

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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CAROL J. REINHARDT,

DOCKET NO. 18-H-199

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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RULING AND ORDER

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DAVID L. COON, COMMISSIONER:

This case comes before the Commission for decision on Cross Motions for Summary Judgment. The Petitioner, Carol J. Reinhardt, appears by Attorney Bruce J. Kostner, of Kostner, Koslo & Brovold LLC, Arcadia, Wisconsin. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Jenine E. Graves. The parties filed a Joint Stipulation of Fact. Both parties have filed briefs in support of their positions as well as supplemental briefs. For the reasons stated below, we find for the Department.

FACTS

*Jurisdictional Facts*

1. Petitioner, an unmarried individual, age 57, filed her 2017 Wisconsin Homestead Credit tax claim, Schedule H, with the Department on February 26, 2018.

Petitioner sought a credit in the amount of \$860 based on a reported amount of household income as a loss of (\$8,495) and real estate taxes assessed in the amount of \$1,075. (Joint Stipulation of Facts ("Stip.") ¶ 1.)

2. On April 18, 2018, the Department issued a Notice of Changes - Individual Income Tax for the taxable period ending on December 31, 2017, denying Petitioner's claim for the Homestead Credit. (Stip. ¶ 2, Ex. A.)

3. By letter dated May 15, 2018, Petitioner timely filed a Petition for Redetermination with the Department. (Stip. ¶ 3, Ex B.)

4. By Notice of Action dated September 21, 2018, the Department denied Petitioner's Petition for Redetermination. (Stip. ¶ 4, Ex. C.)

5. Petitioner timely appealed the Department's denial to the Wisconsin Tax Appeals Commission on September 24, 2018. (Commission File, Stip. ¶ 5 Ex. D.)

6. On November 13, 2019, the Commission issued an order to treat this matter as a large claim matter pursuant to Wis. Stat. § 73.01(4)(b). (Commission File.)

#### *Other Stipulated Facts*

7. Petitioner is a one-third general partner of Little Bear Holstein Farms, a Wisconsin partnership, operating a dairy farm ("Farm Partnership"). (Stip. ¶ 6.)

8. In 2017, the Farm Partnership reported \$158,326 in gross income from farming and \$198,137 in farm expenses, resulting in a farm loss of (\$39,811). (Stip. ¶ 7.)

9. The Farm Partnership reported one-third of this loss on Ms. Reinhardt's 2017 Federal Schedule K-1 in the amount of (\$13,271). The Farm Partnership

also reported on the 2017 Federal Schedule K-1 the amount of \$2,587 as Ms. Reinhardt's one-third share of net gain from the sale of dairy animals.<sup>1</sup> (Stip. ¶ 8.)

10. For federal income tax reporting purposes, Ms. Reinhardt elected to use the farm optional method to figure net earnings from farm self-employment income to calculate the self-employment tax. Ms. Reinhardt reported \$5,200 as optional self-employment income on her 2017 Federal Form 1040, Schedule SE. Based on this optional method, Ms. Reinhardt reported \$796 as the amount owed in federal self-employment income tax. (Stip. ¶ 9.)

11. For Wisconsin income tax purposes, Petitioner reported a loss of (\$50,495) as her federal adjusted gross income on her 2017 Wisconsin Form 1. After making certain adjustments to this amount as required by Wisconsin law, Petitioner reported a loss of (\$9,271) as her Wisconsin income on her 2017 Wisconsin Form 1.<sup>2</sup>

## APPLICABLE LAW

### *Summary Judgment Standard*

Summary judgment is appropriate when 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). The parties have stipulated that summary

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<sup>1</sup> The Farm Partnership identified this amount on Line 10 of the 2017 K-1 "Net Section 1231 gain (loss)." This income related to a sale depreciable business property (which in some instances can include livestock), rather than earned income.

<sup>2</sup> Ms. Reinhardt reported this amount on Line 13 of the 2017 Wisconsin Form 1 "Subtract line 12 from line 5. This is your Wisconsin income." The difference between Ms. Reinhardt's reported Wisconsin income of (\$9,271) and her household income of (\$8,495) as reported on her homestead credit claim was the addition of \$776 in non-taxable capital gains.

judgment is appropriate. The effect of simultaneous motions for summary judgment is an assertion that the material facts are not in dispute and only questions of law remain for determination. *Healthcare Services, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-085 (WTAC 2016).

### *Burden of Proof*

As a general matter, 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 determinations. *Calaway v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-856 (WTAC 2005), citing *Puissant v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984).

### *Statutes*

Wis.Stat. § 71.54(1)(g)7: For claims filed in 2018 and thereafter and based on property taxes accrued or rent constituting property taxes accrued during the previous year, with regard to a claimant who is not disabled or who is under the age of 62 at the close of the year to which the claim relates, no credit may be allowed under this paragraph if the claimant had no earned income in the taxable year to which the claim relates.

### DECISION

In order to claim the Homestead Credit, a taxpayer must be 62 years old, be disabled, or have "earned income." Wis. Stat. § 71.54(1)(g)7. The Department denied Petitioner's claim for the Homestead Credit for the 2017 tax year. The parties agree that the Petitioner does not qualify as being at least 62 years old or as being disabled. The parties' only dispute is whether the Petitioner had earned income. Even though Petitioner reported a negative Wisconsin income for 2017, she asserts that she did have earned

income based upon a theory of extending a federal definition of earned income through the farm optional method created for the federal self-employment tax to the Wisconsin specific Homestead Credit. The Petitioner concedes that she had no earned income by any other means such as W-2 employment income or net income from self-employment.<sup>3</sup>

Unless they are at least 62 years old or are disabled, taxpayers making Homestead Credit claims in 2018 and thereafter must have "earned income." Wis. Stat. § 71.54(1)(g)7. Both parties agree that, on the face of the statute, this is a yes or no question. If there is earned income, the taxpayer may be eligible for the Homestead Credit as long as other tests are met. If there is no earned income, the taxpayer is not eligible for the Homestead Credit. The earned income requirement is not a question of how much earned income, but a test of whether there is any earned income or not. In the Department guidance for the Homestead Credit, the Department notes that "Earned income includes taxable wages, salaries, tips, other employee compensation, and net earnings from self-employment." *Publication No. 127*, p. 10, Wisconsin Department of Revenue, December 2017.

Petitioner asserts that we should adopt the federal definition of earned income in I.R.C. §§ 1402(a)(17)(i) and (ii) for the purpose of determining the Wisconsin Homestead Credit. For the federal self-employment tax, an exception has been devised to create earned income, even where there is a net loss from self-employment or a partnership, using a formula applied to "gross income." This optional method allows

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<sup>3</sup> In answer to a question posed by the Commission in a request for supplemental briefing as to whether the Petitioner "had any wages, salaries, tips, or positive net income from any other business," the Petitioner replied, "The Petitioner had no income from any other source."

those involved with an enterprise with a loss to create “earned income” on which to pay self-employment tax and earn credits toward future social security benefits, among other benefits.

Petitioner reasons that this optional calculation of “earned income” using the federal self-employment tax definition of earned income is used to calculate the federal Earned Income Credit (“EIC”). Petitioner then notes that Wisconsin has adopted this federal EIC definition of earned income for the determination of Wisconsin EIC. Up to this point, we do not disagree as Wisconsin’s EIC statute expressly cites to the federal EIC (“section 32 (b)(1)(A) to (C)<sup>4</sup> of the internal revenue code”), for the basis of determining Wisconsin EIC.

At this point, Petitioner makes a leap to bootstrap the federal self-employment tax optional method of determining earned income from the Wisconsin EIC into the Homestead Credit statute. We decline to do so.

The legislature has used various federal definitions in Chapter 71 to define earned income for particular statutes. As noted, Wisconsin’s EIC uses “section 32(b)(1)(A) to (C) of the Internal Revenue Code.” In Wis. Stat. § 71.05(22)(f)4.c., for Wisconsin’s standard deduction, the legislature chose “section 911(d)(2) of the Internal Revenue Code” as the definition for earned income. In Wis. Stat. § 71.07(6)(am) related to the married couple’s credit, the legislature chose “section 221 (b) of the internal revenue code

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<sup>4</sup> This section of the federal EIC incorporates, according to Petitioner, the federal definition of earned income that also includes of optional methods in I.R.C. §§ 1402(a)(17)(i) and 1402(a)(17)(ii). Based upon our decision that the Homestead Credit does not utilize the federal EIC definition of earned income, we do not need to complete an extensive dialogue about these federal statutes.

as amended to December 31, 1985.” In contrast, for the Homestead Credit, the legislature did not choose to use any specific federal definition of earned income.

In Chapter 71, when the legislature intends to use a specific federal definition of earned income, it has clearly done so by direct reference to that federal definition. For the Homestead Credit, the legislature chose not to incorporate a specific federal definition of earned income. We will not choose among various federal definitions or parts of federal definitions where the legislature did not reference such a specific definition.

The legislature has also chosen not to create a definition of “earned income” within the Homestead Credit language. We have previously determined that, where the legislature has created a specific definition of a term or phrase in one section but has not included that same definitional language in another section, we will focus on the language of the subject section and the related caselaw; we will not look to definitions from another section unless the statute or caselaw direct otherwise. In *J.W. Winco, Inc. v. Dep’t of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-533 (WTAC, No. 99-S-122, April 13, 2001), the Commission had before it a sales tax matter. The Department urged the Commission to use a more detailed definition from the manufacturing property tax statutes. The Commission determined that the matter must be determined based upon the language in the sales tax statutes, rather than the “more detailed” language included in the manufacturing statutes but not included in the sales tax statutes.

The legislature chose the federal definition for earned income for the purposes of Wisconsin’s EIC. The legislature did not choose that federal definition of

earned income for the Homestead Credit, and we will not import it into the statute as suggested by Petitioner.

Petitioner has admitted that she has “no other income from any source” beyond the earned income asserted under the rejected federal definition. Having rejected Petitioner’s suggested expanded federal definition of earned income, we find that the Petitioner is not eligible for the Homestead Credit.

### CONCLUSIONS OF LAW

1. The Homestead Credit statute does not incorporate the expanded definition of “earned income” from the federal self-employment tax (and as used in the federal EIC).

2. Petitioner’s optional farm income calculations do not qualify as earnings for the purpose of triggering qualification for Wisconsin’s Homestead Credit.

3. Because Petitioner had no taxable wages, salaries, tips, other employee compensation, or net earnings from self-employment and has admitted that she did not have any other claimed earned income outside of the rejected federal definition of earned income, Petitioner is not eligible for the Homestead Credit.

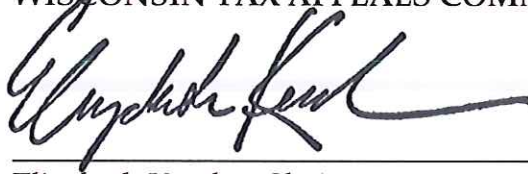
### ORDER

The Department’s Motion for Summary Judgment is granted, Petitioner’s Motion for Summary Judgment is denied, and the Petition for Review is dismissed.



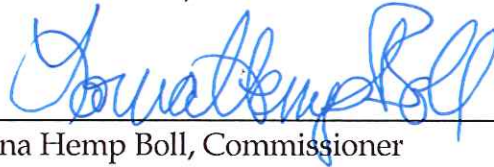
Dated at Madison, Wisconsin, this 2<sup>nd</sup> day of July, 2020.

WISCONSIN TAX APPEALS COMMISSION



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Elizabeth Kessler, Chair



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Lorna Hemp Boll, Commissioner



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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.