

FILED

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Wisconsin Tax Appeals Commission
Nicole Allee - Legal Assistant

STATE OF WISCONSIN
TAX APPEALS COMMISSION

WILLARD AND TAMMY HARVILL,

DOCKET NO. 24-I-204

Petitioners,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DECISION AND ORDER

JESSICA ROULETTE, COMMISSIONER:

This case comes before the Tax Appeals Commission (“the Commission”) for decision following a telephonic evidentiary hearing held on December 17, 2024. The Petitioners, Willard and Tammy Harvill, appear by Willard Harvill, pro se. The Respondent, the Wisconsin Department of Revenue (“the Department”), is represented by Attorney Nicole Pellerin. Petitioners ask the Commission to determine whether their claims for refund for the 2017 and 2018 tax years were properly denied by the Department as untimely filed, or whether fundamental fairness requires a different outcome for Petitioners. The Commission has no equitable powers and must confine its analysis to whether Petitioners’ failure to file a refund claim within four years of the unextended due date of Petitioners’ returns for the relevant years results in a lack of jurisdiction to review the merits of Petitioners’ claims. Having considered the entire record, the Commission finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Mr. Harvill is a veteran who served in the United States military for over 29 years, beginning in 1964 and concluding his service in 1995.
2. Mr. Harvill became ill during the first Gulf War, between 1989 and 1992, and he has become increasingly incapacitated since that time.
3. Mr. Harvill applied to the Department of Veteran's Affairs (VA) for a finding regarding service-related disability during the 2000s. The VA could not find records correlating to Mr. Harvill's years of service, and the process of obtaining a decision regarding his disability claim stretched over more than a decade.
4. On September 11, 2023, the VA made a final determination finding Mr. Harvill 100% disabled as of November 20, 2015. (Ex. A.)
5. In November of 2023, Mr. Harvill received notice of the September 11, 2023, decision regarding the VA's disability finding.
6. On November 22, 2023, the Department received 3 Schedule AR¹ forms with supporting documentation² for the 2017, 2018, and 2019³ tax years from Petitioners. Each form indicated a change to line 46, "tax credit," and indicated in the

¹ Schedule AR ("Explanation of Amended Return") is a Wisconsin Department of Revenue form which taxpayers are supposed to file with their amended tax return form.

² The 2017 Schedule AR had Petitioners' 2017 Real Estate Tax Summary and a Certification for Wisconsin Disabled Veterans and Unremarried Surviving Spouses Property Tax Credit form from the Wisconsin Department of Veteran Affairs, signed November 9, 2023, by Matthew Korbol attached. The 2018 Schedule AR had Petitioners' 2018 Receipt for Payment of Real Estate Property Taxes attached. The 2019 Schedule AR had Petitioners' 2019 Real Estate Tax Summary, and a letter dated September 11, 2023, indicating that after an appeal, the VA had decided that Mr. Harvill was 100% disabled effective November 20, 2015, attached. (Ex. 3.)

³ The 2019 tax year is not at issue in this appeal, and further communication and information regarding that tax year is not included in this decision.

narrative box that Mr. Harvill had applied for a disability finding prior to 2014, that his disability application was appealed many times, and that he was determined to be one hundred percent disabled effective November 20, 2015. (Ex. 3.)

7. On November 27, 2023, the Department issued separate letters requesting that Petitioners file an amended Wisconsin tax return for the 2017 and 2018 tax years, because the Department had only received Petitioners' Schedule AR forms for those years. (Exs. 4 and 5.)

8. On December 4, 2023, the Department received Petitioners' amended Wisconsin income tax returns for the 2017 and 2018 tax years. (Exs. 6 and 7.)

9. On December 18, 2023, the Department issued a letter to Petitioners denying their claims for refund in the amount of \$3,339.00 for tax year 2017 and \$3,235.00 for tax year 2018, pursuant to Wis. Stat. § 71.75(2), stating those claims were filed more than four years after the original due date for the tax returns for 2017 and 2018. (Ex. 1.)

10. On January 31, 2024, the Department received Petitioners' timely filed petition for redetermination regarding the denial of their 2017 and 2018 veteran's property tax credit claims. (Ex. 2.)

11. On May 8, 2024, the Department issued a letter to Petitioners informing them of the Department's intent to uphold their assessment, and giving Petitioners a deadline of June 7, 2024, to indicate whether they wished to withdraw their petition for redetermination or submit additional information for the Department's consideration. (Ex. 8.)

12. On July 5, 2024, the Department issued a Notice of Action which denied Petitioners' petition for redetermination, stating the amended tax returns for 2017 and 2018 were not received by the Department within four years of the unextended due date of those tax returns. (Ex. 9.)

13. On August 27, 2024, Petitioners filed a Petition for Review with the Commission which has been docketed as appeal number 24-I-204. (Commission file.)

APPLICABLE LAW

Wis. Stat. § 71.07 Credits.

(6e) VETERANS AND SURVIVING SPOUSES PROPERTY TAX CREDIT.

(a) *Definitions.* In this subsection:

1. "Claimant" means . . . an eligible veteran . . . who files a claim under this subsection.

...

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

a. Served on active duty under honorable conditions in the U.S. armed forces . . .

b. Was a resident of this state at the time of entry into that active service or had been a resident of this state for any consecutive 5-year period after entry into that service.

c. Is currently a resident of this state for purposes of receiving veterans benefits under ch. 45.

d. Has either a service-connected disability rating of 100 percent under 38 USC 1114 or 1134 or a 100 percent disability rating based on individual unemployability.

(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).

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) and ss. 71.30 (4) and 71.77 (5) and (7) (b), refunds may be made if the claim therefor is filed within 4 years of the unextended date under this section on which the tax return was due.

Wis. Stat. 73.01 Tax appeals commission.

(4) POWERS AND DUTIES DEFINED.

(a) Subject to the provisions for judicial review contained in s. 73.015, the commission shall be the final authority for the hearing and determination of all questions of law and fact arising under sub. (5) and s. 72.86(4), 1985 stats., and ss. 70.38(4)(a), 70.937, 70.64, and 70.995(8), s. 76.38(12)(a), 1993 stats., ss. 76.39(4)(c), 76.48(6), 77.26(3), 77.59(5m) and (6)(b), 78.01, 78.22, 78.40, 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 177.1103, 177.1206(3), 341.405, and 341.45, subch. XIV of ch. 71, and subch. VII of ch. 77. . . .

(5) APPEALS TO COMMISSION.

(a) Any person who . . . has filed a petition for redetermination with the department of revenue and who is aggrieved by the redetermination of the department of revenue may, within 60 days of the determination of the state board of assessors or of the department of revenue or, in all other cases, within 60 days after the redetermination but not thereafter, file with the clerk of the commission a petition for review of the action of the department of revenue. . . .

ANALYSIS

Under Wis. Stat. § 71.75(2), a claim for refund of income tax must be filed

within four (4) years of the unextended date on which the tax return was due for the time period for which a refund is sought. In this appeal, the unextended due date for the claim for refund for the 2017 tax year is four (4) years from April 17, 2018. This means that the claim for refund must have been filed no later than April 17, 2022. In this appeal, the unextended due date for the claim for refund for the 2018 tax year is four (4) years from April 15, 2019. This means that the claim for refund must have been filed no later than April 15, 2023. It is undisputed that the Department received Petitioners' amended tax returns on December 4, 2023. This date was more than four (4) years past the statutory deadline for filing a claim for refund for both the 2017 and 2018 tax years.

The statute allows certain exceptions to the four-year rule, none of which apply to this case: Petitioners' claim was not made within four years of an audit, it was not subject to attachment under delinquent child support laws or maintenance obligations or debts to other state entities, it did not concern a defense contract, it did not involve an IRS adjustment of their 2017 or 2018 federal income tax returns, and the Department did not agree in writing to an extension before the expiration of the deadline. Therefore, the Department cannot grant the requested refunds, and the Commission cannot examine the merits of Petitioners' appeals of those denials. The Commission's jurisdiction is granted by statute, and the Commission may only exercise jurisdiction as allowed by statute.

It is most unfortunate that there is not an enumerated exception for disabled veterans awaiting a determination of service-related disability in Wisconsin law. Mr. Harvill argued very compellingly that he is caught between two bureaucracies, with no opportunity to gain recognition of the intent of Wisconsin's property tax credit for disabled veterans. Mr.

Harvill asked the Commission how he could have claimed a credit available to disabled veterans, when he did not know his disability claim would be granted. The disparity between the strict four-year deadline for filing a claim for credit under Wisconsin statutes and the apparent backlog at the VA leading to the backdating of Mr. Harvill's disability determination by eight years is dismaying, to say the least. Nonetheless, the Commission is bound by the statutory timelines as they are currently written, and we will follow those timelines in this ruling.

When a refund claim is untimely, the Commission lacks subject matter jurisdiction. This lack of jurisdiction bars the Commission from considering the merits of the refund claim. See *Spear v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-537 (WTAC 2012), and *Bower v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-421 (WTAC 1999). In this appeal, the Commission simply does not have the power to grant the property tax credits sought by Petitioners.

CONCLUSIONS OF LAW

1. For the 2017 tax year, Petitioners' time to file a claim for refund on an amended tax return expired on April 17, 2022, pursuant to Wis. Stat. § 71.75(2). Because Petitioners' claim for refund was filed in December of 2023, the claim for refund was untimely.

2. For the 2018 tax year, Petitioners' time to file a claim for refund on an amended tax return expired on April 15, 2023, pursuant to Wis. Stat. § 71.75(2). Because Petitioners' claim for refund was filed in December of 2023, the claim for refund was untimely.

3. The Commission lacks jurisdiction over the Petition for Review under Wis. Stat. § 71.75(2) because the claims for refund were untimely. Therefore, the Department is entitled to dismissal of the Petition as it pertains to the 2017 and 2018 tax years as a matter of law.

ORDER

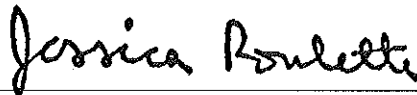
Based on the foregoing, it is the order of this Commission that the Department's denial of the petition for redetermination is affirmed, and that Petitioners' appeal is dismissed with prejudice to refileing.

Dated at Madison, Wisconsin, this 24th day of January, 2025.


WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Chair



Jessica Roulette, Commissioner



Kenneth Adler, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION