

STATE OF WISCONSIN
TAX APPEALS COMMISSION

LARRY C. SMITH,

Petitioner,

DOCKET NOS. 12-I-135-SC
AND 15-I-042

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DECISION AND ORDER

LORNA HEMP BOLL, CHAIR:

This case comes before the Commission for decision following a trial held before the Commission on December 9, 2015, in Madison, Wisconsin. The Petitioner, Larry C. Smith of Racine, Wisconsin, appeared *pro se*. The Respondent, the Wisconsin Department of Revenue (“the Department”), was represented by Attorney Sheree Robertson. Pursuant to the Commission’s post-trial briefing schedule, both parties have filed post-trial submissions.¹

The issues before the Commission are the Homestead Credit and Earned Income Credit claimed by the Petitioner for 2010. In its assessments, the Department

¹ In February 2016, Petitioner submitted some additional or possibly simply repetitious documents in support of his claim. Petitioner was reminded more than once that December 9, 2015 was his day to be heard. The record was closed thereafter and new evidence will not be entertained.

completely disallowed Petitioner's claimed \$316² Homestead Credit and allowed only \$122³ of the Petitioner's claimed \$2,436 Earned Income Credit.

FINDINGS OF FACT
Jurisdictional Facts

1. Under notice dated July 11, 2011, the Department of Revenue issued to Mr. Smith a Notice of Refund Offset for tax period ending December 31, 2010. The Notice indicated that the Department had disallowed the \$268 of Homestead Credit claimed but allowed the \$121 claimed in Earned Income Tax Credit. The Notice showed that the Earned Income Credit refund was offset against an outstanding tax liability.

2. On January 27, 2012, Mr. Smith electronically filed an objection to the Notice which the Department interpreted as a Petition for Redetermination. The Department of Revenue issued to Mr. Smith a Notice of Action letter dated May 10, 2012, denying his Petition for Redetermination because it was not timely filed.

3. Mr. Smith appealed the denial to the Tax Appeals Commission with a Petition docketed as 12-I-135.

4. Subsequent to the Department's Notice of Refund Offset, Mr. Smith filed an amended 2010 Wisconsin income tax return claiming a larger Homestead Credit. In April 2014, Mr. Smith filed a second amended 2010 Wisconsin income tax return claiming \$316 of Homestead Credit and an Earned Income Credit in the amount of \$2,436, based in part on three qualifying individuals.

² Petitioner's initial tax return requested a Homestead Credit of \$268; that amount was disallowed and was the full amount of \$316 claimed on Petitioner's amended.

³ Petitioner's initial tax return requested an Earned Income Credit of \$121; that amount was initially allowed. Petitioner's amended return claimed Earned Income Credit in the amount of \$2,436. The Department disallowed all but \$122 of the amended claim.

5. In response to Petitioner's second amended 2010 Wisconsin income tax return, the Department of Revenue issued a Notice of Changes - Individual Income Tax for tax period ending December 31, 2010. The Notice, dated August 28, 2014, shows that the \$316 of Homestead Credit was disallowed completely and that only \$122 of the claimed \$2,436 Earned Income Credit was allowed.

6. In October 2014, Mr. Smith filed an objection to the Notice dated August 28, 2014, which was considered his Petition for Redetermination.

7. In response, the Department of Revenue issued to Mr. Smith a Notice of Action dated February 24, 2015, denying Petitioner's Petition for Redetermination and noting Petitioner already had a Petition for Review objecting to the denial of the Homestead Credit pending before the Commission.

8. Mr. Smith filed a Petition for Review with the Commission, which was assigned Docket No. 15-I-042, objecting to the Notice of Action dated February 24, 2015. The cases were consolidated.

Evidentiary Facts

9. Although the Department of Revenue determined that another taxpayer may have also claimed two of Petitioner's dependents for the purposes of the Earned Income Credit for tax year 2010, the Department eventually conceded that the Petitioner could claim these individuals as dependents for the purposes of his own 2010 Earned Income Credit claim.

10. The Department has not disputed the following elements required of a valid Homestead Credit claim: Mr. Smith is over 18 years old. No one claimed Mr.

Smith as a dependent. Mr. Smith was a legal resident of Wisconsin for all of 2010. Mr. Smith is not claiming to have income in excess of \$24,680 (the 2010 limit). Mr. Smith paid rent from January through March of 2010, after which he moved in with his mother.

11. The Department has not disputed the following additional elements required of a valid Earned Income Credit: Mr. Smith claimed a federal Earned Income Credit. The parties have stipulated that Mr. Smith had three qualifying dependents in 2010. Mr. Smith was a full-year resident of Wisconsin in 2010. Mr. Smith had earned income but not in excess of \$43,352. Mr. Smith has a valid social security number. He was and is a U.S. citizen. He was not married filing separately. He was not claiming a foreign tax credit. He did not have investment income in excess of \$3,100.

Rent paid

12. Regarding rent paid, Petitioner's original tax return indicated \$1,875 in rent paid in 2010. The rent certificate was not signed and Petitioner did not call the landlord as a witness at trial. Petitioner submitted no money orders, no cancelled checks, and no receipts to show payment of rent.

13. On his amended return, Petitioner added \$250 of additional rent paid. He testified at trial that a client had paid that amount directly to his landlord and that he had offset the amount against her outstanding fees for tax work he had performed. The client was not called to testify. Petitioner introduced what purported

to be an affidavit of the client. The affidavit was not properly notarized, the supposed landlord had a different name, and the document lacked other indicia of reliability.

14. The Commission finds the rent certificate inadequate and further finds there was no credible evidence to support an additional \$250 in rent paid in 2010.

15. In its assessments, the Department disallowed Petitioner's Homestead Credit. However, on its own volition, the Department subsequently contacted the landlord listed on the rent certificate who confirmed rent paid by the Petitioner in the amount of \$1,175 in 2010. The Department has stipulated to that amount of rent for 2010.

16. Based upon the Department's stipulation, the Commission finds a valid basis for \$1,175 paid in rent by the Petitioner for the purposes of a 2010 Homestead Credit.

Income

17. Petitioner claimed \$35,000 in Schedule C gross receipts for 2010.

18. Per Petitioner's spreadsheet, Petitioner's substantiation totaled only \$26,004.50. Petitioner claimed to have additional computer records, but these records were not available at the time of trial. The sources of the claimed earned income were as follows:

MF and Pieske	\$1,504.50
K&S Medical	\$18,000.00
Munoz Trucking	\$2,795.00
Ruffin Trucking	\$3,000.00
Several miscellaneous clients totally	<u>\$705.00</u>
Total	\$26,004.50

19. Petitioner relied on several printouts from his PayPal and NetZero accounts; however, the figures on these printouts were ambiguous at best. They did not clearly designate the payees or details of payment, and there was no corroboration for validity of the printouts of the PayPal or NetZero accounts generally. Petitioner introduced no invoices, no itemizations or descriptions of work done or billed for, no cancelled checks. He testified that receipts went into four or five different bank accounts but produced no details that could be tracked back to work done and billed. The printouts further were complicated with debit card entries which may have represented business expenses.

20. Petitioner testified that the first amount, \$1,504.50, represented gross receipts from more than one client and may have incorporated some expenses.⁴ The offered corroboration was a PayPal printout. The Commission finds evidence of this item of income unclear and not sufficiently credible.

⁴ Commissioner Boll: Now, you're saying that the pile that you have there

2 either substantiates the 1504 income or it
3 substantiates expenses. Which (overlapping
4 dialogue) --

5 MR. SMITH: It substantiates both.
6 Because I use -- here's what it is. When I finish
7 a project, I e-mail the client a bill. And they
8 have the option of paying me through PayPal or
9 mailing me -- no -- paying the bill.

10 A couple clients always pay me through PayPal.
11 So that goes directly to my PayPal account. My
12 PayPal account also has a debit card connected to
13 it. So when I go to say OfficeMax, Office Depot, I
14 use Pay- -- the same account as expenses and
15 income. This will substantiate the 1504 income and
16 some of the additional expenses that were at the
17 bottom, you know, at the bottom here.

TR at 23.

21. Petitioner claimed income from K&S Medical Transport, Inc., in the amount of \$18,000. Petitioner's hand-written itemization of this payment totaled \$14,500; the spreadsheet contained no date, no title, no client name, and with numbers which did not correspond to Petitioner's overall summary. Petitioner also offered what purported to be an affidavit of a client outlining a fee arrangement. The affidavit was excluded at trial because it was not properly notarized, was vague as to time frame, did not include totals or other calculations, and lacked other indicia of reliability. The client was not called to testify at trial, and no evidence of client invoices or other billing was introduced. The Commission finds evidence of this item of income not sufficiently credible.

22. Petitioner claimed income from a client named Munoz in the amount of \$2,795 for 2010. The client was not called to testify, nor were credible detailed supporting documents introduced. Based upon some cancelled checks and a Western Union payment, the Department's Resolution Officer testified that the Department allowed income in the amount of \$2,590 related to Munoz Trucking. In the absence of additional documentation, the Commission accepts the Department's figure for this item of income.

23. Petitioner claimed income from clients named Ruffin in the amount of \$3,000. The Petitioner testified that the figure was wrong, that he had actually billed the client \$4,804 or \$4,840 for his work. He stated he charged the clients monthly for work to complete their returns and go through an audit. Petitioner introduced, as an example of work for these clients, an unsigned undated tax return he testified he filed

on their behalf. The return claimed a deduction for \$4,840 for amounts presumably paid to Petitioner. Petitioner claimed to have cancelled checks but was unable to produce them at trial. Petitioner did not call the clients to testify. The Department showed that there is no record of the return having ever been filed. We find evidence of this item of income not sufficiently credible.

24. Petitioner claimed several smaller items of income totaling \$705.00. Petitioner did not call one of these eight clients to testify at trial. Petitioner did not produce any invoices, cancelled checks, or other credible supporting documentary evidence. We find evidence of this item of income not sufficiently credible.

25. The Department conceded additional income in the amount of \$1,296.72, at least some of which was attributable to the group of eight smaller clients. This amount is gleaned from three bank account deposits and one ATM deposit during 2010.

26. The Commission finds that insufficient support for any items of income beyond those stipulated to or conceded by the Department as follows:

Munoz Trucking	\$2,590.00
Misc. Other receipts	<u>\$1,296.72</u>
Total	\$3,886.72

Petitioner's total amount of substantiated gross receipts for 2010 was \$3,886.72.

Expenses

27. Petitioner introduced PayPal and NetZero printouts at trial as evidence of his 2010 business expenses. As noted above, the printouts, without additional support and explanation, lack sufficient indicia of reliability. Petitioner also

introduced a letter from PayPal describing how transaction expenses were charged; the letter did not contain any information about what expenses Petitioner was actually charged nor did it list a number of transactions from which the total could be calculated.

28. Petitioner introduced Exhibit L as additional support for his 2010 business expenses. However, Exhibit L consisted of a pile of assorted receipts submitted in no particular order, unaccompanied by any sort of summary for the Commission. In keeping with the Commission's Post-Trial Evidentiary Rulings, which the Commission hereby incorporates into this decision, the Commission rejects Exhibit L.⁵

29. Petitioner claimed business expenses related to rent and storage. Consistent with the Commission's Post-Trial Evidentiary Rulings, we reject these expenses because we find they were not paid in 2010.

30. Petitioner offered a hand-written exhibit to show cash payments made to Petitioner's dependents for assistance in organizing his documentation. The exhibit contained no dates, no description of hours worked, and no indication that the work was done in furtherance of Petitioner's business. In fact, it is probable that the work Petitioner described in his testimony may have been done in preparation for trial rather than in the course of Petitioner's business. Consistent with the Commission Post-

⁵ The Commission concluded: "Expense evidence contained in Ex. L (cash expenses) will be considered and given its due weight if presented in a coherent manner." The Commission explained that, "[i]f Petitioner wishes Exhibit L to be considered, Petitioner must create a spreadsheet as described below." The Commission went so far as to include a sample chart on which Petitioner could organize his expenses. Post-trial, Petitioner chose not to submit a chart or any other organized representation of his claimed expenses.

Trial Evidentiary Rulings, we find Petitioner's evidence of this item of expense not sufficiently credible.

31. Petitioner's testimony regarding expenses claimed for office expenses, bank fees, internet, telephone, travel, and the like, was vague and was insufficiently supported by documentary evidence or corroborating testimony.

32. Petitioner's testimony was insufficient and his offered exhibits did not reflect sufficient indicia of reliability to support his claimed expenses for 2010.

Bad Debt

33. In its Post-Trial Evidentiary Rulings, the Commission rejected the bad debt write-offs claimed by the Petitioner for 2010 as follows:

With respect to bad debt write-offs in 2010, Petitioner explained that he recorded income as earned and then, if the income was later deemed uncollectable from clients, he would periodically write those losses off on his tax returns. Petitioner claimed bad debt losses of \$8,000 and \$7,000 for 2010. Petitioner offered Ex. C in support. Exhibit C consisted of several printouts with certain items circled which Petitioner explained represented the claimed losses for 2010. The documentation was neither organized nor coherent. Petitioner produced no books from his tax preparation business and he called no non-paying client witnesses. Petitioner offered only anecdotal evidence of a few clients for whom he had done tax work and by whom he had not been paid, much of which was dated long before the period for which he could have claimed losses. There was vague evidence of billing by a collection agency but no evidence of work done by Petitioner, billings, collection letters, or actual collection efforts.

Petitioner claimed similar losses on his federal returns. He argued that, because the IRS did not disallow the claim, the loss deductions must be valid for Wisconsin tax purposes. Petitioner asserts that Wisconsin must follow the same rules

as the IRS for writing off bad debts. The argument was rejected by this Commission in *Mariucci v. Dep't of Revenue*, (CCH) ¶ 401-948 (WTAC 2014), *aff'd*, Case No. 14-CV-958 (Winnebago Co. Cir. Ct. 2014). Even if the losses might have been timely and might have been allowed on Wisconsin Schedule C (not Schedule I) under Wisconsin tax law, we find the evidence submitted not sufficiently credible to support claimed bad debt write-offs for 2010.

OPINION

As an opening comment, we note that Petitioner is a tax preparer by profession. In that capacity, he should understand the importance of coherent organization and maintenance of receipts and other documentation which substantiates the figures submitted on tax returns. Petitioner's pre-trial submissions were, however, plagued by repeated assertions of unfortunate events from computer crashes and faded thermal receipts to being locked out of buildings containing his records.

Petitioner bears the burden of proof to show the Department erred in its assessment, and that proof must rise to the level of clear and convincing evidence. *Jackson v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-987 (WTAC 2015). Since at least January 2012, Mr. Smith has been disputing the details of his 2010 return. Given that the burden rests on him, Mr. Smith needed to overcome any such obstacles in order to prove his case. Mr. Smith had nearly four years in which to work around or solve these problems.

At trial, Petitioner introduced a spreadsheet of sorts, which did attempt to organize the main sources of income and expense. In support, Petitioner also attempted to introduce piles of receipts and printouts which had not been organized, summarized,

or made meaningful in any coherent manner. Petitioner's post-trial submissions consisted of a repetition of his prior submissions without a summary, spreadsheet, or any organized detail.

Throughout this process, the Commission attempted numerous times to assist in the organization through pre-trial orders, by asking questions at trial designed to keep Petitioner on track, and even offering charts in conjunction with the Commission's Post-Trial Evidentiary Rulings as a guide for Petitioner's post-trial submissions. It is not the role of the Commission to take on the task of sifting through receipts and disorganized records; Petitioner must prove his own case.

We repeat here that this decision does not necessarily mean that Petitioner did not have these items of income, loss, or expense, nor does it carry with it an implication of wrong-doing. We simply hold today that the Petitioner, who bears the burden of proof, did not meet his burden of proving the assessments were in error.

This case involves two credits claimed by the Petitioner on his 2010 tax returns, the Homestead Credit and the Earned Income Credit. Both of these credits are dependent on the amount of Petitioner's earned income. For the Homestead Credit, rent is also a factor. For the Earned Income Credit, the issue of qualified dependents has been resolved with the parties agreeing on three.

In its Post-Trial Evidentiary Rulings, the Commission rejected Petitioner's rent evidence, based upon the facts noted in the Commission's findings above. The Department has conceded \$1,175 of rent paid. Thus, for the purposes of Petitioner's

2010 Homestead Credit Claim, the Commission finds the Department's figure should form a basis for Petitioner's 2010 Homestead Credit.

Much of this case concerned the amount of earned income Petitioner could substantiate for 2010. Petitioner claimed gross receipts in the amount of \$35,000. Department accepted the following amounts:

Munoz Trucking	\$2,590.00
Misc. Other receipts	<u>\$1,296.72</u>
Total	\$3,886.72

In its Post-Trial Evidentiary Rulings, the Commission noted that Petitioner's introduction of the Net Zero and PayPal account printouts would be given their due weight. Having reviewed the testimony and the exhibits, we do not find the information introduced by Petitioner to have the requisite indicia of reliability. The printouts were not supported by invoices, details or even general lists or descriptions of services rendered, or dates on which services were rendered. There are no corresponding bank deposits. Petitioner introduced no office records tracking work done, billed, collected, or deposited, his handwritten unlabeled spreadsheet notwithstanding. Claimed inflows were mixed with claimed expenses, and no meaningful back-up information was introduced.

Petitioner was reminded numerous times, both pre-trial and during the trial, that the trial was his opportunity to prove his case and that his evidence must be presented with some semblance of organization. One cannot simply present piles of information, the proverbial "shoebox," and expect this Commission to be able to make

sense of it. Nevertheless, much of Petitioner's evidence was incomprehensible in the form presented.

Taxpayers must provide more than their own testimony and a self-compiled list of items purporting to support items on a tax return. Receipts, ledgers, or other detailed breakdowns are the type of evidence required to overcome the presumption that the Department's assessment is correct. *Zablocki v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-416 (WTAC 2000). Based upon a lack of credible evidence and consistent with the Commission's Post-Trial Evidentiary Rulings, we reject Petitioner's evidence of earned income with the exception of those items accepted by the Department outlined above. Similarly we reject the expense and bad debt claims as insufficiently substantiated, in keeping with the Findings of Fact above.

The tax system is essentially a self-assessed process. As a safeguard, the Department is empowered through the audit process to spot-check to make sure taxpayers are complying and computing taxes correctly. Taxpayers are repeatedly reminded that they must retain tax records for a number of years in case, as here, the Department requests substantiation of income, expenses, and other aspects of credits claimed. At a time of reckoning such as this, the information must be available. In its absence, we have no choice other than to uphold the Department's assessments.

CONCLUSIONS OF LAW

1. Based upon the \$1,175 rent accepted as valid by the Department, Petitioner may claim a 2010 Homestead Credit based upon that figure.

2. Petitioner's substantiated earned income for 2010 was \$3,886.72. Petitioner had no substantiated business expenses for 2010. Petitioner had no substantiated bad debt loss eligible for write-off on his Wisconsin 2010 tax return. Petitioner had three dependents for the purposes of the Wisconsin 2010 Earned Income Credit which is to be taken into account in the calculation of his 2010 Earned Income Credit.

ORDER

The Petition for Appeal is denied in part and granted in part. The Department is ordered to recalculate the Petitioner's 2010 Homestead Credit and Earned Income Credit based upon the Conclusions of Law above. In all other respects, the Department's assessments are upheld.

Dated at Madison, Wisconsin, this 7th day of September, 2016.

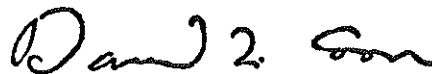
WISCONSIN TAX APPEALS COMMISSION



Lorna Hemp Boll, Chair



David D. Wilmoth, Commissioner



David L. Coon, Commissioner

ATTACHMENTS: NOTICE OF APPEAL INFORMATION
POST-TRIAL EVIDENTIARY RULINGS DOCUMENT
- DEC. 30, 2015

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

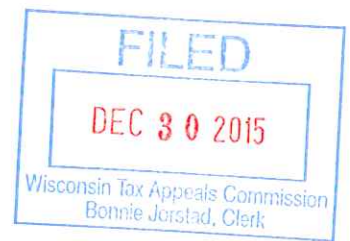
Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeals Commission 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 <http://wicourts.gov>.

This notice is part of the decision and incorporated therein.

STATE OF WISCONSIN
TAX APPEALS COMMISSION



LARRY C. SMITH,

DOCKET NOS. 12-I-135-SC
AND 15-I-042

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

POST-TRIAL EVIDENTIARY RULINGS

Trial held: December 9, 2015
Before Commissioner: Lorna Hemp Boll, Chair
Petitioner appeared by: Larry Smith, appearing *pro se*
Respondent appeared by: Attorney Sheree Robertson

BACKGROUND

This matter concerns the tax year 2010 and specifically Petitioner's claims for Earned Income Credit and Homestead Credit for that year. This case has been pending in various forms since mid-2012. The following quotes from earlier orders demonstrate this Commission's frustration with the production of documentation in this case:

January 8, 2013 Order: The Department will contact other parts of the Department to review all information sent by Petitioner. Petitioner will continue to

search for additional documentation and will send any such information to the Department as soon as possible.

March 5, 2013 Order: The Department will contact other parts of the Department to review all information sent by Petitioner. Petitioner will continue to search for additional documentation regarding both cases and will send any such information to the Department as soon as possible.

July 5, 2013 Order: The Petitioner will submit whatever substantiation he is able to locate to the Department by August 2, 2013.

October 21, 2013 Order: The Petitioner will submit whatever substantiation he is able to locate to the Department by November 4, 2013.

November 19, 2013 Order: Petitioner will submit any remaining documentation to the Department by December 13, 2013.

May 6, 2014 Order: Docket No. 12-I-135-SC will be held in abeyance pending the Department's review of the Petitioner's recently filed amended return for 2010.

July 9, 2014 Order: With respect to Docket No. 12-I-135-SC, the Department will review the Petitioner's recently filed amended return for 2010. (The amended return spurred a new docket number for an additional appeal regarding 2010 which became Docket No. 15-I-042.)

August 27, 2014 Order: These cases will be held until January while the earned income credit claim for 2010 is appealed to the department and, if needed, to the Commission. The parties will continue to exchange information

January 13, 2015 Order: The parties will continue to exchange information.

May 21, 2015: The Department is waiting for responses to discovery requests. . . . On or before June 26, 2015, Petitioner shall respond to the pending discovery in a formal organized manner, providing specific responses to each numbered question and request.

July 28, 2015 Order: Petitioner shall complete his production of documents and shall respond to the pending discovery in a formal organized manner, providing specific responses to each numbered question and request. . . . 1) Petitioner shall submit responses to the Department's Interrogatories and Requests for Production of Documents by August 28, 2015. Any documentation substantiating Petitioner's claims which is not submitted by August 28, 2015, will not be admitted at trial.

September 22, 2015 Pre-Trial Order: No later than November 16, 2015, the parties shall exchange copies of lists of all exhibits that each party plans to introduce at trial, with a copy to the Commission. The Commissioner will exclude any documents which have not already been shared with the opposing party. Exhibits must be explicitly described with specificity in writing to the opposing party. . . . **Exhibits not listed and witnesses not disclosed in accordance with this order will not be admitted into evidence or permitted at trial except by leave of the Commission for good cause shown.**

December 7, 2015 Pre-trial Conference: A Pre-trial conference was held at which time Petitioner was given until noon December 8, 2015, to produce some type of coherent summary of his evidence in support of his rent, income, expenses, and bad debt write-off assertions.

Petitioner submitted numerous disorganized and repetitive groups of documents throughout the day of December 8. The Commission allowed a last minute summary (Ex. B) and attempted to direct Petitioner to follow the summary while introducing his evidence at trial. The summary itself purported to provide totals for income and expenses; however, the totals did not actually add up to the numbers typed at the bottoms of many of the columns.

Prior to trial, the Commission more than once granted the Department's motion to limit Petitioner to the evidence submitted prior to trial to avoid unfair surprise in violation of the Commission's order to produce all evidence to be used at trial prior to trial.

At trial, Petitioner, a professional tax preparer, produced several printouts containing mixtures of both income and expense information from various computer programs spanning several years. He also attempted to introduce several piles of crumpled papers allegedly in support of his income, expenses, rent, and bad debts, the majority of which was not in the file he had provided to the Department pre-trial. The Commission allowed a few new pieces of evidence which had not previously been submitted, and Petitioner continued to promise to produce more unrecovered evidence from storage or from old computers. The Commissioner reiterated that this was Petitioner's day in court and that he was barred from producing anything he had not previously disclosed to the Department during discovery or in his pre-trial submissions.

Some additional leeway was nevertheless allowed, and some additional documents were received at trial, although not admitted, pending further review by the Commissioner.

EVIDENTIARY FINDINGS

In order to streamline the briefing in this case and because certain evidence was difficult to evaluate in the midst of trial, the Commission agreed to consider certain issues and items of evidence to make evidentiary rulings to enable the parties to narrow the scope of their briefs.

Upon review of the documents and in light of testimony received at trial and in consideration of the objections raised by both parties and in light of all previous Commission rulings in these matters, the Commission now finds, rules, and orders as follows:

Rent

With respect to rent paid in 2010, Petitioner offered a rent certificate in the amount of \$1875, allegedly representing five months' rent. Petitioner's testimony was that he lived at the address on 10th Street for only four months (January through April). The rent certificate was not signed by the landlord, and the landlord was not called to testify to support the affidavit. Moreover, no money orders, cancelled checks, or receipts were offered to show rent paid. Petitioner offered an Affidavit (Ex. F) purporting to show that in 2010 a client paid \$250 toward Petitioner's delinquent rent as payment for services rendered. The Affidavit was missing a notary seal and indicated that payment went to someone other than the landlord named by the Petitioner and listed in the rent certificate. The Commission rejects all of Petitioner's rent substantiation as not sufficiently credible to support rent payments for 2010.

Bad Debts

With respect to bad debt write-offs in 2010, Petitioner explained that he recorded income as earned and then, if the income was later deemed uncollectable from clients, he would periodically write those losses off on his tax returns. Petitioner claimed bad debt losses of \$8000 and \$7000 for 2010. Petitioner offered Ex. C in support. Exhibit C

consisted of several printouts with certain items circled which Petitioner explained represented the claimed losses for 2010. The documentation was neither organized nor coherent. Petitioner produced no books from his tax preparation business and he called no non-paying client witnesses. Petitioner offered only anecdotal evidence of a few clients for whom he had done tax work and by whom he had not been paid, much of which was dated long before the period for which he could have claimed losses. There was vague evidence of billing by a collection agency but no evidence of work done by Petitioner, billings, collection letters, or actual collection efforts.

Petitioner claimed similar losses on his federal returns. He argued that, because the IRS did not disallow the claim, the loss deductions must be valid for Wisconsin tax purposes. Petitioner asserts that Wisconsin must follow the same rules as the IRS for writing off bad debts. The argument was rejected by this Commission in *Mariucci v. Dep't of Revenue*, (CCH) ¶ 401-948 (WTAC 2014), *aff'd*, Case No. 14-CV-958 (Winnebago Co. Cir. Ct. 2014). Even if the losses might have been timely and might have been allowed on Wisconsin Schedule C (not Schedule I) under Wisconsin tax law, we find the evidence submitted not sufficiently credible to support claimed bad debt write-offs for 2010.

Income

With respect to substantiation of income for 2010, the Department reviewed everything submitted prior to trial and had agreed to those substantiated amounts (several payments by client Munoz plus 4 substantiated bank deposits) as evidenced on Ex. 8. Some possible evidence of client billing was introduced through Ex. G & Ex. I from Petitioner's Net Zero and PayPal accounts and that evidence will be given its due weight. Please note, however, that it is not the role of this Commission to audit Petitioner's submissions. Petitioner must present his case in a manner from which the Commission can glean the figures needed to make the appropriate conclusion of annual income.

The most significant item of income offered was \$18,000 from K&S Medical for whom Petitioner testified he did significant tax work in 2010. Petitioner testified that the client paid him \$500 every two weeks for a total of \$18,000 for 2010 and offered an Affidavit from the client in support (Ex. E). A handwritten spreadsheet summary (Ex. K) was also offered to support the K&S income in the amount of \$14,500, but there was no date, no title, no client name, and no numbers which tied into Petitioner's summary Ex. B. The supporting Affidavit did not include a notary seal, and the client was not called to testify. The Commission will consider these credibility factors in its ultimate findings.

Petitioner introduced income evidence from another client, Ruffin. Ex. B listed \$3000 of claimed income from this client. Petitioner claimed to have received cash and claimed to have some cancelled checks in support of an even larger amount, \$4840, but admitted documentation was currently unavailable. The Ruffin work consisted of

preparing tax returns which the Department showed were never filed. The Commission will consider these credibility factors in its ultimate findings.

Expenses

With respect to claimed expenses for 2010, some possible evidence of business expenses from Petitioner's NetZero account are contained in Ex. G and additional expenses from Petitioner's PayPal account are contained in both Ex. G and Ex. I. That evidence will be given its due weight.

Exhibit L is an assortment of copies of receipts referred at trial as "cash expenses." Again, it is not the role of the Commission to itemize and tally the receipts. The Petitioner has the burden of proving his case, and that includes presenting evidence in a coherent and logical fashion. If Petitioner wishes Exhibit L to be considered, Petitioner must create a spreadsheet as described below.

Exhibit M was offered in support of Petitioner's rental and storage expenses. Exhibit M shows 2010 charges of \$1015 for ten months' rent of \$85/mo. plus \$15/mo. for late charges. Because Petitioner apparently did not pay these billings in 2010 or perhaps ever, Ex. M does not support the payment of any expenses in 2010.

Petitioner also offered Ex. N to demonstrate payments made to Petitioner's dependents for their alleged assistance in organizing his documentation. Even if Petitioner's documentation were organized, Ex. N contains no dates, no description of hours worked, and the work if anything appears to be a trial preparation expense, as it is labeled "Commission," rather than an expense of Petitioner's business. The Commission excludes Exhibit N.

PRELIMINARY CONCLUSIONS:

- Rent evidence is rejected, so the Homestead Credit claim for 2010 will not stand.
- Bad Debt write-off evidence is rejected.
- Income evidence regarding work done for K&S Medical and Ruffin will be given its due weight taking all credibility factors into account.
- Expense evidence contained in Ex. L (cash expenses) will be considered and given its due weight if presented in a coherent manner.
- Expense evidence contained in Ex. M (rent and storage) is rejected because the expenses, although incurred in 2010, were not paid in 2010 or perhaps ever.
- Ex. N purporting to show payments to Vayta and Miracle Jones is excluded.
- Gross receipts listed on Ex. 8 totally \$3886.72 are stipulated as valid.

It is important to note that these rulings are in any way not intended to imply that Petitioner did not pay rent, earn income, incur expenses, or even incur losses during 2010. At this stage, the Petitioner bears the burden of proving error in the Department's assessments. These findings simply hold that Petitioner has failed to produce proper substantiation of these items sufficient to meet his burden of proof.

ORDER

IT IS ORDERED that the parties are to brief and argue their respective cases in light of the evidentiary findings and rulings above.

1. No later than February 19, 2016, Petitioner shall file with the Commission an original and three copies of an initial brief, and provide one copy to Attorney Sheree Robertson. For any items of income or expense for 2010 which Petitioner wishes the Commission to consider (in addition to Ex. 8), the Commission requests Petitioner to set forth a spreadsheet, in straight columns created in EXCEL, listing and tabulating each circled item of income listed in Ex. G, and similarly any pertinent items from Exhibits I, J, and L laid out in the format shown below. Such charts are to be submitted with Petitioner's brief on or before February 19, 2016.

2. No later than April 15, 2016, Respondent shall file with the Commission an original and three copies of a reply brief, and provide one copy to Mr. Smith.

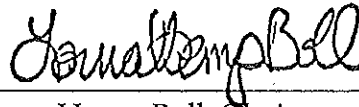
3. No later than May 20, 2016, Petitioner may file with the Commission an original and three copies of its response to Respondent's reply brief, and provide one copy to Attorney Robertson.

4. The parties are requested to email WORD versions of their briefs to the Commission's Legal Assistant, Nancy Batz at nancy.batz@wisconsin.gov.

If either party would like a CD of the hearing proceedings, please remit a \$10 check payable to the Tax Appeals Commission. Once payment is received, the Commission will mail the CD.

Dated at Madison, Wisconsin, this 30th day of December, 2015.

WISCONSIN TAX APPEALS COMMISSION



Lorna Hemp Boll, Chair
5005 University Avenue - Suite 110
Madison, Wisconsin 53705
608-266-1391

cc: Larry Smith
Attorney Sheree Robertson

Smith v. Dep't, Docket Nos. 12-I-135-SC and 15-I-042

INCOME (list all claimed income for which support exists in Ex G or I, not included in Ex. 8)

Date of NetZero client billing (Ex. G)	Income description	Amount of NetZero billing
xx/xx/xxxx	Client name	\$
		\$ Total

Date of PayPal client billing (Ex. G or I)	Income description	Amount of PayPal transaction
xx/xx/xxxx	Client name	\$
		\$ Total

Smith v. Dep't, Docket Nos. 12-I-135-SC and 15-I-042

EXPENSES (list all claimed expenses for which support exists in Ex G, I, J, or L)

Date of Chase ATM Expense (Ex. J) (Sept-Dec)	Expense Description	Amount of Expense Paid
xx/xx/xxxx	Expense Item	\$
		\$ Total

Date of NetZero Transaction (Ex. G)	Expense Description	Amount of Expense Paid
xx/xx/xxxx	Expense Item	\$
		\$ Total

Date of PayPal Transaction (Ex. G or I)	Expense Description	Amount of Expense Paid
xx/xx/xxxx	Expense Item	\$
		\$ Total

Date of Other Expense (Ex. L)	Expense Description	Amount of Expense Paid
xx/xx/xxxx	Expense Item	\$
		\$ Total