

**STATE OF WISCONSIN
TAX APPEALS COMMISSION**

THOMAS G. HETZEL,

DOCKET NO. 09-I-059

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

This case comes before the Commission on the motion of the Respondent, the Wisconsin Department of Revenue (the “Department”), for summary judgment on the basis that there is no genuine issue of material fact and the Department is entitled to judgment as a matter of law under Wis. Stat. § 802.08(1) and Wis. Admin. Code § TA 1.31. Petitioner Thomas G. Hetzel represents himself in this case and has filed several responses and additional documents objecting to the motion. Attorney Julie Lotto represents the Department and has filed a brief, affidavit with exhibits and reply in support of the motion.

Having considered the entire record, the Commission hereby finds, rules and orders as follows:

FINDINGS OF FACT

1. During the year 2007 (the “year at issue”), the Petitioner was a resident of the City of Kenosha, Wisconsin and filed a Wisconsin Form 1 income tax return for that year (the “return”). (Affidavit of Department Resolution Officer Marie

Romero dated May 7, 2009 (“Romero Aff.”), ¶ 2, Ex. 1.)

2. By an Adjustment Notice dated July 29, 2008, the Department notified the Petitioner that it had adjusted his income tax for 2007 based on its computation of amounts relevant to 2007. The adjustment included the Department’s allowance of the standard deduction by the Petitioner and the disallowance of his claimed estimated credits and refund.¹ No income tax bill or refund was issued as a result of the adjustment. (Romero Aff. ¶ 6, Ex. 5.)

3. By letter dated August 1, 2008, the Petitioner filed a petition for redetermination with the Department. (Romero Aff. ¶ 7, Ex. 6.)

4. By a Notice of Action dated January 30, 2009, the Department denied the Petitioner’s petition for redetermination. (Romero Aff. ¶ 8, Ex. 7.)

5. On March 30, 2009, the Commission received the Petitioner’s petition for review via certified mail date-stamped March 27, 2009.

6. On May 8, 2009, the Department filed a notice of motion and motion for summary judgment with attached affidavit, exhibits and brief in support of the motion.

7. On May 14, 2009, the Commission issued a Briefing Order on the Department’s motion.

8. The Petitioner filed several responses to the motion, including the following: (1) settlement offer reminder, request for admission of facts/law, 804.09

¹ According to Ms. Romero, the Department’s scanner read the Petitioner’s claimed refund amount incorrectly as \$6,113,855.00, instead of the actual reported amount of \$6,138.55. (Romero Aff. ¶ 6, Ex.’s 1 and 5.) Because no refund was granted, this apparent scanning error does not appear to have had any effect on the Department’s actions in this case.

production of documents, and alternate motion to strike, all filed on May 14, 2009; (2) request for clarification of the Commission's Briefing Order filed on May 22, 2009; (3) letter and motion to consolidate the Petitioner's claim regarding tax year 2008² with this case filed on May 26, 2009; (4) letter and additional documents filed on June 1, 2009; (5) letter filed on June 8, 2009; (6) letter filed on June 16, 2009; (7) letter and motion for sanctions filed on July 13, 2009; (8) letter filed on August 5, 2009; and (9) motion for summary judgment and motion to consolidate this case with Docket No. 09-I-176 filed on September 17, 2009 (collectively, the "Petitioner's Motions").

9. On June 3, 2009, the Department filed its reply to several filings submitted by the Petitioner.

10. On his 2007 return, the Petitioner claimed the following two credits: (1) the 2007 School Property Tax Credit, based on \$6,138.55 of property taxes "paid on home in 2007"; and (2) the 2007 Eligible Veterans and Surviving Spouses Property Tax Credit in the amount of \$6,138.55.³ (Romero Aff. ¶ 2, Ex. 1, lines 22 and 47.)

11. As an attachment to his 2007 return, the Petitioner filed two City of Kenosha 2007 Real Estate Tax Inquiries for the two lots on 53rd Street at issue (the "Inquiries"). The Inquiries indicate that the Petitioner added the amounts due for the two parcels incorrectly, resulting in the amount of \$6,138.55 claimed on his return. The correct total amount due for the parcels was \$6,438.55. (Romero Aff. ¶ 3, Ex.'s 1-2.)

² At the time this motion was filed, the Department had not yet acted on the Petitioner's petition for redetermination for 2008. The Department subsequently issued a Notice of Action dated September 8, 2009, which the Petitioner has appealed to the Commission (Docket No. 09-I-176).

³ Ms. Romero believes that the amount written on line 47 of the Petitioner's return (\$6,138.55) was scratched out by the Department as it processed the return. (Romero Aff. ¶ 2 and Ex. 1.) This same amount was carried over and reported on lines 50 and 52 of the return as a refund claim. (Ex. 1.)

12. On the return, the Petitioner reported 1943 as the year of his birth. (Romero Aff. ¶ 2, Ex. 1.) Based on that date, the Petitioner reached 65 years of age in 2008.

13. As an attachment to his 2007 return, the Petitioner also filed a Certification for Wisconsin Veterans and Surviving Spouses Property Tax Credit from the Wisconsin Department of Veterans Affairs dated March 20, 2008, indicating that the Petitioner qualified as an Eligible Veteran under Wis. Stat. § 71.07(6e)(3) as of his birth date in 2008. Among its stated requirements, the Certification provides that “‘Eligible Veteran’ means an individual who is at least 65 years of age” (Romero Aff. ¶ 4, Ex. 3.)

14. Prior to filing his 2007 return, the Petitioner filed a 2007 Wisconsin Schedule H claiming a 2007 Homestead Credit in the amount of \$1,160. The Petitioner reported his net 2007 property taxes as \$6,438 (the correct total based on the 2007 Inquiries), and used that amount to calculate his 2007 Homestead Credit claim. The Petitioner attached the same 2007 Inquiries to his 2007 Schedule H as he had attached to his 2007 return. (Romero Aff. ¶ 5, Ex.’s 2 & 4.)

15. The Department granted the Petitioner’s claimed 2007 Homestead Credit in full and paid it to him with Check No. 9401734 dated February 21, 2008 in the amount of \$1,160, which he endorsed and deposited on February 23, 2008. (Romero Aff. ¶ 5, Ex. 4.)

CONCLUSION OF LAW

There is no genuine issue of material fact in this matter and the Department is entitled to judgment as a matter of law pursuant to Wis. Stat. § 802.08.

RULING

Summary judgment is warranted where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Wis. Stat. § 802.08(2). If the moving party has established a *prima facie* case for summary judgment, then the opposing party must establish that there is a genuine issue of material fact that entitles that party to a trial. *Grams v. Boss*, 97 Wis. 2d 332, 338-39, 294 N.W.2d 473 (1980). The Commission concludes that the Petitioner has not shown that there is a genuine issue of material fact in dispute in this case, and the Department therefore is entitled to judgment as a matter of law.

Assessments made by the Department are presumed to be correct, and the burden is on the Petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984); Wis. Stat. § 77.59(1). Tax exemptions, deductions, and privileges are matters of legislative grace and will be strictly construed against the taxpayer. *Fall River Canning Co. v. Dep't of Taxation*, 3 Wis. 2d 632, 637, 89 N.W.2d 203 (1958). In this case, the Petitioner challenges the Department's adjustment to his return and resulting denial of the refund claimed on that return. In response, the

Department argues that the adjustment is correct and that the Petitioner's calculation of the relevant amounts on his 2007 return is incorrect under applicable law.

1. The 2007 School Property Tax Credit

On his 2007 return, the Petitioner claimed a School Property Tax Credit (the "School Credit"). The Petitioner's 2007 return reported a Wisconsin income tax liability of zero, and the Petitioner paid no Wisconsin income tax for 2007. The Department disallowed the 2007 School Credit to the petitioner, partly resulting in the denial of his refund claim and this petition for review.

The governing statute provides that the School Credit may be claimed by a taxpayer "as a credit against, but not to exceed the amount of, taxes under s. 71.02", Stats. Wis. Stat. § 71.07(9)(b). Therefore, the School Credit may only be used to offset an income tax liability.

The Petitioner had no income tax liability for 2007.⁴ The entire 2007 School Credit claimed by the Petitioner exceeded his income tax liability for that year, and therefore was properly disallowed by the Department pursuant to the applicable statute.

2. The 2007 Veterans Property Tax Credit

On his 2007 return, the Petitioner claimed an Eligible Veterans and Surviving Spouses Property Tax Credit (the "Veterans Credit"). The Veterans Credit is available to any "Eligible Veteran" who, among other requirements, is certified as such

⁴ Although his 2007 return and Schedule H Homestead Credit claim are inconsistent as to the Petitioner's total 2007 income, it is clear from these filings that his 2007 income was offset by the \$11,350 Standard Deduction allowed by the Department in the adjustment, resulting in a zero income tax liability.

by the Wisconsin Department of Veterans Affairs (“WDVA”) and is at least 65 years of age. Wis. Stat. § 71.07(6e)(a)(3); Wis. Stat. Ch. 45; WDVA Form 2098 (12/05). Property taxes that are eligible for the Veterans Credit include only those taxes paid during the taxable year for which the credit is claimed. Wis. Stat. § 71.07(6e)(a)(5). Finally, a taxpayer who claims a Homestead Credit is not eligible for the Veterans Credit in that same year. Wis. Stat. § 71.07(6e)(c)(2). In other words, these credits may not both be claimed for the same year.

The Petitioner argues that he paid his 2008 property taxes in 2007 and thus was eligible for the Veterans Credit that year, but the record does not support his position. First, the Petitioner was not yet 65 years of age during 2007 and was not certified by the WDVA as an “Eligible Veteran” until 2008, and thus was not eligible for the credit during 2007. Wis. Stat. § 71.07(6e)(a)(3); Pet. for Review; Romero Aff. ¶ 4, Ex. 3. Second, the record indicates that the Petitioner paid his 2007 property taxes in 2007, and paid his 2008 property taxes in 2008. (Romero Aff. ¶ 3, Ex.’s 1-2; Pet. for Review.) Finally, the Petitioner claimed and received a Homestead Credit for 2007, which also made him ineligible to claim the Veterans Credit for 2007. Consequently, the Department properly disallowed the Petitioner’s claimed Veterans Credit for 2007.

3. The Petitioner’s Motions

During and following briefing on the Department’s motion for summary judgment, the Petitioner filed several additional documents and motions, including a motion to consolidate this matter with a petition for review for tax year 2008 that the Petitioner recently filed with the Commission (Docket No. 09-I-176). We find that

Docket No. 09-I-176 involves facts not at issue in this matter and that consolidation thus is not appropriate, and we therefore deny that motion. The Petitioner's other motions generally seek to introduce information that is not relevant to this case or strike information that is relevant, and thus are also denied.⁵ Finally, the Petitioner's motions for sanctions against Department personnel are denied, on the grounds that the Petitioner has not shown that any such sanctions are justified.

With regard to the Department's summary judgment motion, we find that the Department has presented a *prima facie* case. We further find that none of the Petitioner's arguments made in response to the motion establish that there is a genuine issue of material fact in this matter that would necessitate a hearing. Therefore, we find that there is no genuine issue of material fact in this case and the Department is entitled to summary judgment as a matter of law.

ORDER

1. The Petitioner's Motions are denied.
2. The Department's Motion for summary judgment is granted and its action on the Petitioner's petition for redetermination is affirmed.

⁵ In particular, the Petitioner offers a number of arguments related to the budgeting and related tax collection procedures allegedly followed by the City of Kenosha. We find that these arguments are not relevant to this case, which solely involves questions of State law.

Dated at Madison, Wisconsin, this 1st day of December, 2009.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger W. Le Grand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"