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STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 8

KENOSHA COUNTY

THOMAS G. HETZEL,

Petitioner

vs.

WISCONSIN DEPARTMENT OF REVENUE and
WISCONSIN TAX APPEALS COMMISSION,

Respondents.



Case No. 10-CV-255

FILED

OCT 12 2010

REBECCA MATOSKA-MENTINK
CLERK OF CIRCUIT COURT

DECISION AND ORDER

This matter comes before the Court on a Petition for judicial review of a December 1, 2009 ruling and order of the Wisconsin Tax Appeals Commission (hereinafter referred to as "Commission"). The matter also comes before the Court for judicial review of an order dated January 15, 2010 denying Mr. Hetzel's petition for rehearing.

The Petitioner, Thomas G. Hetzel, contends that he was eligible for the 2007 school tax credit and 2007 veteran's tax credit. The Department of Revenue (hereinafter referred to as "DOR") claims that the petitioner taxpayer was not entitled to either tax credit in 2007.

The burden of proof is upon the Petitioner to show that the administrative decision should be reversed. Sterlingworth Condominium Ass'n v. DNR, 205 Wis. 2d 710, 726, 556 N.W.2d 791 (Ct. App. 1996). "Failure to present any evidence showing error means that the case must be decided against the taxpayer." Woller v. Department of Taxation, 35 Wis. 2d 227, 233, 151 Wis. 2d 170 (1967).

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The Petitioner chose not to allege in his Petition that he is entitled to the 2007 school credit. Nonetheless, the Tax Appeals Commission addressed that issue, and the DOR chose to argue the school credit issue in its trial brief. The Court will address that issue but is persuaded by the argument of the DOR. The school credit can only be used to offset income tax liability. Because the Petitioner's income tax liability was zero in 2007, the Petitioner cannot take advantage of a school tax credit.

The Petitioner does allege in his Petition that he is entitled to a veterans credit in 2007, but none of his pleadings and briefs present any evidence of error committed by the DOR or the Commission. Although the DOR did not have a burden to make any showing or presentation of evidence or argument, the DOR argued in its trial brief that the petitioner taxpayer was not eligible for the 2007 veterans credit because the petitioner taxpayer also claimed the homestead credit, he had not yet reached the requisite age of 65, and he was not verified by the department of veterans affairs in the year 2007.

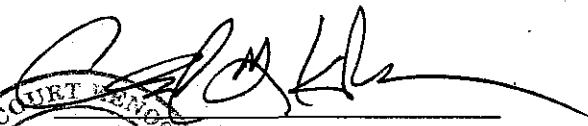
Again, the Court finds the DOR's arguments to be persuasive. The petitioner taxpayer is statutorily prohibited from receiving the benefit of a veterans credit and a homestead credit in the same year under sec. 71.07, Wis. Stat. The petitioner taxpayer claimed and received a homestead credit in 2007, and so he was ineligible for the veterans credit.

In order to qualify for the 2007 veterans credit, the petitioner taxpayer had to be at least 65 years of age under sec. 71.07(6e), Wis. Stat. (2007 statutes). The petitioner taxpayer did not reach the age of 65 until April 27, 2008, and so he was not eligible for the veterans credit on his 2007 tax return. Finally, in order to receive the veterans credit the petitioner taxpayer must be "verified by the department of veterans affairs" under sec. 71.07(6e), Wis. Stat. (2007 statutes). The petitioner taxpayer's certification of eligibility is dated March 20, 2008, and so the petitioner taxpayer was not "verified" for the 2007 tax year.

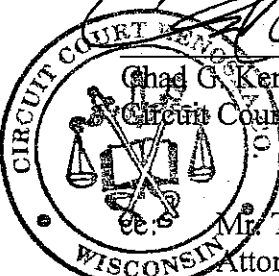
For all the above reasons, this Court finds that the petitioner taxpayer did not qualify for the school credit nor the veterans credit in 2007. The Petitioner has failed to present any evidence showing error, and the findings of the Commission are sustained in the record. And so the Petitioner's request to remand the matter back to the Commission is denied. The decisions of the Commission dated December 1, 2009 and January 15, 2010 are both affirmed.

This decision and order is final for purposes of appeal.

So ordered this 12th day of October, 2010.



Chad G. Kerkman
Circuit Court Judge, Branch 8



Mr. Thomas G. Hetzel
Attorney F. Thomas Creeron III