

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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KRISTIAN L. AND JUSTINA R. HARNAGE,

DOCKET NO. 19-I-159

Petitioners,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**RULING AND ORDER**

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**DAVID L. COON, COMMISSIONER:**

This matter come before the Commission for decision on a Motion for Summary Judgment filed by the Wisconsin Department of Revenue ("the Department"). The Petitioners, Kristian L. and Justina R. Harnage, Trempealeau, Wisconsin, appear *pro se*. The Department is represented by Attorney Sheree Robertson. The parties filed a Stipulation of Facts. The Department filed a brief and affidavit in support of its position. The Petitioners filed a letter stating that the facts in the Stipulation are correct and declining to file further briefing or other supporting documentation in response to the Motion for Summary Judgment. For the reasons stated below, we find for the Department.

**FACTS**

1. Petitioner, Kristian L. Harnage, is a United States Military Veteran having served from April 19, 1994, to November 8, 2001. (Stipulation of Facts ("Stip.") ¶ 7.)
2. In 2012, Mr. Harnage submitted a Veteran's Application for Increased Compensation Based on Unemployability to the United States Department of Veterans

Affairs ("VA"), beginning a process to be declared disabled due to service-connected disabilities. (Stip. ¶ 8, Ex. 4.)

3. Six years after beginning the process, in a letter to Mr. Harnage dated September 18, 2018, which is a summary of benefits, the VA states that Mr. Harnage was determined to be totally and permanently disabled due to his service-connected disabilities as of July 1, 2012. (Stip. ¶ 10, Ex. 4.)

4. The VA's September 18, 2018 letter was provided for Mr. Harnage to use in applying for benefits such as state or local property or vehicle tax relief, civil service preference, to obtain housing entitlements, free or reduced state park annual memberships, or any other program or entitlement in which verification of VA benefits is required. (Stip. ¶ 10, Ex. 4.)

5. Petitioners filed amended 2012 and 2013 Wisconsin income tax returns on November 5, 2018, claiming the Eligible Veterans and Surviving Spouse Property Tax Credit ("Credit"). (Stip. ¶ 1.)

6. Based upon the original unextended due dates for the 2012 and 2013 Wisconsin tax returns, the last day for Petitioners to file an amended 2012 Wisconsin income tax return to make a valid claim was April 18, 2017, and the last day for them to file an amended 2013 Wisconsin income tax return to make a valid claim was April 18, 2018. (Stip. ¶ 1, Ex. 1.)

7. The Department issued to Petitioners a Notice, dated November 28, 2018, denying the \$3,690 refund claimed on their amended 2012 Wisconsin income tax return, and denying the \$1,765 refund claimed on their amended 2013 Wisconsin income

tax return because the amended returns making the claims were filed more than four years after the original due date. (Stip. ¶ 1, Ex. 1.)

8. Petitioners timely filed a Petition for Redetermination. (Stip. ¶ 2, Ex. 2.)

9. The Department of Revenue wrote a letter to Petitioners dated February 14, 2019, explaining that their claims for refund were disallowed because they were filed more than four years after the original due date, referencing Wis. Stat. § 71.75(2). (Stip. ¶ 14, Ex. 7.)

10. The Department issued to Petitioners a Notice of Action, dated March 13, 2019, denying their Petition for Redetermination. (Stip. ¶ 3, Ex. 3.)

11. Petitioners timely filed a Petition for Review with the Commission. (Commission File.)

12. On November 22, 2019, the parties filed a Stipulation of Facts with the Commission. (Commission File.)

13. On December 30, 2019, the Department filed a Motion for Summary Judgment along with a brief and affidavit. On March 13, 2020, the Petitioners filed a letter stating that the Stipulation of Facts accurately set forth the matter and that they would be filing no brief or additional information. (Commission File.)

## APPLICABLE LAW

### *Statutes*

**Wis. Stat. § 71.07(6e)(b):** *Filing claims.* Subject to the limitations provided in this subsection, a claimant may claim as a credit against the tax imposed under s. 71.02 the amount of the claimant's property taxes. If the allowable amount of the claim exceeds the income taxes otherwise due on the claimant's income, the amount of the claim not used as an offset against

those taxes shall be certified by the department of revenue to the department of administration for payment to the claimant by check, share draft, or other draft from the appropriation under s. 20.835 (2) (em).

**Wis. Stat. § 71.07(6e)(c)1.** No credit may be allowed under this subsection unless it is claimed within the time period under s. 71.75 (2).

**Wis. Stat. § 71.75(2).** With respect to income taxes and franchise taxes...refunds may be made if the claim therefor is filed within 4 years of the unextended date under this section on which the tax return was due.

### *Summary Judgment*

Summary judgment is granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2). Here, the parties have stipulated to the material facts and determination of the matter on summary judgment is appropriate.

### **DECISION**

Eligible veterans may claim a Credit under Wis. Stat. § 71.07(6e)(b). Per Wis. Stat. § 71.07(6e)(c)1., one of the requirements to receive the Credit is that "No credit may be allowed under this subsection unless it is claimed within the time period under s. 71.75(2)." Therefore, the claim for the Credit must be made within the time specified in Wis. Stat. § 71.75(2), which states, in part, that "refunds may be made if the claim therefor is filed within 4 years of the unextended date under this section on which the tax return was due."

In this matter, Petitioners have stipulated that the last day to file an amended 2012 Wisconsin income tax return to make a valid claim was April 18, 2017, and the last day to file an amended 2013 Wisconsin income tax return to make a valid claim was April 18,

2018. Petitioners' amended 2012 and amended 2013 Wisconsin income tax returns were filed on November 5, 2018, well beyond the deadline specified in Wis. Stat. § 71.75(2). The claims were not made within four years of the unextended date on which the tax returns were due. Therefore, based upon the stipulated facts, as a matter of law, the Department of Revenue is entitled to Summary Judgment because claims for the Credit for 2012 and 2013 were not timely. Even if the Petitioners meet all other requirements for the Credit, the claims were not filed within the statutory time period set forth in Wis. Stat. § 71.75(2).

For the Petitioners, it was a long and, no doubt, frustrating quest before the VA to show that Mr. Harnage had a service-connected disability. If the Commission had equitable powers to determine matters based upon "fairness," the Commission might well be inclined to exercise that power here. However, "the legislature has empowered this agency to determine and apply Wisconsin tax statutes, but not to preempt application of a statute under a doctrine of equity." *Peterson v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶203-026 (WTAC 1989) (citations omitted).

While it will not help the Petitioners at this point, the Department does outline in its Brief what the Petitioners could have done to preserve their right to make a claim for the Credit while awaiting VA action. The Department states, Petitioners "could have timely filed Wisconsin income tax returns [or timely filed amended returns] claiming the Veterans Credit and further could have asked the Department of Revenue not to act on any claims for refund until the federal Department of Veterans Affairs issued a final decision on...appeal." At a minimum, this shows that there may be ways for veterans waiting for VA disability determinations to work with the Department to preserve their rights. Every

tax situation may be different based upon the particular fact situation, so veterans, who are in the process of making a disability claim, should contact the Department to request assistance with this process to preserve their rights to claim the Credit during what could be a prolonged proceeding with the VA. The Commission hopes that Wisconsin Department of Veterans Affairs and any other organizations working with veterans will take note of the Department's willingness to work with veterans and assist them accordingly.

### CONCLUSIONS OF LAW

The Petitioners' claims for the Credit were untimely under Wis. Stat. § 71.07(6e)(c)1. and Wis. Stat. § 71.75(2); therefore, the Department properly denied the claim.

### ORDER

The Respondent's Motion for Summary Judgment is granted, and the Petitioners' Petition for Review is dismissed.

Dated at Madison, Wisconsin, this 27th day of April, 2020.

### WISCONSIN TAX APPEALS COMMISSION

  
Elizabeth Kessler, Chair

  
Lorna Hemp Boll, Commissioner

  
David L. Coon, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION  
5005 University Avenue - Suite 110  
Madison, Wisconsin 53705

**NOTICE OF APPEAL INFORMATION**

NOTICE OF RIGHTS FOR REHEARING, OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

A taxpayer has two options after receiving a Commission final decision:

***Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION***

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternately, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

**AND/OR**

***Option 2: PETITION FOR JUDICIAL REVIEW***

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, within 30 days of this decision if there has been no petition for rehearing or, within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service, or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or, the Wisconsin Statutes. The website for the courts is <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.