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Wisconsin Tax Appeals Commission

Drew Fox - Clerk

STATE OF WISCONSIN
TAX APPEALS COMMISSION

JAMES PITZ & ANASTASIA BURKHAM

DOCKET NO. 24-I-159

Petitioners,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

JESSICA ROULETTE, COMMISSIONER:

This case comes before the Tax Appeals Commission ("the Commission") for decision on Petitioners' Motion for Summary Judgment. The Petitioners, James Pitz and Anastasia Burkham, husband and wife and both attorneys, appear in this matter *pro se*. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Dominic Weisse. The parties filed a Joint Stipulation of Facts. Petitioners have filed a Motion for Summary Judgment, with a Supporting Brief and Supporting Affidavit, as well as a Reply Brief with attachments. The Department has filed no pleadings in response to Petitioners' Motion for Summary Judgment. The Commission granted leave for the representative of the former spouse of Petitioner Pitz (Michelle Priebe) to file an amicus brief in this matter, and that non-lawyer representative filed a Brief in Response to the Petitioners' Motion for Summary Judgment in the form of a letter

with attachments. The Commission grants the Petitioners' Motion for Summary Judgment.

ISSUE

The issue for determination is whether Petitioners are allowed to deduct from their taxable income the maintenance payments paid to Petitioner Pitz's former spouse during the audit period. The relevant questions are whether any child support payments were included in those maintenance payments, and whether the calculation of the payments on "net income" affects whether the payments can be considered maintenance under applicable tax statutes.

FACTS

Procedural Facts

1. On November 7, 2023, the Department issued a Notice of Office Audit Amount Due – Individual Income Tax to the Petitioners for the total amount of \$41,687.87 for tax years 2019, 2020, 2021, and 2022, which assessed the Petitioners in the alternative for those years with the former spouse of Petitioner Pitz. (Joint Stipulation of Facts, ("JSOF"), ¶¶ 13, 15, and 16, Ex. 5.)

2. On December 26, 2023, the Department received a timely Petition for Redetermination from the Petitioners. (JSOF, ¶ 17, Ex. 6.)

3. On March 27, 2024, the Department issued a Notice of Action to the Petitioners denying their Petition for Redetermination.¹ (JSOF, ¶ 18, Ex. 7.)

¹ The Joint Stipulation of Facts refers in paragraph 17 to Petitioners' "Petition for Redetermination," and the Commission treats the reference in the stipulation at paragraph 18 to a "Petition for Review" as an error in nomenclature.

4. On May 23, 2024, the Petitioners filed a timely Petition for Review with the Commission. (Commission file.)

5. On June 5, 2024, the Department filed an Answer in this appeal. (Commission file.)

6. On June 7, 2024, the Commission scheduled this matter for an initial telephone status conference on July 18, 2024. (Commission file.)

7. On July 10, 2024, the Department filed a Motion to Consolidate this appeal with the appeal docketed under Commission docket number 24-I-149, along with a Supporting Affidavit and a Proposed Order to Consolidate. (Commission file.)

8. On July 18, 2024, the Commission held an initial telephone status conference and issued a Memorandum and Order which deferred the issue of consolidation for further consideration after the issuance of a Commission Ruling and Order in the appeal docketed under Commission docket number 24-I-149. (Commission file.)

9. On October 1, 2024, the Commission issued a Memorandum and Order memorializing a telephone status conference held in this matter on September 27, 2024. That Memorandum and Order noted that the appeal docketed under Commission docket number 24-I-149 had been placed in abeyance pending resolution of appellate proceedings in that appeal, and that the Commission would allow the representative for Petitioner Pitz's former spouse to file certain pleadings in this appeal. The Order further contained the Commission's orders regarding the briefing schedule for proposed Cross-Motions for Summary Judgment: 1) no later than January 17, 2025, the Petitioners and the

Department will file a Joint Stipulation of Facts; 2) no later than February 21, 2025, the Petitioners and the Department shall file their respective Motions for Summary Judgment, Briefs in Support, and supporting documents; 3) no later than March 7, 2025, the Petitioners, the Department, and the amicus representative shall file Briefs in Response and Supporting documents; and 4) no later than March 14, 2025, the Petitioners, the Department, and the amicus representative shall file Briefs in Reply. (Commission file.)

10. On January 22, 2025, the Petitioners and the Department filed a Joint Stipulation of Facts with attached Exhibits 1 through 8. (Commission file.)

11. On February 24, 2025, the Commission mailed a complete copy of the pleadings filed on January 22, 2025, to the representative for Petitioner Pitz's former spouse. (Commission file.)

12. On February 24, 2025, the Commission issued an Amended Briefing Order directing the Petitioners and the Department to serve any future pleadings related to the Motion for Summary Judgment on the amicus representative for Petitioner Pitz's former spouse and amending the deadlines for filing subsequent pleadings as follows: 1) no later than March 21, 2025, the Petitioners, the Department, and the amicus representative shall file Briefs in Response and Supporting documents; and 2) no later than April 4, 2025, the Petitioners, the Department, and the amicus representative shall file Briefs in Reply. (Commission file.)

13. On February 25, 2025, the Petitioners filed a Motion for Summary Judgment, to which they attached a Supporting Affidavit and the Joint Stipulation of

Facts with Exhibits 1 - 8, which was previously filed on January 22, 2025. (Commission file.)

14. On February 25, 2025, the Commission received a letter from Attorney Weisse stating that the Department would not be filing a Motion for Summary Judgment but “reserved the right” to file a response brief to any submissions filed by the Petitioners and/or the amicus. (Commission file.)

15. On February 25, 2025, the Commission mailed a copy of the Petitioners’ Motion for Summary Judgment and Supporting Affidavit to the representative for Petitioner Pitz’s former spouse. (Commission file.)

16. On March 12, 2025, the Commission received a letter from Attorney Weisse on behalf of the Department. (Commission file.)

17. On March 12, 2025, the Commission issued a Scheduling Notice setting this matter for a telephone status conference on March 14, 2025. (Commission file.)

18. On March 14, 2025, the Commission issued a Memorandum and Second Amended Briefing Order further amending the briefing schedule as follows: 1) no later than March 21, 2025, the Petitioners, the Department, and the amicus representative may file Briefs in Response and Supporting documents; and 2) no later than April 25, 2025, the Petitioners, the Department, and the amicus representative may file Briefs in Reply. (Commission file.)

19. On March 21, 2025, the amicus representative filed a letter with attachments in response to the Motion for Summary Judgment filed by the Petitioners. (Commission file.)

20. On April 15, 2025, the Commission received a letter from Attorney Weisse on behalf of the Department which stated that the Department does not oppose the Petitioners' Motion for Summary Judgment and does not have arguments to make on the issues of law argued by the Petitioners. (Commission file.)

21. On April 29, 2025, the Petitioners filed a Reply Brief with attachments 1 through 8, reproducing the same attachments previously filed on January 22, 2025. (Commission file.)

Substantive Facts

22. James Pitz and Michelle Priebe were married from May 6, 1995, to June 7, 2018. (JSOF, ¶ 6.)

23. James Pitz and Michelle Priebe's youngest child was born in July of 2001, and that child completed his third year of high school in June of 2018. (JSOF, Ex. 2, p.1 and Petitioners' Motion for Summary Judgment, Exhibit A.)

24. On June 6, 2018, the Outagamie County Circuit Court entered a partial Final Order based on a stipulation regarding maintenance, child support, and debt and property division made between Petitioner James Pitz and Michelle Priebe in Outagamie County Circuit Court case number 17 FA 364. (JSOF, ¶ 7, Ex. 1.)

25. The June 6, 2018, Partial Final Order provided that "[c]hild support is considered a component of the maintenance award. In the event either party requests child support, maintenance shall be recalculated to take into consideration any child support ordered." (JSOF, ¶ 7, Ex. 1.)

26. The June 6, 2018, Partial Final Order further provided for the payment of maintenance by Petitioner James Pitz to Michelle Priebe on a three-tier schedule. Tier One is a flat amount to be paid every month with 48 hours of receipt of Petitioner Pitz's mid-month draw. Tier Two is described as both a percentage of Petitioner Pitz's gross Tier 2 Excess Draws, and also as a percentage of the parties' net disposable income after taxes. Tier Three is described as both a percentage of Petitioner Pitz's gross Tier 3 Excess Draws, and also as a percentage of the parties' net disposable income after taxes. (JSOF, ¶ 7, Ex. 1.)

27. On June 7, 2018, Petitioner James Pitz entered into a Marital Settlement Agreement with Michelle Priebe in Outagamie County Circuit Court case number 17 FA 364. (JSOF, ¶ 8, Ex. 2.)

28. On June 7, 2018, the Outagamie County Circuit Court granted a judgment of divorce to Petitioner James Pitz and Michelle Priebe. (JSOF, ¶ 9.)

29. On June 8, 2018, the Outagamie County Circuit Court signed the Findings of Fact, Conclusions of Law, and Judgment of Divorce in Outagamie Circuit Court case number 17 FA 364. (JSOF, ¶ 10, Ex. 3.)

30. On August 13, 2024, the Outagamie County Circuit Court entered an Order on a Motion to Show Cause in Outagamie County Circuit Court case number 17 FA 364 (JSOF, ¶ 11, Ex. 4.)

APPLICABLE LAW

The statutes pertinent to this ruling address the procedures followed by the parties during the summary judgment process and the substantive tax law which applies to the dispute.

APPLICABLE PROCEDURAL LAW

Wisconsin Statutes

CHAPTER 73 TAX APPEALS COMMISSION AND DEPARTMENT OF REVENUE

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 . . . subch. XIV of ch. 71

CHAPTER 802 CIVIL PROCEDURE - PLEADINGS, MOTION, AND PRETRIAL PRACTICE

Wis. Stat. § 802.08 Summary judgment.

(1) **AVAILABILITY.** A party may, within 8 months of the filing of a summons and complaint or within the time set in the scheduling order under s. 802.10, move for summary judgment on any claim, counterclaim, cross claim, or 3rd-party claim which is asserted by or against the party. Amendment of pleadings is allowed as in cases where objection or defense is made by motion to dismiss.

(2) **MOTION.** Unless earlier times are specified in the scheduling order, the motion shall be served at least 20 days before the time fixed for the hearing and the adverse party shall serve opposing affidavits, if any, at least 5 days before the time fixed for hearing. . . . The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the

affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(3) **SUPPORTING PAPERS.** Supporting and opposing affidavits shall be made on personal knowledge and shall set forth such evidentiary facts as would be admissible in evidence. Copies of all papers or parts thereof referred to in an affidavit shall be attached thereto and served therewith, if not already of record. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or denials of the pleadings but the adverse party's response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the party.

(4) **WHEN AFFIDAVITS UNAVAILABLE.** Should it appear from the affidavits of a party opposing the motion that the party cannot for stated present by affidavit facts essential to justify the party's opposition, the court may refuse the motion for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make any other order such as is just.

....

Administrative Code

TA 1.31 Motions.

- (1) Motions shall be brought in the manner provided under the rules of civil procedure in force in the circuit courts of this state except that the commission may issue notices of dates for hearings on motions.
- (2) The commission or the presiding commissioner may rule on any motion at the time set for the hearing on it after hearing the arguments of the party or parties present. The commission or presiding commissioner may rule on any motion if any party fails to appear at the time set for

hearing.

TA 1.39 Practice and Procedures.

Except as provided in TA 1.53, the practice and procedures before the commission shall substantially follow the practice and procedures before the circuit courts of this state.

APPLICABLE SUBSTANTIVE LAW

Federal Statutes

I.R.C. § 71 Alimony and separate maintenance payments²

(a) **General rule.** Gross income includes amounts received as alimony or separate maintenance payments.

(b) **Alimony or separate maintenance payments defined.** For purposes of this section –

(1) **In general.** The term “alimony or separate maintenance payment” means any payment in cash if–

(A) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument,

(B) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215,

....

(c) **Payments to support children.**

(1) **In general.**

Subsection (a) shall not apply to that part of any payment which the terms of the divorce or separation agreement fix (in terms of an amount of money or a part of the payment) as a sum which is payable for the support of the children of the payor spouse.

....

I.R.C. § 215 Alimony, etc. payments³

(a) **General rule.** In the case of an individual, there shall be allowed as a deduction an amount equal to the alimony or

² This statute was repealed in 2017, but it was controlling for maintenance orders entered on or before December 31, 2018.

³ This statute was repealed in 2017, but it was controlling for maintenance orders entered on or before December 31, 2018.

separate maintenance payments paid during such individual's taxable year.

(b) Alimony or separate maintenance payments defined. For purposes of this section, the term "alimony or separate maintenance payment" means any alimony or separate maintenance payment (as defined in section 71(b)) which is includible in the gross income of the recipient under section 71.

ANALYSIS

Summary judgment must be granted if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Maynard v. Port Publications, Inc.*, 98 Wis. 2d 555, 558, 297 N.W.2d 500 (1980) (citing Wis. Stat. § 802.08(2)). A party moving for summary judgment has the burden to establish the absence of a genuine, that is, disputed, issue as to any material fact. *Kraemer Bros. v. United States Fire Ins. Co.*, 89 Wis. 2d 555, 565, 278 N.W.2d 857 (1979). Any evidentiary facts in an affidavit are to be taken as true unless contradicted by other opposing affidavits or proof. *Artmar, Inc. v. United Fire & Casualty Co.*, 34 Wis. 2d 181, 188, 148 N.W.2d 641, 644 (1967).

In this appeal, there are no disputed facts. The two portions of the procedural statutes at issue in the appeal before the Commission are: 1) the clause directing the trial court to determine whether the moving party is "entitled to a judgment as a matter of law," and 2) whether a decision by a Circuit Court of Wisconsin determining the taxability of maintenance payments, made while this appeal was

pending before the Commission, precludes the Commission from exercising jurisdiction over that issue.

The Department has filed no briefs in response to Petitioners' Motion for Summary Judgment. In the letters which the Department sent to the Commission, counsel stated that the Department had no arguments to make regarding the application of Wisconsin law to the appeal here before the Commission.

This leaves the Commission in an unusual position; we can identify no previous instance where the Department has, for all practical purposes, conceded Petitioners' case but refused to settle. Either we accept the position of the Petitioners and grant their Motion for Summary Judgment, or we must do the work of the Department and conduct our own independent analysis, in what is essentially an adversarial position with regard to the Petitioners.

The Commission does have the benefit of a brief in the form of a letter, which was filed as an amicus pleading on behalf of the former spouse of Petitioner Pitz. This amicus brief raises a substantive issue of tax law, which the Commission must examine before it can determine whether the Petitioners here are entitled to a judgment as a matter of law.

On the foundational question of whether the Commission is precluded by the August 2024 Order of the Outagamie County Circuit Court, made in the context of contempt proceedings, from making a determination regarding the taxability of payments made by Petitioner Pitz to his former spouse, the Commission has concurrent jurisdiction to make such a determination with the Circuit Court. Wis. Stat. § 73.01(4)(a).

The Tax Appeals Commission is an independent tribunal exercising quasi-judicial functions. *Sawejka v. Morgan*, 56 Wis. 2d 70, 75 (1972) (citing *State ex rel. Thompson v. Nash*, 27 Wis. 2d 183, 195 (1965)). “[T]he circuit court and the tax appeals commission have concurrent jurisdiction to hear and determine all questions of law and fact arising under the tax laws of this state. The doctrines of exhaustion-of-remedies and primary-jurisdiction are not concerned with the question of subject-matter jurisdiction. The doctrines assume concurrent jurisdiction between the court and the agency and are addressed to the trial court’s discretion to decline jurisdiction in favor of that of the agency.” *Sawejka* at 78-79 (citing *Metzger v. Dep’t. of Taxation*, 35 Wis. 2d 119 (1967); *Wisconsin Collectors Asso. v. Thorp Finance Corp.*, 32 Wis. 2d 36 (1966)). When the Circuit Court entered its Order on August 13, 2024, it did not address jurisdictional issues or this pending appeal. The Commission has concurrent jurisdiction with the Circuit Court to determine the application of tax law to the parties to this appeal and views the Circuit Court’s August 2024 order as a clarification of the Judgment of Divorce. We write the remainder of this opinion to set forth a detailed application of tax law to the facts presented by the parties to this appeal.

The Commission now turns to the issue of tax law that brings the parties before it. Perhaps unsurprisingly, the Petitioners in this matter contend that the former spouse should be taxed on the income in question. The former spouse, Petitioner in the other appeal (TAC Docket No. 24-I-149), contends that it is the Petitioners appearing in this appeal who should be taxed. The two substantive issues of tax law which the Commission examines in this ruling center on the words chosen by the parties to

memorialize their agreement regarding ongoing maintenance payments from Petitioner Pitz to his former spouse. See *Melvin O. Seamans et al. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-583 (WTAC 2002) (citing *Hoover v. Commissioner*, 102 F.3d 842, (6th Cir. 1996) and *Sroufe v. Commissioner*, 69 TCM (CCH) 2870, 2874 (1995)).

First, the Commission examines a question it raised on its own behalf during telephonic status conferences: does the maintenance award agreed to by Petitioner Pitz and his former spouse include a child support component? A related question is, if the maintenance includes a child support component, how does that affect the taxability of the payments made as maintenance under the agreement and subsequent court order by Petitioner Pitz to his former spouse? The agreement between Petitioner Pitz and his former spouse was made a Partial Final Order of the Outagamie County Circuit Court in Outagamie County Circuit Court case number 17 FA 364 on June 6, 2018.⁴

The agreement stated in pertinent part:

1. Neither party shall pay child support. Child support is considered a component of the maintenance award. In the event either party requests child support, maintenance shall be recalculated to take into consideration any child support ordered.

...

5. The respondent⁵ shall pay maintenance to the petitioner for a term of 120 months from the date of the granting of the Final Judgment of Divorce. The maintenance paid by the respondent encompasses and includes consideration for any child support that may be due to the petitioner. In the event the respondent is required to pay child support his

⁴ JSOF, Ex. 1

⁵ In the divorce matter, James Pitz was designated the Respondent, and Michelle Priebe was designated the Petitioner.

maintenance payments shall be reduced by the same amount.
...⁶

The general rule in effect at the time the maintenance award was made regarding money paid as maintenance from one former spouse to another is that “[g]ross income includes amounts received as . . . maintenance payments.” I.R.C § 71(a). However, that general rule “shall not apply to that part of any payment which the terms of the divorce or separation agreement fix (in terms of an amount of money or a part of the payment) as a sum which is payable for the support of the children of the payor spouse.” I.R.C. § 71(c)(1).

Petitioners here argue that no party, not even the amicus, argues to the Commission that any portion of the payments made by Petitioner Pitz to his former spouse was in fact child support. However, at summary judgment, the Commission cannot limit its inquiry to the arguments of the parties. The Commission must determine whether any party is entitled to summary judgment as a matter of law. Wis. Stat. § 802.08(2). In order to do so here, the Commission examines the text of the agreement drafted by Petitioner Pitz and his former spouse, as subsequently ordered by the Circuit Court in 2018, to determine whether the maintenance paid by Petitioner Pitz to his former spouse is considered maintenance for tax purposes. The Commission cannot ignore the language regarding child support used by the parties, as Petitioners here urge us to do, when they point out that the agreement refers to the payments as “maintenance” throughout the document.

⁶ JSOF, Ex. 1, pages 1, 3.

The concern of the Commission initially arose from the plain language of the agreement and order, which states that an unspecified portion of the maintenance payments is child support. The issue of payments to a former spouse which include both spousal and child support has previously been examined by the Commission, which followed precedent set by the United States Supreme Court. *See Terance and Patricia Boerner v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-239 (WTAC 1996) (citing *Commissioner v. Lester*, 366 U.S. 299, (1961); and *Heilman v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-389 (WTAC 1998)). The Commission continues to follow its prior holdings here. The Outagamie County Circuit Court divorce judgment does not name a specific sum or a set percentage of the monthly maintenance payments as child support. Under the Supreme Court's ruling in *Lester*, where a divorce judgment is written as the judgment was here, that judgment does not "fix" a portion of the maintenance as child support in the manner required by federal tax law to change the party to whom the payment is attributable as taxable income. Accordingly, for tax purposes, no portion of the payments made by Petitioners to Petitioner Pitz's former spouse is includible in Petitioners' taxable income as money paid in the nature of child support.

Next, the Commission turns to the legal issue raised in the amicus pleadings: does the agreement of Petitioner Pitz and his former spouse regarding maintenance designate the payment of maintenance to be included as part of the recipient's gross income? The general rule in effect at the time the maintenance award was made governing taxability of maintenance payments is that they are to be included

in the gross income of the recipient⁷, and that the payor of maintenance is allowed to deduct maintenance payments from his or her gross income⁸. The most vexing part of this case is that the agreement in the family court matter between Petitioner Pitz and his former spouse describes the Tier Two and Tier Three maintenance payments both as a percentage of Petitioner Pitz's gross Excess Draws, and as a percentage of Petitioner Pitz and his former spouse's net disposable income after taxes.⁹ This conflicting language within the governing document should have been addressed by the taxing authority, given that it is a party to this dispute, however, the Department refused every opportunity to indicate its opinion as to who it believes is legally responsible for these taxes it claims are owed. Additionally, the agreement and subsequent order made in circuit court does not specifically reference I.R.C. § 215(a).

Amicus argues that, because the agreement signed by the parties describes the maintenance to be paid under Tiers Two and Three as a percentage of the parties' net disposable income after taxes, the agreement specifically designates those payments as a payment which is not includible in gross income under I.R.C § 71 and not allowable as a deduction under I.R.C § 215.¹⁰ The argument is that, when the parties used the phrase "after taxes," that was a specific designation pursuant to the exception to the general rule as outlined in I.R.C. § 71(b)(1)(B) in the divorce agreement filed in circuit court. In fleshing out her argument, the amicus urges the Commission to consider the reconciliations

⁷ I.R.C. § 71(a).

⁸ I.R.C. § 215(a)

⁹ JSOF, Ex. 1, pages 3 – 4.

¹⁰ I.R.C. § 215(b)(1)(B).

performed by Batley, CPA. The amicus argues that the reconciliations show that Batley reduced the amount Petitioner Pitz pays to his former spouse in Tiers Two and Three based on Petitioner Pitz's tax bracket as compared to the tax bracket of his former spouse. When Petitioners in this appeal then seek to deduct the maintenance payments from their gross income, amicus argues, they essentially get tax benefits at both the calculation of the maintenance due and again at the payment of the maintenance due. Petitioners argue that the phrase "net disposable income after taxes" is simply a shorthand reference to "Mac Davis calculations."¹¹ However, no party's arguments as to the intent and/or effect of the agreement are controlling here. See *Melvin O. Seamans et al. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-583 (WTAC 2002) (citing *Hoover v. Commissioner*, 102 F.3d 842, (6th Cir. 1996) and *Sroufe v. Commissioner*, 69 TCM (CCH) 2870, 2874 (1995)); *Linton v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-598 (WTAC 2002); *Carran v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-922 (WTAC 2006).

The question for the Commission then, is how explicit must the divorce instrument be to invoke the exception in I.R.C. § 71(b)(1)(B)? The tax statute does not require the citation of the pertinent tax statute by, for example, designating "such payment as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215."¹² Notwithstanding the fact that the statute

¹¹ "Mac Davis calculations" is itself a shorthand reference to an Excel spreadsheet. Waukesha County Circuit Court Judge J. Mac Davis developed the spreadsheet during his time on the bench, and he updated formulas in the spreadsheet until his retirement from the bench in 2015. The spreadsheet could be used by litigants to calculate the ultimate result of various maintenance orders during the pendency of divorce proceedings. A litigant could enter various figures into the spreadsheet, which itself contained formulas which applied the tax rates applicable to each litigant. The user could then see what an order for a particular amount of maintenance would mean for each party's post-tax discretionary income.

¹² I.R.C. § 71(b)(1)(B)

does not require specific reference to the statute by name or number, the Commission finds that a designation for tax purposes must be more explicit than that which is present in the agreement between Petitioner Pitz and his former spouse. “Net disposable income after taxes” does not on its face mean the same as “not includible in gross income under [I.R.C. § 71(b)(1)(B)] and not allowable as a deduction under [I.R.C.] section 215.”¹³ There is no indication that the parties intended for the phrase referring to the parties’ net disposable income after taxes to substitute for a specific designation, either naming the applicable tax statute or reciting its application to gross income, regarding the tax treatment of the maintenance payments. The Commission concludes that the parties did not designate, with adequate specificity, that the maintenance payments from Petitioner Pitz to his former spouse are not includible in gross income of the payee and not allowable as a deduction from the gross income of Petitioner Pitz’s former spouse. The maintenance paid by Petitioner Pitz to his former spouse for the tax years 2019, 2020, 2021, and 2022 are appropriately deducted from the gross income of the Petitioners.

CONCLUSIONS OF LAW

1. The maintenance payments made by Petitioner Pitz to his former spouse for maintenance for the tax years 2019, 2020, 2021, and 2022 are deductible from Petitioners’ gross income, as those payments did not fix (in terms of an amount of money or as a specified percentage of the payment) a sum which was payable for the support of the children of the payor spouse as required by I.R.C. § 71(c)(1) and I.R.C. § 215.

¹³ Id.

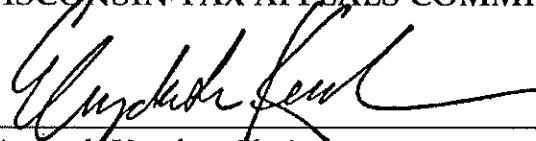
2. Pursuant to I.R.C. § 215 (a), the maintenance payments made by Petitioner Pitz to his former spouse for maintenance for tax years 2019, 2020, 2021 and 2022 are deductible from Petitioners' gross income, as the parties to the divorce instrument did not designate, with adequate specificity, a contrary provision for the taxation of those payments in the agreement regarding maintenance as required by I.R.C. § 71(b)(1)(B).

ORDER

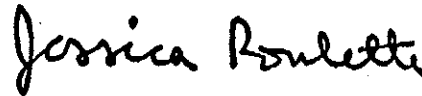
Based on the foregoing, it is the order of this Commission that the Petitioners' Motion for Summary Judgment is hereby granted.

Dated in Madison, Wisconsin, this 16th day of October, 2025.

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.