

STATE OF WISCONSIN
TAX APPEALS COMMISSION

GENERAL MILLS, INC.,

DOCKET NO. 20-I-157

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

KENNETH P. ADLER, COMMISSIONER:

This case comes before the Commission for decision on competing Motions for Summary Judgment. The Petitioner, General Mills, Inc., appears by Attorneys Scott Bender and Axel F. Candelaria Rivera of Deloitte Tax LLP. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorneys Mark S. Zimmer and Jared M. Boucher. Both parties have filed with the Commission briefs and documents in support of their respective positions. For the reasons stated below, we find for the Respondent.

RELEVANT FACTS

I. JURISDICTIONAL FACTS

1. Under notice dated March 28, 2019, the Department of Revenue ("Department") timely issued a notice to General Mills, Inc. ("Taxpayer" or "Petitioner") denying Taxpayer's refund claim, for fiscal taxable year May 27, 2013 to May 25, 2014

("taxable year," "taxable period" or "2013 tax year"). (Joint Stipulation of Facts ("Jt. Stip") ¶ 1, Exh. 1.)

2. Taxpayer timely filed its Petition for Redetermination with the Department on May 23, 2019. (Jt. Stip ¶ 2, Exh. 2.)

3. Under Notice of Action dated April 24, 2020, the Department timely denied in full Taxpayer's Petition for Redetermination. (Jt. Stip ¶ 3, Exh. 3.)

4. Petitioner was aggrieved by the Department's redetermination and timely filed its Petition for Review with the Wisconsin Tax Appeals Commission ("Commission"). In its Answer, the Department denied Taxpayer was aggrieved. (Jt. Stip ¶ 4.)

II. PARTIES

5. General Mills, Inc., is a leading global manufacturer of branded consumer foods sold through retail stores. Petitioner also is a leading supplier of branded and unbranded food products to the foodservice and commercial baking industries. Taxpayer manufactures products throughout the United States and has a manufacturing facility located in Milwaukee, Wisconsin. The Milwaukee facility manufactures branded consumer foods, including Bugles, Gardetto's Snack Mix and Chex Mix Snack Mix. (Jt. Stip ¶ 5.)

6. The Department is a principal administrative unit of the executive branch of the State of Wisconsin, created and existing under §§ 15.02(2) and 15.43, Wis. Stat. (2019-20) with its principal office located at 2135 Rimrock Road, Madison, Wisconsin 53713. (Jt. Stip ¶ 6.)

III. MATERIAL SUBSTANTIVE FACTS

7. Taxpayer timely filed its Forms 4, *Wisconsin Corporation Franchise or Income Tax Return*, for the fiscal periods of May 28, 2012 to May 26, 2013 ("2012 tax year") and May 27, 2013 to May 25, 2014 ("2013 tax year"). The only year at issue in this appeal is the 2013 tax year. The unextended due date under § 71.24(1), Wis. Stat. for the 2013 tax year return was August 15, 2014. (Jt. Stip ¶ 7.)

8. Taxpayer did not claim the manufacturing credit ("the credit," "manufacturing credit," or "MA-M credit"), as provided under § 71.28(5n), Wis. Stat. (2013-2014), on the originally filed return for the 2013 tax year. The full statutory name of the credit is "manufacturing and agriculture credit." (Jt. Stip ¶ 8.)

9. Subsequent to Taxpayer filing its 2012 to 2013 fiscal year returns, the Department timely initiated a field audit of Taxpayer's returns for these fiscal periods. Need a record cite here

10. Under notice dated September 1, 2016, the Department issued its Notice of Proposed Audit Report ("NOPAR") "setting forth the Department's findings in the field audit of your books and records." (Jt. Stip ¶ 9, Exh. 4, p. 1.)

11. For the 2013 tax year, the audit resulted in an additional proposed balance of \$247,902.61, including interest. Among others, the Department's proposed field audit or NOPAR adjusted the super research and development credit, interest income, long-term capital gains and ordinary income and losses. (Jt. Stip ¶ 11.)

12. The MA-M credit was neither adjusted by the Department nor the subject of the prior assessment. (Jt. Stip ¶ 12.)

13. Taxpayer signed PART A of the NOPAR on September 8, 2016. (Jt. Stip ¶ 13.)

14. On September 13, 2016, the Department received check number 00005497820, in the amount of \$390,929.21, in compliance with the NOPAR. (Jt. Stip ¶ 14.)

15. Taxpayer neither protested nor appealed the Department's NOPAR. (Jt. Stip ¶ 15.)

16. Procedurally, after finalizing a NOPAR, the Department issues a notice of field audit action. (Jt. Stip ¶ 16.)

17. Exhibit No. 5 attached to the Joint Stipulation of Facts is the finalized Notice of Field Audit Action mentioned in the NOPAR. This Notice of Field Audit Action was dated October 3, 2016. (Jt. Stip ¶ 17, Exh. 5.)

18. This "Notice of Field Audit Action" was mailed by the Department to the Taxpayer via first class mail on or about that date, and the Taxpayer received this Notice of Field Audit Action several days thereafter. (Jt. Stip ¶ 18.)

19. On July 21, 2017, the Department received the Taxpayer's first amended Forms 4, *Wisconsin Corporation Franchise or Income Tax Return*, for the fiscal periods of May 28, 2012 to May 26, 2013 ("2012 tax year") and May 27, 2013 to May 25, 2014 ("2013 tax year"). (Jt. Stip ¶ 19.)

20. On the first amended Form 4 for the 2013 tax year, Taxpayer claimed an MA-M credit in the amount of \$42,304. (Jt. Stip ¶ 20.)

21. The unextended four-year statute of limitation for the 2013 tax year was August 15, 2018. (Jt. Stip ¶ 21.)

22. Taxpayer filed a second amended Form 4 return for the 2013 tax year, which was received by the Department on August 15, 2018. In the amended return, Taxpayer revised its computation of the manufacturing credit and claimed an additional refund in the amount of \$811,220 plus statutory interest. (Jt. Stip ¶ 22.)

23. In a notice dated March 28, 2019, the Department denied Taxpayer's claim for refund for the 2013 tax year. In pertinent part, the notice stated that, under "Wisconsin Stats. 71.75(4), a taxpayer may not file a claim for refund for any tax year covered by a field audit that has become final." (Jt. Stip ¶ 23, Exh. 1.)

24. Taxpayer timely petitioned to the Department for redetermination, disagreeing with the determination that the field audit was final and conclusive on grounds that Taxpayer, in compliance with Department notices and publications, paid the assessment in full and neither protested nor appealed the Department's determination. (Jt. Stip ¶ 24.)

25. The Department denied the petition for redetermination in its April 24, 2020, Notice of Action that followed. (Joint Stipulation of Facts ¶ 25, Exh. 3.)

26. Thereafter, Taxpayer timely appealed to the Commission. The Petition for Review and Answer are already part of the Commission's file for this dispute. (Jt. Stip ¶ 26.)

ISSUE

While the parties reached Stipulations of Fact, the relevant issues to be addressed were somewhat fluid throughout the briefing. The Department asserts the Petitioner was barred from filing a claim for refund for two reasons: (1) because the

applicable statutes prohibit a claim for refund after an audit in respect to items that were not adjusted in the notice of assessment or refund and (2) because the applicable statutes generally prohibit any claim for refund for any year that has been subject to field audit if the audit resulted in a final assessment and if the Department notifies the taxpayer that the field audit is final unless the taxpayer appeals. The Petitioner asserts the issue for determination is the taxpayer's procedural right to file a claim for refund. The Commission finds the issue for determination is whether the Petitioner had a right to file a refund claim for a manufacturing credit when that credit was not an issue in the originally filed return, the field audit, the subsequently issued Notice of Proposed Audit Report or in a resulting additional assessment.¹

ANALYSIS

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). In this case, both parties filed Motions for Summary Judgment along with a Joint Stipulation of Facts. Summary judgment is thus appropriate. *Healthcare Services Group, Inc. v. Wisconsin Dept. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-086 (WTAC 2016).

¹ Based upon the analysis which follows, the Commission concludes it is not necessary to assess whether the claim for refund is prohibited for any year that has been subject to field audit if the audit resulted in a final assessment and if the Department notifies the taxpayer that the field audit is final unless the taxpayer appeals.

PRESUMPTION OF CORRECTNESS

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. *Itsines v. Wisconsin Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-341 (WTAC Aug. 13, 2010), citing *Edwin J. Puissant, Jr. v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984). Testimony by interested parties that is not corroborated by other evidence will not overcome the presumption of correctness. *Dvorak v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-600 (WTAC 2002).

WISCONSIN STATUTES

Wis. Stat. § 71.75 Claims for refund.

(1) Except as provided in ss. 49.855, 71.77 (5) and (7) (b) and 71.935, the provisions for refunds and credits provided in this section shall be the only method for the filing and review of claims for refund of income and surtaxes, and no person may bring any action or proceeding for the recovery of such taxes other than as provided in this section.

(2) With respect to income taxes and franchise taxes, except as otherwise provided in subs. (5) and (9) . . . refunds may be made if the claim therefor is filed within 4 years of the unextended due date under this section on which the tax return was due.

...

(4) Except as provided in subs. (5) and (5m), no refund shall be made and no credit shall be allowed for any year that has been the subject of a field audit if the audit resulted in a refund or no change to the tax owed or in an assessment that is final under s. 71.88 (1) (a) or (2) (a), 71.89 (2), 73.01 or 73.015 and if the department of revenue notifies the taxpayer that unless the taxpayer appeals the result of the field audit under subch. XIV, the field audit is final. No refund shall be made

and no credit shall be allowed on any item of income or deduction, assessed as a result of an office audit, the assessment of which is final under s. 71.88 (1) (a) or (2) (a), 71.89 (2), 73.01 or 73.015.

(5) A claim for refund may be made within 4 years after the assessment of a tax or an assessment to recover all or part of any tax credit, including penalties and interest, under this chapter, assessed by office audit or field audit and paid **if the assessment was not protested by the filing of a petition for redetermination.** No claim may be allowed under this subsection for any tax, interest or penalty paid with respect to any item of income, credit or deduction self-assessed or determined by the taxpayer or assessed as the result of any assessment made by the department with respect to which **all the conditions specified in this subsection are not met.** If a claim is filed under this subsection, the department of revenue may make an additional assessment in respect to any item of income or deduction that was a subject of the prior assessment. **No claim for refund may be made in respect to items that were not adjusted in the notice of assessment or of refund.** A person whose returns for more than one year have been adjusted may make a claim under this subsection whether or not the net result of the adjustments for those years is an assessment. This subsection does not extend the time to file under s. 71.53 (2) or 71.59 (2), and it does not extend the time period during which the department of revenue may assess, or the taxpayer may claim a refund, in respect to any item of income or deduction that was not a subject of the prior assessment.

[emphasis added.]

Wis. Stat. § 71.88 Time for filing an appeal.

(1) APPEAL TO THE DEPARTMENT OF REVENUE. (a) *Contested assessments and claims for refund.* Except for refunds set off under s. 71.93 in respect to which appeal is to the agency to which the debt is owed, except for refunds set off under s. 71.935 in respect to which an appeal is held under

procedures that the department of revenue establishes and except for refunds set off under s. 49.855 in respect to which a hearing is held before the circuit court, any person feeling aggrieved by a notice of additional assessment, refund, or notice of denial of refund may, within 60 days after receipt of the notice, petition the department of revenue for redetermination. . . . The department shall make a redetermination on the petition within 6 months after it is filed.

[emphasis added.]

The relevant facts of the case are neither complicated nor in dispute. The Petitioner filed an initial tax return and did not claim a manufacturing credit. During the subsequent field audit the manufacturing credit was neither an issue nor adjusted. Nor was a manufacturing credit an issue in the Notice of Proposed Audit Report (NOPAR) or the resulting additional assessment.² Finally, the Petitioner paid the assessment and did not protest by filing a petition for redetermination. Subsequently, the Petitioner filed amended returns claiming a manufacturing credit and requesting a refund. The Department denied the refund request.

The question is what law is applicable to these undisputed facts. The primary argument advanced by the Department asserts Wis. Stat. § 71.75(5) bars the Petitioner's claim for refund because that claim concerns a manufacturing credit which was not an issue at any part of the process prior to the claim for refund. The Petitioner agrees that Wis. Stat. § 71.75 provides the only method for filing a claim for refund,³ but its primary assertion is that it followed the directives of Wis. Stat. § 71.75(2) and timely

² The Petitioner acknowledges this in its brief in support of its Motion for Summary Judgment at page 11.

³ See the Petitioner's brief in support of its motion for Summary Judgment at page 11.

filed its refund claim. In addition, both parties review the relevant Department publications and Department correspondence with the Petitioner regarding the refund claim.

Section 71.75(1) Wis. Stat. explains that statutory section provides the only method for filing a claim for refund. Section 71.75(2) Wis. Stat. is the general rule providing taxpayers four years from the unextended due date of a return to file a claim for refund without limitations. Section 71.75(2) Wis. Stat. applies except as otherwise provided in § 71.75(5) Wis. Stat. Section 71.75(5) Wis. Stat. bars a claim for refund in respect to items *not adjusted in the notice of assessment or refund*.

First, the Commission does not find the Petitioner's argument that it timely filed its amended return pursuant to Wis. Stat. § 71.75(2) persuasive. Section 71.75(2) Wis. Stat. is the general rule addressing the filing of refund claims but does not address refund claims filed after a field audit. In addition, it clearly states it applies to refunds "except as otherwise provided in subs. (5) and (9)." Therefore, it is necessary to look to subsection (5) to determine if the facts of this case fall within that exception.

Second, the Commission does not find the Petitioner's argument that it was allowed to file an amended return pursuant to Wis. Stat. § 71.75(4) persuasive. While section 71.75(4) Wis. Stat. is the general rule addressing the refunds for claims after a field audit, it also states "[e]xcept as provided in subs. (5) and (5m)." Therefore, it is again necessary to look to subsection (5) to determine if the facts of this case fall within that exception.

Section 71.75(5) Wis. Stat. generally allows a claim for refund after an assessment assessed by a field audit and paid if the assessment was not protested by the filing of a petition for redetermination. The parties agree no petition for redetermination was filed. However, that subsection continues by explaining no claim may be allowed under that subsection unless all the conditions in the subsection are met. The subsection continues:

If a claim is filed under this subsection, the department of revenue may make an additional assessment in respect to any item of income or deduction that *was a subject of the prior assessment*. No claim for refund may be made in respect to items *that were not adjusted in the notice of assessment or of refund*.

Reading Wis. Stat. § 71.75(5) requires applying the basics of statutory interpretation. Well-recognized principles of statutory construction require that “[s]tatutory language [be] given its common, ordinary and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.” *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58 ¶ 45, 271 Wis. 2d 633, 663; 681 N.W.2d 110, 124 (2004).

The Department argues that since the credit was not initially claimed on the originally filed return nor part of any subsequent process prior to the filing of the amended return, it was “not adjusted” and “was not a subject” as those terms are utilized in Wis. Stat. § 71.75(5). The Petitioner agrees the credit was neither claimed on the originally filed return nor part of any subsequent process prior to filing the appeal, but questions whether one can claim something was “not adjusted” or “not a subject” when it was not there in the first place. The Commission does not find this musing persuasive

and chooses to read those terms in the most reasonable manner. Based upon the above, Wis. Stat. § 71.75(5), bars a taxpayer from filing a claim for refund (when it did not protest its assessment following a field audit by filing a petition for redetermination) with respect to items that were not adjusted in the notice of assessment or of refund. Therefore, the Commission finds the Petitioner's refund claim was correctly denied by the Department pursuant to Wis. Stat. § 71.75(5).

DEPARTMENT CORRESPONDENCE

The Petitioner also argues Department correspondence indicated the Petitioner had a right to appeal and a right to file an amended claim. The September 1, 2016 Notice of Proposed Audit Report states "this proposed report is subject to changes resulting from possible objections by you or possible subsequent action by the department based on final review of the audit." Exh. 4, page 1. Included was the proposed report showing \$390,926.21 due. The Notice, at page one, also stated:

A. If you agree in full.

If you agree in full with the results of the enclosed proposed audit report, please sign under Part A on page 2 of this Notice and return it to the auditor as soon as possible but no later than 09/14/16.

B. If you do not agree in full.

...

Once this Notice is completed and returned, a finalized "Notice of Field Audit Action", signed by the Field Audit Section Chief, will be issued to you.

CAUTION. Completion of page 2 of this Notice *by persons who disagree with some or all of the adjustments in the proposed audit report* does not constitute an appeal. If you wish to appeal, a written petition for redetermination must

be filed with the Department's Resolution Unit within 60 days of your receipt of the final notice of assessment or refund.

Exh. 4, page 1 [emphasis added]

The Notice, at page two, stated, in relevant part:

PART A: AGREEMENT IN FULL I agree with *the adjustments* and the additional tax due or overpayments and any penalties shown on the attached proposed audit report. I also understand that interest accrues until the amount due is paid or refunded and that the signing of this Notice does not waive my appeal rights.

PART B: AGREEMENT IN PART

PART C: DISAGREE IN FULL

Parts A, B and C each state "I also understand that interest accrues until the amount due is paid or refunded and that the signing of this notice does not waive my appeal rights." Exh. 4, page 2. The Petitioner signed Part A, indicating it *agreed in full* and returned payment in full of \$390,926.21 on September 8, 2016. While that section informed the Petitioner that signing did not waive its appeal rights, as explained above, the Petitioner did not exercise those appeal rights. The Petitioner did file a claim for refund which, as reviewed above, was properly denied. Therefore, the Commission does not find this Department correspondence misled the Petitioner or was in conflict with the relevant statutes.

The October 3, 2016 Notice of Field Audit Action (Exhibit 5) acknowledged receipt of the "\$390,926.21 in full and agreement to the results of the department's field audit." The Notice further stated, in relevant part,

Having paid the total amount due, if you later decide to contest *some or all of the adjustments*, a claim for refund may be filed.

The Petitioner acknowledges that the manufacturing credit was not an issue in the originally filed return, the field audit, the subsequently issued NOPAR or in the resulting additional assessment.⁴ A reasonable person would therefore conclude the manufacturing credit was not an "adjustment" upon which the Petitioner could file a claim for refund after having paid the total amount due. Therefore, the Commission does not find this Department correspondence misled the Petitioner or was in conflict with the relevant statutes cited above.

DEPARTMENT PUBLICATIONS

The Petitioner also argues Department publications indicated the Petitioner had a right to file an amended claim. Publication 501, Field Audit of Wisconsin Tax Returns states, in relevant part, as follows:

Claims for refund

If you believe you overpaid tax in the period being audited and plan to file a claim for refund, you should notify the auditor as early in the audit process as possible. The auditor then can plan for and include the review of the refund claim in the audit.

If you file a claim for refund late in the audit, the auditor may not be able to include action on the claim in the audit. You would need to file an appeal of the audit determination to pursue the claim for refund.

If you agree with the Notice of Proposed Audit Report

If the proposed audit report results in an amount due and you agree with the amount due, sign the Notice of Proposed Audit Report indicating you agree in full. Notify the auditor if you are interested in reducing your interest due by "prepaying" the final bill in full.

⁴ See Taxpayer's Brief in Support of Its Motion for Summary Judgment, page 11.

If you disagree with the Notice of Proposed Audit Report

If you disagree with any findings in the proposed audit report, it is important to communicate that to the auditor as soon as possible. The auditor can schedule a conference with you and their supervisor to attempt to reach agreement on the unagreed issues. These can often be settled without time-consuming appeals.

If you and the auditor/supervisor cannot reach an agreement on the unagreed issues, the department will issue a final notice. This notice is final unless you appeal it. Note: Even if you signed the Notice of Proposed Audit Report indicating you disagree, you still must send a written appeal of the final notice. Follow the instructions on the notice for how to appeal.

...

If the notice is an amount due and you pay it without filing an appeal, you may later choose to contest the notice by filing a claim for refund of the amount you paid.

Exh. 6, pages 5 and 6.

The Petitioner asserts the above informs the taxpayer it may "later choose to contest the notice by filing a claim for refund of the amount you paid." However, this language is found under the heading "[i]f you *disagree* with the Notice of Proposed Audit Report" [emphasis added]. The Petitioner did not disagree with the Notice of Proposed Audit Report and at no time indicated such. Instead, the Petitioner agreed and paid the amount due. Therefore, the Petitioner's actions fall under the heading "[i]f you *agree* with the Notice of Proposed Audit Report." That section mentions nothing about a subsequent right of appeal or the ability to later file a claim for refund of the amount paid. Therefore, the Commission does not find this publication misled the Petitioner or was in conflict with the relevant statutes cited above..

Publication 506, Taxpayer's Appeal Rights of Audit Adjustments, states, under General Information, that "[t]axpayers have the right to appeal adjustments the

Wisconsin Department of Revenue makes during an audit.” Ex. 7, page 3. The Publication further states, in relevant part, as follows:

2. OPTIONS AFTER RECEIVING AN AUDIT NOTICE

...

If you receive a Notice of Amount Due, and you:

- Agree - pay the total amount due by the due date on the notice.
- Disagree - file an appeal within 60 days of receiving your notice or pay the total amount due by the due date on the notice to allow for a claim for refund at a later date. See Claim for Refund later in this publication.

Caution: If you do not file your appeal within 60 days, the notice is final.

...

7. CLAIM FOR REFUND, explains “[i]f you pay the amount due on the notice and do not file an appeal, you may file a claim for refund.

Exh. 7, pages 3 and 5.

The Petitioner did not, at any time during the process prior to filing the request for refund, indicate it disagreed with the Notice of Amount Due. The language above discussing appealing in 60 days or filing a claim for refund even when an appeal is not filed within 60 days, does not apply to a situation where the taxpayer has paid the amount due by the date on the notice and has not indicated it disagreed with that amount due. Therefore, the Commission does not find this Department publication misled the Petitioner or was in conflict with the relevant statutes cited above..

Based upon all of the above, the Commission concludes the Petitioner was barred from filing a claim for refund based upon its own actions and the Department statutes and publications detailed in this decision. While the Commission accepts this was not the most clearly defined process, the Commission does not find the Petitioner’s various arguments regarding compliance with multiple timelines to be relevant to this

set of facts. Nor does the Commission need to address the question of whether or when the audit became final. The manufacturing credit which the Petitioner used as a basis for its refund claim was not the subject of any part of the process prior to the refund claim. Therefore, there was no right to file an amended claim within *any* timeline. Additionally, the Petitioner's agreement with the Department's assessment and its action in making payment in full without the mention of any disagreement further supports the conclusion that the Petitioner, by its own actions, foreclosed its opportunity to file an amended return using the manufacturing credit as the basis for that request.

CONCLUSIONS OF LAW

1. That the Petitioner did not have a right to file a refund claim for a manufacturing credit pursuant to Wis. Stat. § 71.75(5) when that credit was not an issue in the originally filed return, the field audit, the subsequently issued Notice of Proposed Audit Report or in a resulting additional assessment.

2. That the Petitioner did not have a right to file a refund claim for a manufacturing credit pursuant to Wis. Stat. § 71.75(2) when that credit was not an issue in the originally filed return, the field audit, the subsequently issued Notice of Proposed Audit Report or in a resulting additional assessment pursuant to Wis. Stat. § 71.75(5).

3. That the Petitioner did not have a right to file a refund claim for a manufacturing credit pursuant to Wis. Stat. § 71.75(4) when that credit was not an issue in the originally filed return, the field audit, the subsequently issued Notice of Proposed Audit Report or in a resulting additional assessment pursuant to Wis. Stat. § 71.75(5).

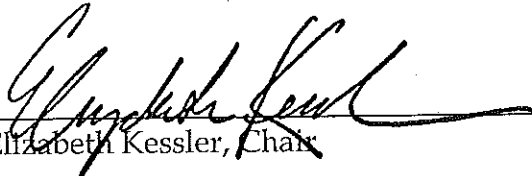
4. That as the Petitioner did not disagree with the Notice of Proposed Audit Report and at no time indicated such until it filed the refund claim for the manufacturing credit and instead agreed and paid the amount due, none of the directives in the Department's correspondence or publications were in conflict with the provisions of Wis. Stat. § 71.75.

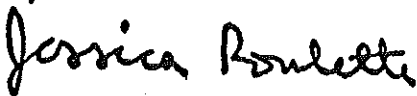
ORDER

Based on the foregoing, it is the order of this Commission that the Petitioner's Motion for Summary Judgment is denied, and Respondent's Motion for Summary Judgment is granted as we find the Petitioner did not have a right to file a refund claim for a manufacturing credit when that credit was not an issue in the originally filed return, the field audit, the subsequently issued Notice of Proposed Audit Report or in a resulting additional assessment.

Dated at Madison, Wisconsin, this 26th day of October, 2022.

WISCONSIN TAX APPEALS COMMISSION


Elizabeth Kessler, Chair


Jessica Roulette, Commissioner


Kenneth Adler, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION
101 E Wilson St, 5th Floor
Madison, Wisconsin 53703

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.