

STATE OF WISCONSIN
TAX APPEALS COMMISSION

THOMAS G. HETZEL,

DOCKET NO. 09-I-176

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(2) and Wis. Admin. Code § TA 1.31. Petitioner Thomas G. Hetzel appears *pro se* in this case and has filed several responses and additional documents objecting to the motion. Attorney Mark S. Zimmer represents the Department and has filed a brief, proposed findings of fact, affidavit with exhibits and reply in support of the motion.

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

FINDINGS OF FACT

1. During the year 2008 (the “year at issue”), the Petitioner was a resident of the City of Kenosha, Wisconsin and filed a Form 1 Wisconsin income tax

return for that year¹ (the “return”). (Affidavit of Department Resolution Officer Marie Romero dated March 3, 2010 (“Romero Aff.”), ¶ 2, Ex. 1.)

2. The Petitioner reported no income and no income tax paid or due on his 2008 return; however, he claimed a 2008 Eligible Veterans and Surviving Spouses Property Tax Credit (the “credit”) in the amount of \$12,487 on Line 33 of the return, which he claimed as a refund on Line 36. *Id.*

3. During the processing of the return, Department personnel lined out the original entries of \$12,487 on Lines 33, 34 and 36 and replaced them with the amount of \$5,431.00. *Id.*

4. The Petitioner provided to the Department a City of Kenosha 2008 Real Estate Tax Inquiry for the improved lot including his principal dwelling, Parcel Number 08-222-35-427-022 (the “residence”), showing that property taxes on this property in the amount of \$5,430.89 were paid on December 30, 2008. (Romero Aff. ¶ 3, Ex. 2.)

5. The Petitioner provided to the Department a City of Kenosha 2008 Real Estate Property Tax Bill for an unimproved lot adjacent to his principal dwelling, Parcel Number 08-222-35-427-027 (the “lot”), showing that property taxes on this property in the amount of \$917.36 were due for 2008. (Romero Aff. ¶ 4, Ex. 3.; Hetzel Ltr. received April 9, 2010.)

¹ The Petitioner’s return claimed a fiscal year beginning on January 2, 2008 and ending on January 2, 2009. Because this minor discrepancy between the Petitioner’s claimed fiscal year and the 2008 calendar year does not affect our analysis in this matter, this ruling and order does not address whether the Petitioner properly filed his return based upon the claimed fiscal year.

6. The Petitioner provided to the Department copies of escrow disclosure statements from his mortgage lender dated June 1, 2008 and June 1, 2009 showing anticipated escrow payments and disbursements for the fiscal years beginning on the statement dates. (Romero Aff. ¶ 6, Ex. 4.)

7. Exhibits 2, 3 and 4 were all addressed to both the Petitioner and Laura J. (or Jean) Hetzel, the Petitioner's daughter, indicating that the Petitioner and his daughter own the residence and the lot as joint tenants. (Romero Aff. ¶¶ 3-6, Ex. 2-4.)

8. The Petitioner's original claim of a credit in the amount of \$12,487 appears to include the 2008 property taxes paid (or due) on the residence and the lot, plus the Petitioner's 2007 property taxes paid (or due).² (Romero Aff. ¶ 7 and Ex. 2.)

9. By a Notice of Refund dated April 9, 2009, the Department notified the Petitioner that it had adjusted his return for 2008 resulting in an allowed refund in the amount of \$2,716 (approximately one-half of \$5,431.00). (Romero Aff. ¶ 8, Ex. 5.)

10. The Department's adjustment to the Petitioner's 2008 return allowed a 2008 Veterans and Surviving Spouses Credit in the amount of \$2,716 because the Petitioner jointly owns the residence in question, and \$2,716 represents one-half of the property taxes on the Petitioner's principal residence actually paid during 2008 (\$5,431.00). *Id.*

11. On Line 23b of her 2008 Form 1 Wisconsin income tax return, Laura J. Hetzel, the co-owner of the residence and the lot, also claimed that she paid property

² In its decision in Docket Number 09-I-059 dated December 1, 2009 involving these same parties, the Commission previously held that the Petitioner was ineligible to claim this credit for 2007, which the Petitioner has appealed to the Kenosha County Circuit Court (Case No. 10-CV-255).

taxes in the amount of \$6,348.00 in 2008, which is the total of the property taxes paid on the residence and the lot for that year. (Romero Aff. ¶ 12, Ex. 9.)

12. By letter dated April 9, 2009 and received by the Department on April 20, 2009, the Petitioner filed a petition for redetermination with the Department. (Romero Aff. ¶ 9, Ex. 6.)

13. By a Notice of Action dated September 8, 2009, the Department denied the Petitioner's petition for redetermination. (Romero Aff. ¶ 10, Ex. 7.)

14. On September 17, 2009, the Commission received the Petitioner's petition for review via certified mail date-stamped September 16, 2009.

15. On October 9, 2009, the Department filed its answer.

16. On October 29, 2009, the Petitioner filed a response to the Department's answer.

17. On March 4, 2010, the Department filed a notice of motion and motion for summary judgment with attached proposed findings of fact, affidavit, exhibits and brief in support of the motion.

18. On March 9, 2010, the Commission issued a Briefing Order on the Department's motion.

19. On April 9, 2010, the Petitioner filed a response to the motion that included over 100 pages of handwritten text, including various requests and a request for more time to file an additional response.

20. On April 19, 2010, the Commission granted the Petitioner's request for additional time and set a due date of May 3, 2010 for his additional response.

21. The Petitioner did not file any additional materials by May 3, 2010.

22. On May 17, 2010, the Department filed its reply to the Petitioner's responses.

23. On June 28, 2010, the Petitioner filed another response to the Department's motion.

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, 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). Tax credits are subject to the same strict construction. *L&W Construction Co., Inc. v. Wis. Dep't of Revenue*, 149 Wis. 2d 684, 690 (Ct. App. 1989).

In this case, the Petitioner challenges the Department's adjustment to his 2008 return and resulting reduction 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 2008 return is incorrect under applicable law.

1. The 2008 Eligible Veterans Property Tax Credit

On his 2008 return, the Petitioner claimed an Eligible Veterans and Surviving Spouses Property Tax Credit (the "credit"). The Department agrees that the Petitioner is eligible for the credit for 2008 and granted him a portion of the refund he claimed based on that credit. However, the parties dispute the amount of the Petitioner's 2008 property taxes that may be included in the calculation of the credit.

Property taxes that are eligible for the credit include only those taxes paid by the claimant on the claimant's "principal dwelling" during the taxable year for which the credit is claimed. Wis. Stat. § 71.07(6e)(a)(5). Pursuant to Wis. Stat. § 71.07(6e)(a)(4), for purposes of this credit,

'Principal dwelling' means any dwelling, whether owned or rented, and the land surrounding it that is reasonably necessary for use of the dwelling as a primary dwelling of the claimant and may include a part of a multidwelling or multipurpose building and a part of the land upon which it is built that is used as the claimant's primary dwelling.

Wis. Stat. § 71.07(9)(a)2. In cases where the principal dwelling is jointly owned by the claimant with another person, the credit is further limited as follows:

If the principal dwelling on which the taxes were paid is owned by 2 or more persons or entities as joint tenants or tenants in common or is owned by spouses as marital property, 'property taxes' is that part of property taxes paid that reflects the ownership percentage of the claimant, except that this limitation does not apply to spouses who file a joint return.

Wis. Stat. § 71.07(6e)(a)5. Where two individuals who are not spouses own property as joint tenants, each tenant "has an equal interest in the whole property for the duration of the tenancy, irrespective of unequal contributions to its creation." Wis. Stat. § 700.12(2)(a).

While the Petitioner is eligible for the credit for 2008, the statutory limitations on the allowable amount of the credit discussed above clearly apply. Only property taxes paid on the Petitioner's principal dwelling are eligible for the credit, thus excluding any property taxes paid on the adjacent unimproved lot. In addition, only 50% of the property taxes paid on the Petitioner's principal dwelling are eligible, because he owns the property as a joint tenant with his daughter.

The Petitioner offers a number of arguments in favor of including various other amounts in his 2008 credit claim, but these arguments are either nonsensical, irrelevant or plainly contrary to the statutes. In contrast, the Department offers a clear-cut case that is supported by all of the documentary evidence in the record, including the Petitioner's own documents, and the applicable statutes. Consequently, we

conclude that the Department properly reduced and allowed the correct amount of the Petitioner's claimed Veterans Credit and related refund for 2008.

2. The Petitioner's Requests and Motions

In his responses to the Department's motion for summary judgment, the Petitioner included various requests and motions, including a motion to consolidate this matter with Docket No. 09-I-059. We previously denied that motion in Docket No. 09-I-059, and we deny it again here. The Petitioner's other requests and motions generally seek to introduce information that is not relevant to this case or strike information that is relevant, and thus also are denied.

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.

Dated at Madison, Wisconsin, this 12th day of August, 2010.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger W. Le Grand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"