

HAUGEN JOHN R & GWENDOLYN 94160 092095 TAC

Wisconsin Tax Appeals Commission
SEP 20 1995
Darlene Skolaski
Deputy Clerk

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STATE OF WISCONSIN
TAX APPEALS COMMISSION

JOHN R. AND GWENDOLYN HAUGEN
603 County Road "X"
Edgerton, WI 53534

Petitioners,

vs.

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

Respondent.

- * DOCKET NO. 94-I-60
- * RULING AND ORDER
- * AWARDING SUMMARY
- * JUDGMENT

SEP 1995
State of Wisconsin
Department of Revenue
Received
Legal Staff

JOSEPH P. METTNER, COMMISSIONER, JOINED BY MARK E. MUSOLF, COMMISSION CHAIRPERSON, AND DON M. MILLIS, COMMISSIONER:

This matter is before the Commission based upon the respondent's Motion for Summary Judgment, which was filed along with supporting papers on November 25, 1994.

In conjunction with the respondent's motion, the parties subsequently have filed briefs and letters of clarification.

The petitioners are represented in this matter by Attorney Galen W. Pittman. The respondent is represented by Attorney Michael J. Buchanan.

Having considered the submissions of the parties in their entirety, this commission finds, rules, and orders as follows:

1. During 1990, the petitioners jointly filed a 1989 Wisconsin income tax return ("the original return") in which they claimed, inter alia, that their 1989 federal adjusted gross income was \$48,749, that their gross Wisconsin income tax liability was equal to \$735, and that they owed \$626 in income taxes as a

result of the information included in the return. Included in the federal adjusted gross income reported on the original return was a gain on the 1989 sales of certain farm animals and farm equipment, as originally reported by the petitioners on federal Schedule 4797 for that year. This resulted in a Wisconsin subtraction modification of \$21,020 for 1989.

2. In November 1990, the petitioners filed an amended 1989 Wisconsin income tax return ("the first amended return") in which they claimed a Farmland Preservation Credit in the amount of \$350 for 1989. The petitioners' explanation for the change was noted as "Taxpayer is filing for Farmland Preservation under prior year law. Real estate taxes not paid. Agreement dated 10-5-82."

3. In May of 1991, the petitioners filed another amended 1989 Wisconsin income tax return ("the second amended return"), in which the gain from the 1989 sale of the farm animals and farm equipment was removed from the calculation of Wisconsin income. The petitioners' stated explanation for the change reflected in the amended return was that the gain was not reportable under § 108 of the Internal Revenue Code, which relates to certain exclusions of income from the discharge of indebtedness. Also on the second amended return, the petitioners reasserted their claim of a Farmland Preservation Credit in the amount of \$350 for 1989.

4. On February 24, 1992, the respondent issued a Notice of Amount Due to the petitioners in which the petitioners were assessed additional taxes and interest due in the amount of \$4,750.94. The respondent's assessment was based upon its implicit

disallowance of the subtraction modification made in the second amended return relating to the 1989 sales of farm animals and equipment through the respondent's use of taxable income as reported on the petitioners' original return. The respondent also adjusted the petitioners' 1989 income to reflect a recognizable portion of gain realized on the proceeds from a foreclosure sale of mortgaged property previously held by the petitioners for which no basis substantiation was provided by the petitioners to the respondent's agents. Lastly, the respondent disallowed the petitioners' Farmland Preservation Credit claim because no certification was ever provided that the prior year's real estate taxes were ever paid by the petitioners.

5. The petitioners filed a petition for redetermination with the respondent in a letter dated April 21, 1992.

6. The respondent issued its Notice of Action in a letter dated December 13, 1993, in which it denied the petitioners' petition for redetermination.

7. There is no genuine issue of material fact in this case.

8. The foreclosure sale for which the respondent allocated recognizable gain to the petitioners for the 1989 tax year in fact took place on November 20, 1990, as shown by a 1990 Form 1099-A issued by the Farm Credit Bank of St. Paul, as lender, noting gross sale proceeds in the amount of \$89,847.41. Accordingly, petitioners are entitled to summary judgment on that issue.

9. The respondent has shown good and sufficient grounds for the granting of its motion for summary judgment on the remainder of issues under review and is entitled to judgment in its favor on those issues as a matter of law under § 802.08, Stats., for the following reasons:

a) The facts do not show the presence of any discharge of indebtedness income for the petitioners relating to the 1989 tax year which would qualify under § 108, I.R.C.

b) The petitioners have admitted that they did not pay 1988 real estate taxes, as required under the certification provisions of § 71.59(1)(b), Stats. (1989-90), in order to support their eligibility to claim a 1989 Farmland Preservation Credit. If it was the intent of the petitioners to file for a Farmland Preservation Credit under § 71.60(1)(b), Stats., using the prior year's law method, the petitioners would nonetheless be ineligible for the credit due to their claimed level of household income under § 71.09(11)(b)1, Stats. (1981-82), and the facts do not indicate eligibility for the minimum credit under § 71.09(11)(bm), Stats. (1981-82).

10. On December 19, 1994, the respondent issued to the petitioners a separate assessment for the 1990 tax year in the amount of \$4,055.85 for additional income tax as a result of the gain on the 1990 foreclosure sale of real estate. The period of time within which the petitioners could have petitioned for redetermination of this separate assessment expired on February 20, 1995, rendering it final and conclusive under § 71.88, Stats.

11. In a letter submitted to the Commission by the petitioners' attorney, the petitioners requested that the 1990 assessment be consolidated with this action for review before the Commission and asked that the Commission reprimand the respondent's attorney for alleged ethical violations in the course of the issuance of the separate assessment for 1990 against the petitioners.

12. The conclusive 1990 assessment on the foreclosure sale gain cannot be reviewed by this commission due to the Commission's lack of subject matter jurisdiction over the respondent's action, there being no redetermination by the respondent for the Commission to review. Further, this commission has no jurisdiction to review alleged violations of the Rules of Professional Conduct for Attorneys.

Therefore,

IT IS ORDERED

1. The petitioners are awarded summary judgment with respect to respondent's assessment for gain on the foreclosure sale of real estate.

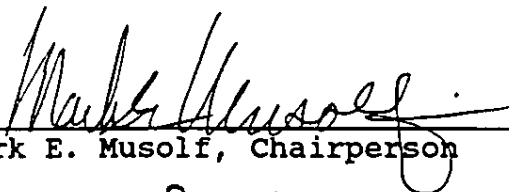
2. The respondent is awarded summary judgment with respect to its assessment pertaining to the petitioners' discharge of indebtedness income and eligibility for the Farmland Preservation Credit for the 1989 tax year.

3. The respondent's action on the petitioners' petition for redetermination is hereby affirmed, as modified by the removal of the 1989 foreclosure sale gain as a component of that


redetermination.

Dated at Madison, Wisconsin, this 20th day of September,
1995.

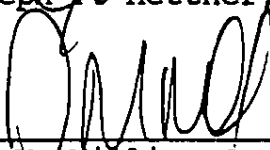
WISCONSIN TAX APPEALS COMMISSION



Mark E. Musolf, Chairperson



Joseph P. Mettner, Commissioner



Don M. Millis, Commissioner

ATTACHMENT: "Notice of Appeal Information"