

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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**ROBERT LASKE,**

**DOCKET NO. 14-I-002**

Petitioner,

vs.

**WISCONSIN DEPARTMENT OF REVENUE,**

Respondent.

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**RULING AND ORDER**

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**LORNA HEMP BOLL, CHAIR:**

This case comes before the Commission for decision on simultaneous Motions for Summary Judgment. The Petitioner appears by Attorney Kenneth O. Donner of Donner Law Group, Mequon, Wisconsin. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Sheree Robertson. Both parties have filed briefs and affidavits in support of their respective positions regarding the Petitioner's ability to claim the Veterans and Surviving Spouses Property Tax Credit ("Veterans Credit").

The Petitioner was a qualified veteran who, by paying property taxes as a condition of his continued use of the property, rented the residence in question. Because we also find that both owners and renters who pay property taxes may claim the Veterans Credit, we find for the Petitioner.

## FACTS

Despite the lack of a formal stipulation of facts, the facts submitted by each side are essentially the same. The pertinent facts are as follows:

### *Jurisdictional Facts*

1. On March 29, 2013, the Department issued a Notice of Denial of Claim for Refund for the tax years 2010 and 2011. (Dep't Ex. 1.)

2. Specifically, the Department denied Petitioner's claim of the Veterans Credit for 2010 and for 2011 because Petitioner did not own the real property at which he resided in Fox Point, WI. (Dep't Ex. 1.)

3. Similarly, the Department denied Petitioner's claim of the Veterans Credit for the 2012 tax year except for the month of December as long as he paid property tax in 2012 because Petitioner did not own the real property at which he resided in Fox Point, WI. (Dep't Ex. 1.)

4. On April 26, 2013, the Department issued a Notice of Refund for the 2012 tax year allowing Petitioner a refund as a result of the Veterans Credit but only for the month of December. (Dep't Ex. 2.)

5. On May 21, 2013, Petitioner filed a timely Petition for Redetermination objecting to the denial of Petitioner's claim for the Veterans Credit for 2010 and for 2011. (Dep't Ex. 3.)

6. On June 19, 2013, Petitioner filed a timely Petition for Redetermination objecting to the partial denial of Petitioner's claim for the Veterans Credit for 2012. (Dep't Ex. 4.)

7. On November 5, 2013, the Department denied Petitioner's Petition for Redetermination with respect to the 2010 and 2011 tax years, again asserting that the Petitioner could not claim the Veterans Credit because he did not own the property where he resided during those tax years. With respect to the 2012 tax year, the Department granted the Petition for Redetermination in part, allowing the Petitioner's claim for credit beginning on the date the property was distributed to him, October 12, 2012, rather than December 1, 2012, thus allowing an additional refund for 2012. (Dep't Ex. 5.)

8. On January 6, 2014, Petitioner filed a timely Petition for Review with the Commission, objecting to the November 5, 2013 Notices. (Dep't Ex. 6.)

9. Both parties have filed Motions for Summary Judgment, along with an affidavit with exhibits in support of their respective positions.

#### **Material Facts<sup>1</sup>**

10. Since 1999, Petitioner has resided at the relevant address in Fox Point, WI (the "Residence"). He has used the Residence address for voting, driver's license, and tax return purposes. (Petitioner's Affidavit ("PA"), ¶¶ 2 & 3.)

11. The Residence was owned by the Patricia A. Dixon Revocable Living Trust dated 9/27/2004 (the "Trust") until Ms. Dixon's death on July 14, 2012. (PA, ¶ 4.)

12. In 2007, due to incapacitation from dementia, Ms. Dixon became a resident of an assisted living and memory care facility in Menomonee Falls, WI. (PA, ¶ 5, Ex. 4.)

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<sup>1</sup> Although the parties did not submit a stipulation of facts, the facts cited here are derived from the affidavits submitted by the parties, which do not differ in any material aspects.

13. A 2004 amendment to the Trust provided that, upon Ms. Dixon's incapacity, Petitioner would be allowed to continue to reside in the Residence provided he paid the utilities, normal repairs, maintenance, and real estate taxes of the Residence ("the Expenses"). (PA, Ex. 5)

14. Per the terms of the Trust amendment, if Petitioner had failed to pay the Expenses of the Residence, his right to reside in the Residence would be terminated. (PA, Ex. 3, p. 1.)

15. Petitioner paid the Expenses (including the property taxes) required by the terms of the Trust and continued (and continues) to reside in the Residence. (PA, ¶ 8.)

16. Per the terms of the Trust, the Residence was to be distributed to the Petitioner provided he survived her by 90 days. The 90-day period ended on October 12, 2012. On November 20, 2012, the Trustee distributed property to the Petitioner. (PA, Ex. 1.)

17. The Wisconsin Department of Veterans Affairs has certified that Petitioner is an Eligible Veteran under the Veterans Credit beginning with the tax year 2010. (PA, Ex. 7.)

18. In his amended tax returns for 2010, 2011, and 2012, Petitioner claimed the Veterans Credit for real estate taxes paid on the Residence in those tax years. (PA, ¶ 14.)

## ISSUES PRESENTED

1. Must a taxpayer own the property on which he pays property taxes in order to treat it as his *principal dwelling* for purposes of the Veterans Credit?
2. If renting is sufficient, did Petitioner “rent” the Residence by virtue of paying the Expenses, including property taxes?

## RELEVANT STATUTES

The Veterans Credit is described in Wis. Stat. § 71.07 as follows:

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).

The relevant definitions and related provisions are as follows:

Wis. Stat. § 71.07(6e)(a)1:

“Claimant” means an eligible unremarried surviving spouse, an eligible veteran or an eligible spouse who files a claim under this subsection.

Wis. Stat. § 71.07(6e)3:

“Eligible veteran” means an individual who is verified by the department of veterans affairs as meeting all of the following conditions . . .

Wis. Stat § 71.07(6e)(a)5 first sentence:

“Property taxes” means real and personal property taxes, exclusive of special assessments, delinquent interest, and charges for service, paid by a claimant, and the claimant’s spouse if filing a joint return, on the eligible veteran’s or unremarried surviving spouse’s principal dwelling in this

state during the taxable year for which credit under this subsection is claimed, less any property taxes paid which are properly includable as a trade or business expense under section 162 of the Internal Revenue Code. 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 . . . .

Wis. Stat. § 71.07(6e)(a)4:

"Principal dwelling" has the meaning giving in sub. (9)(a)2.

Wis. Stat. § 71.07(9)(a)2:

"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.

#### ANALYSIS

Both parties have moved for summary judgment. A motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that 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).

When simultaneous Motions for Summary Judgment are pending, the parties in effect stipulate to the underlying material facts because they are both claiming that only issues of law are before the Commission. See *Eichenseer v. Madison-Dane County Tavern League, Inc.*, 2008 WI 38 ¶ 4, 308 Wis. 2d 684, 748 N.W.2d 154.

We agree that the relevant facts in this case are not in dispute and this matter is indeed ripe for summary judgment. The issue of law is whether the Petitioner

was entitled to claim the Veterans Credit under Wis. Stat. § 71.07(6e).

Statutes relating to the same subject matter must be viewed *in pari material*; that is, they must be read in a manner that harmonizes all pieces so the whole and its parts are each given full force and effect. *Lake City Corp. v. City of Mequon*, 207 Wis. 2d. 155, 165, 558 N.W.2d 100 (1997) n.11; *State v. Jeremiah C.*, 2003 WI App 40, ¶ 17, 260 Wis. 2d 359, 659 N.W.2d 193.

The Veterans Credit is available as a credit for property taxes paid by the claimant on the claimant's principal dwelling. There is no dispute that Petitioner qualifies as a claimant under Wis. Stat. § 71.07(6e)(a)1 by virtue of his status as an *eligible veteran* under Wis. Stat. § 71.07(6e)(3). The Wisconsin Department of Veterans Affairs has so certified the Petitioner. There is no dispute that Petitioner paid property taxes on the Residence during the periods at issue. There is no dispute that Petitioner lived at the Residence and nowhere else during the periods at issue, i.e., that the Residence was Petitioner's primary dwelling. There is no dispute that Petitioner did not own the Residence during the periods at issue.<sup>2</sup> The parties, nevertheless, disagree as to whether the Residence qualifies as Petitioner's *principal dwelling*.

The Department's primary position is that ownership of a primary dwelling is required in order for it to qualify as a *principal dwelling* for the purposes of claiming the Veterans Credit. Petitioner disagrees, claiming his payment of the Expenses constituted

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<sup>2</sup> The Petitioner raised an alternative argument in his reply brief asserting that Petitioner's occupation of the Residence could create a present interest or defeasible fee simple interest which in turn could be interpreted as ownership, regardless of title. The Department did not have an opportunity to respond; however, we reject the argument. We note that, while present possession or enjoyment of the benefits of a property can be evidence of ownership, Petitioner obviously had no right to sell, lease, or otherwise encumber or dispose of the Property. His use was limited by and subject to the terms of the Trust. Petitioner's reasoning would confer ownership to anyone allowed to use or enjoy the property of another.

rent and that by renting the Residence he may treat it as his *principal dwelling* for purposes of the Veterans Credit. In the alternative, the Department argues that, even if the Veterans Credit may be claimed by a renter, Petitioner's payment of the Expenses, including the property taxes, did not constitute rent.

**1. An Eligible Veteran Need Not Own the Property to Claim the Veterans Credit for Property Taxes Paid**

The Department first asserts that, in order to claim the Veterans Credit, Petitioner must be an owner of the property on which he paid the taxes. The Veterans Credit subsection sets forth and redefines many of the terms also found in similar subsections. The Legislature could have similarly redefined *principal dwelling* in the Veterans Credit subsection. Instead, it chose to adopt the definition found within the subsection establishing the School Tax Credit. The School Tax Credit predates the Veterans Credit. At the time the Veterans Credit was created, the School Tax Credit definition of *principal dwelling* contained the "whether rented or owned" language and continues to do so. Thus, we infer that the Legislature was aware that the phrase was present. Thus, for the purposes of the Veterans Credit, we find that a *principal dwelling* is a dwelling, whether rented or owned, that is used by the claimant as a primary dwelling.

The Department points out that various subsections of the Veterans Credit provide for an allocation of the credit by percentage of ownership if the property is owned by two or more persons, and that there is no language directly addressing renters. The Department notes that, the School Tax Credit statutory scheme specifically provides for renters to calculate a credit for "rent constituting property taxes," limiting claimants to a percentage of the rent paid, while the Veterans Credit provisions contain no similar



language.

Based upon these points, the Department contends that “a reasonable conclusion is that the Wisconsin Legislature intended for only eligible veterans or eligible unremarried surviving spouses who own their principal dwelling to claim the Credit based on property taxes they paid.” The Department urges the Commission to interpret the statute in a manner consistent with that intent. We do not. The language of the statute is clear: An eligible veteran may claim a credit against his or her Wisconsin income tax in an amount equal to the property taxes paid by the claimant on the claimant’s primary dwelling in the state, whether owned or rented. While the Department may feel the Legislature was mistaken in including the reference to rent, it is not the role of this Commission to rewrite the language of a statute that is clear on its face.

**2. The Residence Qualifies as Petitioner’s Principal Dwelling Because His Payment of Expenses and Taxes Constituted Rent**

The Veteran’s Credit is available for those who pay property taxes on a *principal dwelling*, which is defined as one’s primary dwelling, whether owned *or rented*. There is no dispute that Petitioner did not own the property. The Department brings an alternative argument that Petitioner also did not rent the Residence, so the Residence does not qualify as Petitioner’s *principal dwelling*. Petitioner disagrees, arguing that the Residence was his primary dwelling and that, by paying the Expenses, he was renting and therefore eligible for the Veterans Credit.

The Trust provided that Petitioner could continue to live in the Residence during her incapacity, given certain conditions:

In the event the Settlor becomes incapacitated and is not able

to reside in her personal residence located at [address], Fox point, Wisconsin, or her replacement personal residence, and if ROBERT LASKE is residing in said personal residence at such time, ROBERT shall have the right to continue to reside in said personal residence without obligation to pay rent, provided he pays for utilities, normal repairs, maintenance, and real estate taxes. ROBERT's right to reside in said personal residence shall immediately terminate upon the first to occur of ROBERT's failure to timely pay for the expenses set forth in the preceding sentence, his express relinquishment of his right to reside in said personal residence, his failure to reside in said personal residence, or the Trustee's determination, in its sole discretion, that said personal residence must be sold in order to have sufficient liquid assets for the Settlor's support, health care, and general welfare. (emphasis added)

Paragraph D of Article II of the First Amendment to Patricia A. Dixon Revocable Living Trust ("Use of Residence During Settlor's Incapacity").

The Trust did not require Petitioner to pay monetary rent to the Trust in order to remain in the Residence. However, Petitioner was required to pay the Expenses, including the property taxes, as a condition to remaining in the Residence. He could essentially be evicted if he failed to do so. Petitioner's affidavit states that he paid the Expenses while he resided at the Residence during Ms. Dixon's incapacity. There is no evidence that he failed to do so, nor is there any reason to believe he was occupying the house in violation of the Trust terms.

*Black's Law Dictionary* (9<sup>th</sup> Edition) defines *rent* as "consideration paid, usu. periodically, for the use or occupancy of property (esp. real property)." Common dictionary definitions define the term to mean, "Payment, usu. of an amount set by contract, made by a tenant at designated intervals in return for the right to occupy or use

another's property."<sup>3</sup>

We find that Petitioner paid the Expenses as a condition to occupying the Residence. Those payments directly benefitted the Trust; consequently, we further find that his payment of the Expenses constituted "consideration paid . . . for the use or occupancy of property." Thus, we conclude that Petitioner was in fact renting the Residence during the periods at issue.

### CONCLUSION

In drafting Wis. Stat. § 71.07(6e) to establish the Veterans Credit, the Legislature could easily have crafted a separate definition of *principal dwelling*. Instead it chose to cross-reference the definition used for the School Tax Credit. It is not our charge to rewrite the statute. We read and apply the statutory language simply as written: a primary dwelling which is rented by an eligible veteran who pays the property taxes is the eligible veteran's *principal dwelling* for the purpose of claiming the Veterans Credit. This Petitioner's payment of the Expenses constituted rental of the property, which means the Residence was his *principal dwelling*. Thus, he may claim the Veterans Tax Credit.

### CONCLUSIONS OF LAW

1. A claimant may either own or rent the property on which the claimant pays property taxes in order to qualify for the Veterans Credit.
2. Petitioner's payment of the Expenses, constituted rent.
3. Because Petitioner was an eligible veteran and therefore a valid claimant who paid property taxes on his principal dwelling, he is entitled to claim the

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<sup>3</sup> See, e.g., *Webster's II New College Dictionary* 939 (2001).

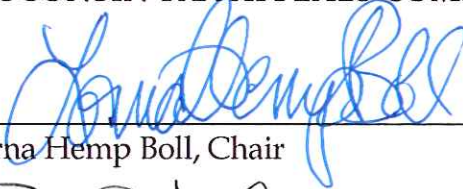
Veterans Credit.

**ORDER**

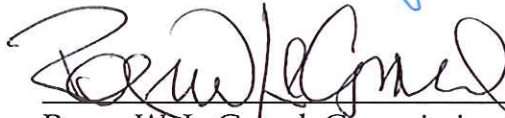
There being no issues of material fact and based on the foregoing reasoning and case law, it is ordered that Department's motion for summary judgment is denied and Petitioner's motion for summary judgment is granted.

Dated this 27<sup>th</sup> day of February, 2015.

**WISCONSIN TAX APPEALS COMMISSION**



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Lorna Hemp Boll, Chair



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Roger W. LeGrand, Commissioner



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David D. Wilmoth, 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. Alternatively, 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 Appeals Commission either in-person, by certified mail, or by courier, and served upon the other party (which usually is the Department of Revenue) 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 <http://wicourts.gov>.

This notice is part of the decision and incorporated therein.