

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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TANIA AVILA,

DOCKET NO. 05-I-151

Petitioner,

vs.

DECISION AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**DAVID C. SWANSON, COMMISSIONER:**

This matter came before the Commission for a hearing conducted via telephone on June 28, 2006. Petitioner, Tania Avila, appeared *pro se*. Respondent, Wisconsin Department of Revenue ("Department"), appeared by Attorney Mark S. Zimmer. The parties presented testimony, evidence, and oral arguments.

Having considered the entire record before it, the Commission finds, decides, concludes, and orders as follows:

**FINDINGS OF FACT**

1. Petitioner was a Wisconsin resident during the years 2000 through 2003 (the "years at issue").
2. Petitioner filed a Wisconsin income tax return for each of the years at issue (the "returns").
3. Petitioner paid no Wisconsin income tax for each of the years at issue, as reported on her returns.

4. Petitioner claimed an earned income credit on each of the returns, and the Department paid the amount of each credit claimed to petitioner as a refund for each of the years at issue.

5. By Notice dated February 28, 2005, the Department issued an assessment against petitioner for the years at issue in the total amount of \$2,866.02, including tax and interest, after disallowing certain items petitioner had claimed on her returns, including all earned income credits.

6. By letter dated April 27, 2005, petitioner filed a petition for redetermination with the Department.

7. By Notice of Action dated of July 18, 2005, the Department denied petitioner's petition for redetermination.

8. On September 20, 2005, petitioner filed a petition for review with the Commission.

9. By letter dated May 3, 2006, the Department asked petitioner to provide documentation to substantiate the income reported on her returns.

10. As substantiation for the income reported on her returns, petitioner provided the Department with handwritten notes recording various dates and amounts received during the years at issue. Petitioner's notes were not made contemporaneously with the income and dates recorded therein, but rather were made by petitioner in response to the Department's inquiry regarding her claimed income.

11. On her petition for review, petitioner stated that she was unable to obtain information from her employers due to "confidentiality issues."

12. At the hearing, petitioner testified that she had hired a professional preparer to prepare her returns for the years at issue and that she had relied on her preparer's advice in preparing and filing those returns.

13. Neither party was able to locate the preparer of petitioner's returns for a deposition, and the preparer did not testify at the hearing.

14. At the hearing, the Department contested only petitioner's eligibility for the earned income credits claimed on her returns, and conceded the remaining issues.

15. Following the hearing, the Department issued a revised assessment dated June 28, 2006 to petitioner for the years at issue in the total amount of \$2,987.82, consisting of the disallowed earned income credits and interest.

### CONCLUSION OF LAW

Petitioner has not proved the Department's assessment to be incorrect by clear and satisfactory evidence.

### OPINION

Statutes that grant tax exemptions, deductions and privileges are matters of legislative grace and tax statutes are to be construed against the granting of the same. *Ramrod, Inc. v. Dep't of Revenue*, 64 Wis. 2d 499, 504, 219 N.W.2d 604 (1974). Any taxpayer who claims such a privilege must point to an express provision granting such privilege and bring himself or herself clearly within its terms. *Id.* As a tax credit, the Wisconsin earned income credit is a type of tax "privilege." Assessments made by the Department are presumed to be correct, and the burden is upon the petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its

determination. *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984); Wis. Stat. § 77.59(1). Petitioner has failed to meet her burden in this case.

The Department requested that petitioner provide documentation substantiating her income as reported on her returns for purposes of claiming the earned income credit, and petitioner was unable or unwilling to comply. At the hearing, the only documentation petitioner was able to provide were copies of her own handwritten notes recording various dates and amounts received during the years at issue. These notes were not made contemporaneously with the income and dates recorded therein, but rather were made by petitioner in response to the Department's inquiry regarding her claimed income. These non-contemporaneous notes prepared by petitioner for submission to the Department in connection with this case are not clear and satisfactory evidence that the Department erred in its decision on petitioner's petition for redetermination.

Petitioner has failed to meet her burden in this case, and the Commission upholds the Department's adjustments reflected in its Notice of Action and revised assessment dated June 28, 2006.

**IT IS ORDERED**

The Department's action on petitioner's petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 6th day of November, 2006.

**WISCONSIN TAX APPEALS COMMISSION**

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Jennifer E. Nashold, Chairperson

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Diane E. Norman, Commissioner

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David C. Swanson, Commissioner

**ATTACHMENT: "NOTICE OF APPEAL INFORMATION"**