirement System.

11. Mr. Groschel retired on June 9, 1990, and began receiving a retirement annuity based only on his age, his three highest years of income as a teacher, and his service under the STRS, plus his years of creditable service purchased in May 1990.

12. The Wisconsin Department of Employee Trust Funds ("DETF"), the agency responsible for administering the WRS, uniformly interprets and applies § 40.25(6), Stats., to mean that any eligible public employe who purchases previously forfeited creditable service obtains the right to use such service only to determine the final amount of the retirement annuity to which the employe may be entitled and not to reinstate and restore any other rights the person may have had in the WRS or a predecessor prior to withdrawal from such system.

13. Petitioners filed with respondent on August 29, 1994, their joint amended income tax returns for 1990 through 1993, claiming refunds of income taxes for taxes previously paid on Mr. Groschel's retirement annuity from the WRS.

14. Under the date of January 12, 1995, respondent denied petitioners' claim for refunds. Under the date of March 1, 1995, petitioners filed a petition for redetermination. Under the date of July 18, 1995, respondent denied the petition for review. Petitioners filed a timely petition for review with the Commission.

## APPLICABLE WISCONSIN STATUTES

### 71.05 Income computation.

(1) EXEMPT AND EXCLUDABLE INCOME. There shall be exempt from taxation under this subchapter the following:

(a) Retirement systems. All payments received from ... the public employe trust fund as successor to the Milwaukee public school teachers' annuity and retirement fund and to the Wisconsin state teachers retirement system, which are paid on the account of any person who was a member of the paying or predecessor system or fund as of December 31, 1963 ... .

### RULING

There is no genuine issue of material fact, and this matter is appropriate for summary judgment. This matter hinges upon whether or not the annuity payments received by Mr. Groschel were "paid on the account of [a] person who was a member of [the MRF] as of December 31, 1963." Both parties have cited the Commission's decision in Connor v. Department of Revenue, Wis. Tax Rptr. ¶ 400-176 (WTAC 1995), in support of their respective positions. Connor has limited applicability to the issue at hand.

In Connor, Mr. Connor had withdrawn from the STRS prior to December 31, 1963. Id. at ¶ 30,574. [In the present case, Mr. Groschel was a member of the MRF on December 31, 1963.] The primary issue in Connor was, therefore, whether Mr. Connor was a member of the STRS as of December 31, 1963. Id. at ¶ 30,576. We concluded that Mr. Connor was not a member on December 31, 1963, because on that date he was not entitled to a retirement benefit

nor did he have a credit in any STRS reserve. Id.

In this case, there is no doubt that Mr. Groschel was a member of the MRF on December 31, 1963. However, that alone is not sufficient to qualify for the exemption under § 71.05(1)(a), Stats. The statute exempts payments "paid on the account of any person who was a member of [the MRF] as of December 31, 1963." [Emphasis supplied.] In order to resolve this case, the Commission must determine what "paid on the account" means.

In construing this language, we are mindful of the "long-established rule of statutory construction in this state that tax exemptions ... are matters of legislative grace and tax statutes are to be strictly construed against granting the same. One who claims such an exemption must ... bring himself clearly within the terms of the exemption." Ramrod, Inc. v. Department of Revenue, 64 Wis. 2d 499, 504, 219 N.W.2d 604 (1974). While the construction need not be the most narrow, all doubts are to be resolved against the exemption and in favor of taxability. Revenue Dept. v. Greiling, 112 Wis. 2d 602, 605, 334 N.W.2d 118 (1983). When interpreting this statute, the Commission should avoid rendering any portion surplus language. Kelley Co., Inc. v. Marquardt, 172 Wis. 2d 234, 250, 493 N.W.2d 68 (1992).

Petitioners argue that this exemption only requires Mr. Groschel to have been a member of MRF on December 31, 1963. Were this the case, why would the legislature have included the words "paid on the account of"? Petitioners' reading would render these words superfluous. The statute would merely have to read "paid to

any person who was a member of the paying or predecessor system or fund as of December 31, 1963." Petitioners' construction violates the above-cited maxim against rendering portions of a statute as surplusage. Moreover, petitioners' construction would violate the rule that exemption statutes must be strictly construed against the granting of the exemption.

A more reasonable construction of the exemption is that the word "account" refers to the account the member had on December 31, 1963. Thus, this exemption applies to annuities paid on the account the member had on December 31, 1963. The evidence submitted to the Commission makes it clear that when Mr. Groschel withdrew his contributions from the MRF, there was nothing in his MRF account, either in the form of his contributions or state contributions. Mr. Groschel's WRS annuity payments are not exempt from the income tax, therefore, because they are not paid on his MRF account that existed as of December 31, 1963.

Petitioners argue that even after Mr. Groschel's withdrawal, a certain number of years of creditable service remained in his account. This claim appears in petitioners' brief. Because petitioners did not submit this evidence in a proper form, petitioners fail to raise an issue of material fact that these years of creditable service remained in Mr. Groschel's account. Hopper v. Madison, 79 Wis. 2d 120, 130, 256 N.W.2d 139 (1977); E.S. v. Seitz, 141 Wis. 2d 180, 186, 413 N.W.2d 670 (Ct. App. 1987). Notwithstanding the petitioners' claim, Mr. Groschel's MRF ledger shows that all of his contributions were refunded and all

state contributions were transferred out of his account. There is no indication that the MRF credited any years of service to his account. Moreover, the fact that Mr. Groschel had to purchase his MRF years of creditable service belies petitioners' claim that Mr. Groschel's years of creditable service remained in his MRF account.

Petitioners appear to argue that the enactment of §§ 42.244-.245, Stats. (1965-66), restored Mr. Groschel's MRF account. These sections granted partial creditable service to certain former members of the STRS who withdrew their account contributions. Petitioners cannot benefit from the enactment of these sections because these sections applied to withdrawals from the STRS, not the MRF. Moreover, as described in Connor, the enactment of these statutes merely granted years of creditable service to persons who rejoined the STRS. They did not restore any accounts or accumulations. Connor, Wis. Tax Rptr. at ¶ 30,577.

Petitioners also argue that Mr. Groschel's repurchase of his MRF years of creditable service reestablished his years of creditable service to his MRF account. In Connor, we clearly held that the purchase of previously forfeited years of creditable service does not reinstate credit in a member's retirement deposit fund. Id.

Finally, petitioners may be suggesting that respondent should be equitably estopped from denying their claim for refund because it issued Wisconsin Tax Bulletin No. 76, a bulletin that took a position contrary to the respondent's position in Connor. Petitioners fail, however, to submit any evidentiary facts that



support the elements of equitable estoppel against respondent: (1) action or non-action by respondent, (2) that induces reliance by petitioners, (3) to petitioners' detriment. Petitioners have failed to submit any evidence that petitioners took action to their detriment in reliance on Tax Bulletin 76. In fact, it seems doubtful that petitioners could have relied on Tax Bulletin 76, since that bulletin dealt only with withdrawals from the STRS, not the MRF.

Therefore,


**IT IS ORDERED**

That respondent's motion for summary judgment is granted, and its action on petitioners' petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 19th day of July, 1996.

**WISCONSIN TAX APPEALS COMMISSION**

  
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Mark E. Musolf, Chairperson

  
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Joseph P. Mettner, Commissioner

  
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Don M. Millis, Commissioner

ATTACHMENT: "Notice of Appeal Information"