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RETTIG JOHN R E READE 9511260 071996 TAC



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Wisconsin Tax Appeals Commissioner
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STATE OF WISCONSIN
TAX APPEALS COMMISSION

JOHN R. AND E. READE RETTIG
5402 Whitcomb Drive
Madison, WI 53711

*
* DOCKET NO. 95-I-1260

Petitioners,

vs.

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

* RULING AND ORDER
* AWARDING SUMMARY
* JUDGMENT

JUL 19 1996
State of Wisconsin
Department of Revenue
Received
Legal Staff

Respondent.

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

The above-entitled matter comes before the Commission on the parties' cross-motions for summary judgment. Both parties have filed supporting papers and briefs in support of their respective motions for summary judgment. Petitioners are represented by Attorney John K. Smerlinski. Respondent is represented by Attorney Kevin B. Cronin. For the reasons stated below, the Commission grants respondent's motion.

Based upon the entire record, the Commission finds, rules, and orders as follows:

UNDISPUTED MATERIAL FACTS

1. Petitioners are Wisconsin residents, residing at 5402 Whitcomb Drive, Madison, Wisconsin 53711.
2. Petitioner John R. Rettig was a member of the Wisconsin Retirement Fund ("WRF") from March 1950 until January 31, 1963.

3. On January 31, 1963, Mr. Rettig became a member of the State Teachers Retirement System ("STRS") and remained a member until November 30, 1985, when he retired.

4. From 1950 until his retirement in 1985, Mr. Rettig had a retirement account in the WRF. From 1963 until his retirement in 1985, Mr. Rettig had a retirement account in the STRS.

5. The WRF and STRS were separate and discrete teacher retirement systems until they were merged into the Wisconsin Retirement System ("WRS") in 1982. At this time, the Public Employee Trust Fund ("PETF") was created to further the purposes of the WRS.

6. Since his retirement in 1985, Mr. Rettig has received a retirement annuity from the PETF based on his membership attributable to his separate and discrete accounts in each of the two retirement systems. The portion of his annuity attributed to the WRF is based on 12.83 years of creditable service. The portion of his annuity attributed to the STRS is based on 27.68 years of creditable service, including military service.

7. Petitioner E. Reade Rettig was a member of the WRF from March 1947 until July 1, 1960.

8. In July of 1960, Mrs. Rettig became a member of the STRS and remained a member until July 31, 1987, when she retired.

9. From 1947 until her retirement in 1987, Mrs. Rettig had a retirement account in the WRF. From 1960 until her retirement in 1987, Mrs. Rettig had a retirement account in the

STRS.

10. Since her retirement in 1987, Mrs. Rettig has received a retirement annuity from the PETF based on her membership attributable to her separate and discrete accounts in each of the two retirement systems. The portion of her annuity attributed to the WRF is based on 13.29 years of creditable service. The portion of her annuity attributed to the STRS is based on 27.13 years of creditable service.

11. On their joint state income tax returns for years 1989 through 1992, petitioners deducted from their income all of their annuity payments received from the PETF.

12. On May 30, 1994, respondent assessed petitioners \$4,304.60 in taxes and interest for the years 1989 through 1992. Respondent determined this tax liability by including in petitioners' income that portion of their respective annuities attributed to petitioners' respective years of creditable service with the WRF.

13. Under the date of July 18, 1994, petitioners filed a petition for redetermination. Under the date of June 26, 1995, respondent denied the petition for redetermination. Petitioners filed a timely petition for review with the Commission.

APPLICABLE WISCONSIN STATUTES

71.05 Income computation.

(1) EXEMPT AND EXCLUDABLE INCOME. There shall be exempt from taxation under this subchapter the following:

(a) Retirement systems. All payments received from ... the public employe trust

fund as successor to ... the Wisconsin state teachers retirement system, which are paid on the account of any person who was a member of the paying or predecessor system or fund as of December 31, 1963

RULING

The parties agree that there is no genuine issue of material fact, that this matter is ripe for summary judgment, and that the sole issue is whether petitioners' annuity payments based on their years of creditable service under the WRF are exempt from the income tax.¹ There is no dispute that the portion of petitioners' respective annuities based on their years of creditable service with the STRS is exempt.

This issue can be resolved by a careful review of § 71.05(1)(a), Stats. In construing this exemption, we are mindful of the "long-established rule of statutory construction in this state that tax exemptions ... are matters of legislative grace and tax statutes are to be strictly construed against granting the same. One who claims such an exemption must ... bring himself clearly within the terms of the exemption." Ramrod, Inc. v. Department of Revenue, 64 Wis. 2d 499, 504, 219 N.W.2d 604 (1974). While the construction need not be the most narrow, all doubts are to be resolved against the exemption and in favor of taxability. Revenue Dept. v. Greiling, 112 Wis. 2d 602, 605, 334 N.W.2d 118

¹ In its submissions, respondent addressed two issues raised in the petition for redetermination: the statute of limitations for 1989 and the apportionment of exempt and non-exempt income. Petitioner neither contested nor submitted any evidentiary facts concerning these issues. Therefore, the Commission need not address these issues.

(1983).

In relevant part, the exemption applies only to those payments from the PETF made as successor to the STRS and paid "on the account" of a person who was a member of the STRS on December 31, 1963. Payments from the PETF as successor to the WRF do not fall within the scope of the exemption. Moreover, the exemption is based on payments made on the account of a person who was a member of the predecessor system. In this case, "predecessor system" can only refer to the STRS or the Milwaukee Public School Teachers' Annuity and Retirement System, not the WRF.

Petitioners cite § 40.20, Stats., for the proposition that the WRF and STRS must be considered one in the same for all purposes, including the tax status of their annuities. They cite language that provides, for all relevant purposes, "the Wisconsin retirement system is a continuation of the Wisconsin retirement fund." This language says nothing about treating the STRS and the WRF identically for tax purposes. Even if this general language could be construed to mandate equal treatment of the WRF and STRS in conflict with the exemption at issue, the more specific language in § 71.05(1)(a), Stats., would control. Pope v. DHSS, 187 Wis. 2d 207, 213, 522 N.W.2d 22 (Ct. App. 1994),

Petitioners also argue that because the WRF was a predecessor to the WRS, payments based on years of creditable service with the WRF must also be exempt. Were this to be the case, there would be no need for the legislature to have mentioned two other predecessors of the WRS in the exemption. Petitioners'

construction is untenable because it would render a portion of the exemption language as surplusage. Kelley Co., Inc. v. Marquardt, 172 Wis. 2d 234, 250, 493 N.W.2d 68 (1992).

That portion of petitioners' respective annuities attributed to years of service under the WRF are not excluded from the income tax because § 71.05(1)(a), Stats., does not exempt payments on the account of a person who was a member of the WRF.

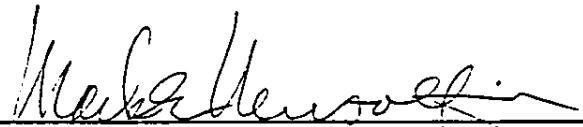
Therefore,

IT IS ORDERED

That respondent's motion for summary judgment is granted, and its action on petitioners' petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 19th day of July, 1996.

WISCONSIN TAX APPEALS COMMISSION



Mark E. Musolf, Chairperson



Joseph P. Mettner, Commissioner



Don M. Millis, Commissioner

ATTACHMENT: "Notice of Appeal Information"