

FILED

OCT 16 2025

STATE OF WISCONSIN
TAX APPEALS COMMISSION

Wisconsin Tax Appeals Commission
Drew Fox - Clerk

MICHELLE PRIEBE,

DOCKET NO. 24-I-149

Petitioner,

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 Respondent's Motion for Summary Judgment. The Petitioner, Michelle Priebe, appears by Mr. Genaro Cardaropoli, CPA. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Dominic L. Weisse. The Department has filed a brief with attached exhibits, including an affidavit with additional attached exhibits, in support of its Motion, as well as a letter in reply to Petitioner's Response. Petitioner's representative has filed a Response to the Department's Motion for Summary Judgment.

The Commission grants the Respondent's Motion for Summary Judgment.

ISSUE

The issue for determination is whether Petitioner must include maintenance payments paid to Petitioner by her former spouse in her taxable income

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 October 24, 2023, the Department issued a letter to Petitioner notifying her that the claims for refund for tax years 2019¹, 2020², and 2021³ were denied. (Affidavit of Alexander Hans, styled as Exhibit A of Department’s June 27, 2025, Brief in Support of Motion for Summary Judgment (“Hans Aff.”), ¶ 16; Ex. A appended to Hans Aff.; Ex. B of Department’s June 27, 2025, Brief in Support of Motion for Summary Judgment (“Dep’t. Br.”).)

2. On October 30, 2023, the Department received correspondence from the Petitioner which it treated as a timely Petition for Redetermination for the 2019, 2020, and 2021 tax years. (Hans Aff., ¶ 17, Ex. B appended to Hans Aff.; Ex. C of Dep’t. Br.)

3. On November 7, 2023⁴, the Department issued a Notice of Office Audit Amount Due – Individual Income Tax to the Petitioner for the total amount of \$6,527.09 for tax year 2022, which assessed the Petitioner in the alternative for that tax

¹ Petitioner’s amended 2019 income tax return claimed a refund was due in the amount of \$9,230.

² Petitioner’s amended 2020 income tax return claimed a refund was due in the amount of \$7,021.

³ Petitioner’s amended 2021 income tax return claimed a refund was due in the amount of \$5,575.

⁴ Respondent’s June 27, 2025, Brief in Support of Motion for Summary Judgment lists this document with a date of November 27, 2023, but the document itself reflects the date used by the Commission in this recitation.

year with Petitioner's former spouse, James Pitz, and her former spouse's new spouse, Anastasia Burkham. (Hans Aff., ¶ 20; Ex. C appended to Hans Aff.; Ex. D of Dep't. Br.)

4. On November 17, 2023, the Department received correspondence from the Petitioner which it treated as a timely Petition for Redetermination for the 2022 tax year. (Hans Aff., ¶ 21, Ex. D appended to Hans Aff.; Ex. E of Dep't. Br.)

5. On March 27, 2024, the Department issued a Notice of Action to the Petitioner denying her Petitions for Redetermination. (Hans Aff., ¶ 22, Ex. E appended to Hans Aff.; Ex. F of Dep't. Br.)

6. On April 25, 2024, the Petitioner filed a timely Petition for Review with the Commission. (Commission file.)

7. On May 23, 2024, the Department filed an Answer in this appeal. (Commission file.)

8. On May 29, 2024, the Commission scheduled this matter for an initial telephone status conference on July 11, 2024. (Commission file.)

9. On July 10, 2024, the Department filed a Motion to Consolidate this appeal with the appeal docketed under Commission docket number 24-I-159, along with a Supporting Affidavit and a Proposed Order to Consolidate. (Commission file.)

10. On July 11, 2024, the Commission held an initial telephone status conference and issued a Memorandum and Briefing Order which noted the Motion for Consolidation filed the previous day was not ripe to be heard and scheduled Briefing of the Department's Motion for Partial Summary Judgment. (Commission file.)

11. On September 10, 2024, the Commission issued a Ruling and Order on the Department's Motion for Partial Summary Judgment, dismissing Petitioner's Petition for Review of the 2018 tax year. (Commission file.)

12. On September 18, 2024, Petitioner filed a Petition for Review of the Commission's September 10, 2024, Ruling and Order with the Outagamie Circuit Court. The Petition for Review was assigned a court case filing number of 2024 CV 992. (Commission file.)

13. On September 27, 2024, the Commission issued an order placing this appeal in abeyance pending resolution of the Petition for Review by the Outagamie Circuit Court. (Commission file.)

14. On January 10, 2025, the Honorable Troy L. Nielsen dismissed the Petition for Review in Outagamie County Circuit Court case number 2024 CV 992. (Commission file.)

15. On April 23, 2025, the Department filed in this matter a Motion for Leave to File a Motion for Summary Judgment with supporting Affidavit. (Commission file.)

16. On May 16, 2025, the Commission issued a Memorandum and Order memorializing a telephone status conference held in this matter on May 16, 2025. That Memorandum and Order contained the Commission's orders regarding the briefing schedule for the Department's Motion for Summary Judgment. (Commission file.)

17. On June 12, 2025, the Department filed a Motion to Consolidate this matter with the appeal filed under Commission Docket Number 24-I-159, with attached Exhibits A through F. (Commission file.)

18. On June 13, 2025, the Commission issued an Order denying the motion for consolidation. (Commission file.)

19. On June 27, 2025, the Department filed a Motion for Summary Judgment and Brief in Support of the Motion. The Department attached Exhibits A through Q to its Brief in Support. Exhibit A to the Brief in Support consisted of an Affidavit, which itself had attached Exhibits A through F. The Exhibits attached to the Affidavit, while marked with the same letters as the Exhibits attached to the Brief in Support, consist of different documents than those bearing the same designation attached to the Brief in Support. (Commission file.)

20. On August 4, 2025, the Commission issued an Amended Briefing Order regarding the remaining pleadings due with regard to the issue of summary judgment. (Commission file.)

21. On August 12, 2025, the Petitioner filed a Response to the Department's Motion for Summary Judgment. (Commission file.)

22. On August 14, 2025, the Department submitted a letter to the Commission in reply to the Petitioner's Response. (Commission file.)

Substantive Facts

23. James Pitz and Michelle Priebe were married from May 6, 1995, to June 7, 2018. (Ex. M of Dep't. Br.)

24. On June 6, 2018, the Outagamie County Circuit Court entered a Partial Final Order based on a stipulation regarding maintenance, child support, debt, and property division made between Petitioner and James Pitz in Outagamie County Circuit Court case number 17 FA 364. (Ex. K of Dep't. Br.)

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." (Ex. K of Dep't. Br.)

26. The June 6, 2018, Partial Final Order further provided for the payment of maintenance to Petitioner by James Pitz on a three-tier schedule. Tier One is a flat amount to be paid every month with 48 hours of receipt of James Pitz's mid-month draw. Tier Two is described as both a percentage of James 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 James Pitz's gross Tier 3 Excess Draws, and also as a percentage of the parties' net disposable income after taxes. (Ex. K of Dep't. Br.)

27. On June 7, 2018, Petitioner entered into a Marital Settlement Agreement with James Pitz in Outagamie County Circuit Court case number 17 FA 364. (Ex. L of Dep't. Br.)

28. On June 7, 2018, the Outagamie County Circuit Court granted a judgment of divorce to Petitioner and James Pitz. (Ex. M of Dep't. Br.)

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. (Ex. M of Dep't. Br.)

30. On August 13, 2024, the Outagamie County Circuit Court entered an Order on a Motion for an Order to Show Cause in Outagamie County Circuit Court case number 17 FA 364. (Ex. N of Dep't. Br.)

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 payments⁵

(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,

....

⁵ This statute was repealed in 2017, but it was controlling for maintenance orders entered on or before December 31, 2018.

(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. payments⁶

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

⁶ This statute was repealed in 2017, but it was controlling for maintenance orders entered on or before December 31, 2018.

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.

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 to Petitioner by her former spouse, the Commission has concurrent jurisdiction with the Circuit Court to make such a determination. 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 Assn. 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 Petitioner in this matter contends that her former spouse should be taxed on the income in question. The former spouse, Petitioner James Pitz in the other appeal (TAC Docket No. 24-I-159), contends that it is the Petitioner 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 to Petitioner from her 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 and her 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 to Petitioner by her former spouse? The agreement between Petitioner and her 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, 2018.⁷ 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 respondent⁸ 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 maintenance payments shall be reduced by the same amount.

...⁹

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).

In order to determine whether either party is entitled to summary judgment

⁷ Exhibit K of Dep't. Br.

⁸ In the divorce matter, Michelle Priebe was designated the Petitioner, and James Pitz was designated the Respondent.

⁹ Exhibit K to Dep't. Br., pages 1, 3.

as a matter of law, the Commission examines the text of the agreement drafted by Petitioner and her former spouse, as subsequently ordered by the Circuit Court in 2018, to determine whether the maintenance paid to Petitioner by her former spouse is considered maintenance for tax purposes.

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 to Petitioner by her former spouse is excludible from Petitioner's taxable income as money paid in the nature of child support.

Next, the Commission turns to the legal issue raised by Petitioner: does the agreement of Petitioner and her 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 recipient¹⁰, and that the payor of maintenance is allowed to deduct maintenance payments from his or her gross income¹¹. The most vexing part of this case is that the agreement in the family court matter between Petitioner and her former spouse describes the Tier Two and Tier Three maintenance payments both as a percentage of the former spouse's gross Excess Draws, and as a percentage of Petitioner and her former spouse's net disposable income after taxes.¹² The Department argues that the language of the divorce agreement means that the amount of the maintenance due is to be calculated on the net disposable income of both parties. The Department further notes that the presiding family court judge in Outagamie County issued an order on August 13, 2024. The Department characterizes the August 13, 2024, order as "signaling that the court's understanding was that the payments would constitute alimony and be includible to Michelle Priebe." Dep't Br. at 12. As discussed above, it is the language of the agreement, and not the parties' intent, which controls the analysis for tax purposes. Neither the agreement of Petitioner and her former spouse nor the subsequent order made in circuit court specifically references I.R.C. § 215(a). It is arguable that when the family court wrote "pursuant to the law in effect for divorce judgments entered prior to December 31, 2018," the Outagamie Circuit Court was referencing the applicable tax statutes. Given that the

¹⁰ I.R.C. § 71(a).

¹¹ I.R.C. § 215(a)

¹² Exhibit K to Dep't. Br., pages 3 – 4.

order does not specifically name the specific law being considered, the Commission continues its analysis.

Petitioner 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 § 215.¹³ 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, Petitioner urges the Commission to consider the reconciliations performed by Batley, CPA. Petitioner argues that the reconciliations show that Batley reduced the amount Petitioner is paid by her former spouse in Tiers Two and Three based on her former spouse's tax bracket as compared to the tax bracket of Petitioner. When Petitioner's former spouse then seeks to deduct the maintenance payments from his gross income, Petitioner argues, the former spouse essentially gets tax benefits at both the calculation of the maintenance due and again at the payment of the maintenance due. In the companion appeal before this Commission, Petitioner's former spouse argues that the phrase "net disposable income after taxes" is simply a shorthand reference to "Mac Davis calculations."¹⁴ However, no party's arguments as

¹³ I.R.C. § 215(b)(1)(B).

¹⁴ "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

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."¹⁵ Notwithstanding the fact that the statute 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 and her 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."¹⁶ There is no indication that the parties used 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

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.

¹⁵ I.R.C. § 71(b)(1)(B)

¹⁶ *Id.*

specificity, that the maintenance payments to Petitioner from her former spouse are not includible in gross income of the payee and not allowable as a deduction from the gross income of Petitioner as required by I.R.C. § 71(b)(1)(B). The maintenance paid to Petitioner by her former spouse for the tax years 2019, 2020, 2021, and 2022 is appropriately included in the gross income of Petitioner.

CONCLUSIONS OF LAW

1. The maintenance payments made to Petitioner by her former spouse for maintenance for the tax years 2019, 2020, 2021, and 2022 are includible in Petitioner's gross income, as those payments did not fix (in terms of an amount of money or as a specified percentage of the payment) as 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.

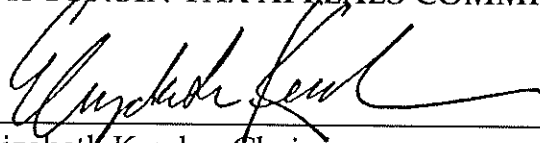
2. Pursuant to I.R.C. § 215 (a), the maintenance payments made to Petitioner by her former spouse for maintenance for tax years 2019, 2020, 2021 and 2022 are includible in Petitioner's gross income, as the parties to the divorce instrument did not designate, with adequate specificity, a contrary provision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

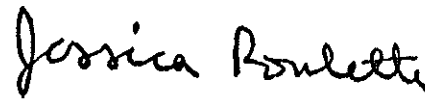
ORDER

Based on the foregoing, it is the order of this Commission that the Respondent's 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.