

ROYER KENNETH HC10200 100584 TAC

February

STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
RECEIVED
OCT 9 1984
LEGAL DIVISION

KENNETH L. ROYER
1125A S. 13th Street
Manitowoc, WI 54220

Petitioner,

DOCKET NO. HC-10,200

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8933
Madison, WI 53708

Respondent.

The above-entitled matter having come on to be heard before this Commission; the petitioner, Kenneth L. Royer, having failed to appear and the respondent having not waived his personal appearance; the respondent, Wisconsin Department of Revenue, having appeared by its attorney, Veronica Folstad; and the respondent having moved this Commission for an order dismissing the petitioner's petition for review on the grounds that petitioner's failure to appear violates the personal appearance requirement of s. 71.12(3) of the Wisconsin Statutes, and moving in the alternative that this Commission affirm its action based on the record presented; having considered the entire record before it, this Commission hereby finds, decides and rules as follows:

1. On or about April 18, 1983, the petitioner, Kenneth L. Royer, filed a timely Schedule H, Wisconsin Homestead Credit Claim with the respondent, Wisconsin Department of Revenue, for the year 1982 in the amount of \$148.00. Petitioner's claim was

based on a "rent constituting property taxes accrued" basis. Said claim reflected zero household income and contained the following statement, "I was on general relief for entire year 1982. They paid my rent and restaurant".

2. Under date of May 2, 1983, the respondent issued a notice denying the petitioner's homestead claim on the following basis: "Since you did not pay the rent for 1982 your allowable rent is zero. As a result of the adjustment above, homestead credit will not be available to you for 1982."

3. On June 17, 1983, the petitioner filed a petition for redetermination with the respondent, which it denied on October 17, 1983. On October 21, 1983, the petitioner appealed the respondent's denial to this Commission.

4. S. 71.09(7)(a)6. of the Wisconsin Statutes contains the following:

"Rent constituting property taxes accrued" means 25% of the gross rent actually paid in cash or its equivalent . . . each year by a claimant and his household solely for the right of occupancy of their Wisconsin homestead in such calendar year . . ."
(Emphasis added)

5. The Manitowoc County Department of Social Services, not the petitioner, paid his rent for the calendar year 1982.

6. S. 71.12(3) of the Wisconsin Statutes contains the following:

"No person against whom an assessment of income tax

has been made shall be allowed in any action, either as plaintiff or defendant or in any other proceeding to question such assessment unless the requirements of sub (1) shall first have been complied with, and unless such person shall have made full disclosure under oath at the hearing before the tax appeals commission of any and all income received by him. The requirements of this subsection may be waived by the department of revenue".

7. On July 31, 1984, after the instant hearing was scheduled, this Commission received correspondence from the petitioner indicating that he would not be able to attend the hearing due to poor health.

8. The respondent has established a "prima facie" case. The petitioner may not claim rent paid by the Manitowoc County Department of Social Services as "rent constituting property taxes accrued" as the basis for his homestead credit claim under the terms of s. 71.09(7)(a)6. of the Wisconsin Statutes.

9. The respondent has shown good and sufficient grounds for the granting of its alternative motion that its action in denying the petitioner's homestead credit claim be affirmed.

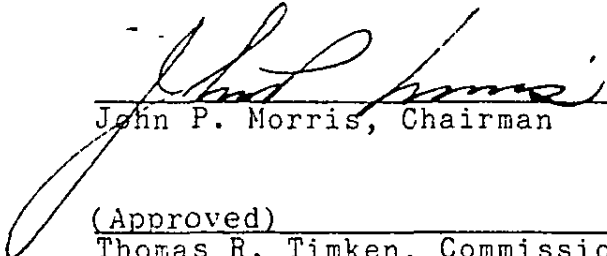
Therefore,

IT IS HEREBY ORDERED

That the respondent's action in denying petitioner's homestead credit claim be and the same is hereby affirmed.

Dated at Madison, Wisconsin, this 5th day of October,
1984.

WISCONSIN TAX APPEALS COMMISSION



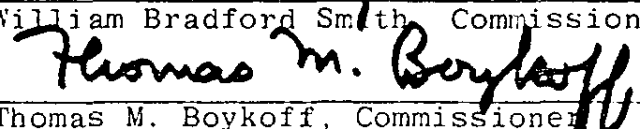
John P. Morris, Chairman

(Approved)

Thomas R. Timken, Commissioner



William Bradford Smith, Commissioner



Thomas M. Boykoff, Commissioner

cc: Petitioner
Respondent

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"