

FILED

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STATE OF WISCONSIN
TAX APPEALS COMMISSION

Wisconsin Tax Appeals Commission
Nicole Allee - Legal Assistant

RIZIKI IVETI,

DOCKET NO. 23-H-024

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

CORRECTED DECISION AND ORDER¹

JESSICA ROULETTE, COMMISSIONER:

This case comes before the Commission for decision following a trial held on February 26, 2024. The issues in this case are whether Petitioner, Ms. Riziki Iveti, was eligible to claim the Earned Income Credit and Homestead Credit for the 2021 tax year, and whether the Department of Revenue's Notice of Refund dated June 16, 2022 correctly denied Ms. Iveti's claimed refunds for the 2021 tax year. The Petitioner appeared in person and by representative Mr. Maximilien Kaluta of Milwaukee, Wisconsin. The Department of Revenue ("the Department") appeared by Attorney Jared M. Boucher of Madison, Wisconsin. Interpretation from English to French and from French to English for the benefit of Ms. Iveti was provided by Mr. Mihai Beldea, who also appeared in person on the day of trial.

¹ The original version of this decision failed to include the date on which it was signed by the Commission.

At the hearing, the Commission received and entered into evidence Petitioner's Exhibits 1 - 10, as well as Respondent's Exhibits A - I. Petitioner presented sworn testimony from Ms. Iveti. The Respondent presented sworn testimony from Mr. Alexander Hans.

The facts found at trial are listed below. Based upon the credible trial testimony and evidence in the record, the Commission finds the Petitioner has failed to meet her burden of proof and is not entitled to the earned income and homestead tax refunds claimed on her 2021 State of Wisconsin income tax return.

FINDINGS OF FACT

A. Jurisdictional Facts

1. On June 16, 2022, the Department issued a Notice of Refund - Individual Income Tax to the Petitioner for the 2021 tax year.
2. On July 9, 2022, Petitioner filed a Petition for Redetermination, which was denied by the Department in a Notice of Action dated January 4, 2023.
3. On February 7, 2023, Petitioner filed a timely Petition for Review with the Commission.
4. On February 26, 2024, the Commission held a trial in this matter, which was duly recorded.

B. Material Facts

5. Ms. Riziki Iveti was born in 1985 in Congo and resided in Congo from birth until 1996.

6. In 1996, as a minor child, Ms. Riziki Iveti moved to the Kigoma refugee camp² in Tanzania.

7. While residing in the Kigoma refugee camp in Tanzania, Ms. Riziki Iveti gave birth to a boy in 2009, a girl in 2011, a girl in 2016, and a girl in 2018.

8. While residing in the Kigoma refugee camp in Tanzania, through the assistance of the United Nations High Commissioner for Refugees (UNHCR), Ms. Riziki Iveti completed an application, on her own behalf and on behalf of her four minor children, to be admitted to the United States as a refugee.

9. On May 23, 2019, the office of United States Citizenship and Immigration Services issued a letter notifying Ms. Riziki Iveti that her application for refugee status had been conditionally approved for herself and for her four minor children. That letter indicated that all five family members would need to complete a free medical examination, and that if any of her children married prior to leaving Tanzania, such marriage would cause that child or children to lose their refugee status based on Ms. Iveti's application.

10. The May 23, 2019, letter from the office of United States Citizenship and Immigration Services further indicated that Ms. Riziki Iveti would be issued a Travel Packet, prepared by the Resettlement Support Center that assisted her in preparing her application.

² In her trial testimony, Petitioner referred to the camp as the Kigoma refugee camp. The camp's more formal designation would be the Nyarugusu refugee camp in the province of Kigoma, Tanzania. This opinion adopts the verbiage used by Petitioner in her testimony in its Findings of Fact.

11. On or about November 20, 2020, the United States Department of State generated a letter welcoming Ms. Riziki Iveti to the United States.

12. On or about November 20, 2020, the Travel Packet was also generated, and that packet included a two-page document generated by the United States Department of State which provided the UNHCR case number, as well as photographs, names, and birthdates of Ms. Riziki Iveti's five-member family.

13. Ms. Riziki Iveti did not choose to live in Wisconsin.

14. Ms. Riziki Iveti was assigned to live in Wisconsin after she submitted her application for refugee status, as part of the refugee application process.

15. Ms. Riziki Iveti arrived in Wisconsin on February 16, 2021, and she has resided continuously in Wisconsin as a lawful resident since that date.

16. On or about February 11, 2022, Ms. Riziki Iveti³ filed a Wisconsin income tax return for 2021 on Wisconsin Form 1, with Federal Form 1040, Federal Schedule EIC, Federal Schedule 8812, Federal Form 8867, Wisconsin Form EIC-A, Wisconsin Form H, Wisconsin Rent Certificate, and Wisconsin Form W-RA attached.

17. Wisconsin Form 1 is the income tax form designated for use by full-year residents of Wisconsin.

18. Wisconsin Form 1-NPR is the income tax form designated for use by Part-Year Residents and Nonresidents of Wisconsin.

³ Petitioner credibly testified that, in accordance with her cultural tradition, she considers both "Kazoki" and "Iveti" to be her legal surname and uses the names interchangeably. For clarity, this opinion refers to Petitioner as "Riziki Iveti" throughout. The Wisconsin income tax return for 2021 was filed under the name "Riziki Kazoki."

19. In its June 16, 2022, Notice of Refund, the Department reduced the earned income credit from \$2,276.00 to \$0.00 and reduced the homestead credit from \$796.00 to \$0.00, thereby reducing the total refund due to Petitioner from \$3,612.00 to \$540.00. The Department offered two valid explanatory notes for the reductions. The Department indicated that the earned income credit was not available to Petitioner because she was not a full-year resident of Wisconsin for the entire year of 2021. The Department further indicated that the Petitioner was not eligible to claim the homestead credit because Petitioner was a resident alien without a green card, and also that the Department had recalculated the homestead credit based on information regarding Petitioner's Wisconsin Works income, as received by the Department from the Department of Children and Families.

20. At some time, subsequent to the filing of the Petition for Review, Petitioner applied for a "green card," also known as a Form I-551.

21. At some time, subsequent to the filing of the Petition for Review, Petitioner was issued a green card with an identifying number ending in "01," valid through January 4, 2034, reflecting that Petitioner's residency status was effective as of February 16, 2021.

APPLICABLE LAW

SUBCHAPTER I TAXATION OF INDIVIDUALS AND FIDUCIARIES

Wis. Stat. § 71.02 Imposition of tax

(1) . . . Every natural person domiciled in the state shall be deemed to be residing within the state for the purposes of determining liability for income taxes. . . .

Wis. Stat. § 71.05 Income computation

(22) STANDARD DEDUCTION

(h) Part-year residents. If a person and that person's spouse are not both domiciled in this state during the entire taxable year, the Wisconsin standard deduction or itemized deduction on a joint return is determined by multiplying the Wisconsin standard deduction or itemized deduction, each calculated on the basis of federal adjusted gross income, and as provided in par. (f), by a fraction the numerator of which is their joint Wisconsin adjusted gross income and the denominator of which is their joint federal adjusted gross income.

Wis. Stat. § 71.07 Credits

(9e) EARNED INCOME TAX CREDIT

(c) Part-year residents and nonresidents of this state are not eligible for the credit under this subsection.

SUBCHAPTER VIII HOMESTEAD CREDIT

Wis. Stat. § 71.52 Definitions

(1) "Claimant" means a person who has filed a claim under this subchapter and who was domiciled in this state during the entire calendar year to which the claim for credit under this subchapter relates. . . .

ANALYSIS

This case involves the income tax return filed by Ms. Riziki Iveti for the 2021 tax year, on which she claimed an earned income tax credit in the amount of \$2,276.00 and a homestead tax credit in the amount of \$796.00. The Department of Revenue determined that Petitioner was not eligible for either tax credit, because those tax credits are only available to individuals who resided in Wisconsin for the full calendar year, and Petitioner first arrived in Wisconsin on February 16, 2021. Petitioner appealed the denial of the credits to the Department, and the Department affirmed its original decision denying the credits. The Petitioner then appealed to the Wisconsin Tax Appeals Commission.

The Department's assessments are presumed to be correct. The burden falls

upon a petitioner to prove by clear and satisfactory evidence any errors in the Department's determination. *Puissant v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984). With respect to domicile specifically, the taxpayer bears a substantial burden. *Lizalek v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-306 (WTAC 2010). The Petitioner in this appeal has not proven by clear and convincing evidence that the Department's determinations are incorrect.

Tax credits are a matter of legislative grace and construed strictly against the taxpayer. *L & W Const. Co. v. Dept. of Revenue*, 149 Wis. 2d 684, 690, 439 N.W.2d 619, 621 (Ct. App. 1989), citing *Ramrod, Inc. v. Dept. of Revenue*, 64 Wis. 2d 499, 504, 219 N.W.2d 604, 607 (1974). In this appeal, the dispute between the Petitioner and the Department centers on two income tax credits: the homestead tax credit described in Wis. Stat. § 71.52, and the earned income tax credit described in Wis. Stat. § 71.07(9e).

The Commission begins its analysis by noting that there may well be a difference between the meanings of "legal resident status" as that phrase is used in immigration law, and "residency" and "domicile" as those words are used in tax law. It is outside of the Commission's purview to make an independent determination as to the date on which Petitioner gained legal resident status, as that phrase is used in immigration law. This is because, under Wisconsin tax law, the seminal case regarding residency for tax purposes sets out a two-prong test of residency, and both prongs must be satisfied for an individual to be considered a "resident" of Wisconsin for tax purposes.

Precedent set forth by the Wisconsin Supreme Court in *Baker v. Dept. of Taxation*, 246 Wis. 611, 18 N.W.2d 331 (1945) is controlling on the issue of domicile and

residency for tax purposes.

A domicile once established is not lost until a new one is acquired. Everyone must at all times have a domicile somewhere. Where an actual domicile has once been established, **two things are necessary to create a new domicile, first, an abandonment of the old domicile, and second, the intention and establishment of a new domicile.** The mere intention to abandon a domicile once established is not of itself sufficient to create a new domicile, for before a person can be said to have changed his domicile, even though he manifests an intention to abandon the old domicile, a new domicile must be shown...

'A domicile, once established, is presumed to continue until a new domicile has been effectuated. One may change his domicile for any reason or for no reason. But whether he changes his domicile or not will depend upon intent and actual change of residence. As to these questions of fact the usual rules of evidence apply.' The determination of a person's domicile or of his choice of domicile involves the adjudication of questions of fact which must be settled by recourse not only to an analysis of the intention to establish a new domicile, but, more significantly, by weighing his overt acts which bear upon his carrying out of that intention so as to ascertain whether or not he had actually abandoned his old domicile. There must be more than an intention to acquire a new or different legal domicile. **Until the old domicile has been actually abandoned and an intended new home has been actually and permanently occupied and established elsewhere, the latter cannot be considered the new domicile.**

Baker, 246 Wis. at 617 (emphasis added) (citations omitted). Applying the analysis of *Baker* to the facts in this appeal, Petitioner has established an intent to abandon her prior domicile in Africa. The facts in evidence further establish that Petitioner actually and permanently occupied her new home in Wisconsin when she first arrived in the state, on February 16, 2021. Therefore, Wisconsin could not be Petitioner's new domicile until February 16, 2021, and she was not domiciled in this state during the entire year.

Accordingly, for the 2021 tax year, Petitioner was a part-year resident of Wisconsin for tax purposes.

The Earned Income Tax Credit is not available to part-year residents of Wisconsin. Wis. Stat. § 71.07(9e)(c). Petitioner was a part-year resident of Wisconsin in 2021. Accordingly, Petitioner was not eligible to claim the Earned Income Tax Credit on her 2021 Wisconsin income tax return.

An individual who wishes to claim the Homestead Tax Credit in Wisconsin must be a Wisconsin resident, domiciled in Wisconsin for the entire calendar year to which the claim for credit relates. Wis. Stat. § 71.52(1). Petitioner established her Wisconsin domicile when she arrived in Wisconsin on February 16, 2021. Accordingly, Petitioner was not eligible to claim the Homestead Tax Credit on her 2021 Wisconsin income tax return.

Petitioner argues that she should be considered a Wisconsin resident as of the date the travel packet and welcome letter were generated in November of 2020. Under Wisconsin law as it relates specifically to the tax credits at issue, the date on which Petitioner was permitted to enter the United States as a refugee with lawful resident status is not relevant. The Commission must determine the date on which Petitioner established her domicile in Wisconsin, and that date cannot be earlier than the date on which Petitioner arrived in Wisconsin. Accordingly, Petitioner's argument fails.

CONCLUSIONS OF LAW

1. Petitioner has not met her burden to show that she was a full-year resident of, and domiciled in, the State of Wisconsin during the tax year at issue.

2. Petitioner has, therefore, not met her burden to show that the Department's assessment was incorrect insofar as refund due to Petitioner was concerned.

3. Petitioner was a part-year resident of the State of Wisconsin during the tax year 2021 and therefore not eligible for an Earned Income Tax Credit pursuant to Wis. Stat. § 71.07(9e)(c).

4. Petitioner was not domiciled in Wisconsin for the entire tax year 2021 and therefore is not eligible for a Homestead Credit pursuant to Wis. Stat. § 71.52.

ORDER

The Department's action denying the Petition for Redetermination is affirmed.

Dated at Madison, Wisconsin, this 21st day of August, 2024.

WISCONSIN TAX APPEALS COMMISSION


Elizabeth Kessler, Chair


Jessica Roulette, Commissioner


Kenneth P. Adler, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION