

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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ARTHUR AND PATRICIA CURTES,

DOCKET NO. 16-I-110

Petitioners,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**RULING AND ORDER ON MOTION FOR SUMMARY JUDGMENT**

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**DAVID D. WILMOTH, COMMISSIONER:**

This case comes before the Commission for decision on a Joint Stipulation of Facts submitted by the parties and the Respondent's Motion for Summary Judgment. The Petitioners, Arthur and Patricia Curtes, of Hartland, Wisconsin, are represented in this matter by Brad M. Voght, CPA. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Jenine E. Graves. As part of their Stipulation, the parties agreed the Commission may decide the case based upon their Joint Stipulation of Facts and the parties' briefs without any further hearing or submissions. For the reasons set forth below, we hold in favor of the Department.

## FACTS

### *Jurisdictional Facts*

1. On September 3, 2015, the Department issued to the Petitioners a Notice of Amount Due - Individual Income Tax for the calendar year ending December 31, 2011. (Joint Stipulation of Facts ("Stip.") ¶ 1; Ex. A.)
2. By letter dated September 14, 2015, the Petitioners timely filed a Petition for Redetermination of the additional assessment. (Stip. ¶ 2; Ex. B.)
3. By Notice of Action dated March 11, 2016, the Department denied the Petitioners' Petition for Redetermination. (Stip. ¶ 3; Ex. C.)
4. The Petitioners timely appealed the Department's denial to the Commission on May 2, 2016. (Stip. ¶ 4; Ex. D.)
5. The parties agreed that this matter could be resolved on cross-motions for summary judgment based on a Joint Stipulation of Facts. By Status Conference Memorandum and Briefing Order dated February 17, 2017, the Commission set dates for the submission of a Joint Stipulation of Facts, the filing of motions for summary judgment along with supporting briefs, and the filing of responsive briefs. (Commission file.)
6. On March 2, 2017, the parties filed the Joint Stipulation of Facts with the Commission. (Commission file.)
7. On May 4, 2017, the Department filed with the Commission a Notice of Motion and Cross-Motion for Summary Judgment, along with a brief in support of the Motion. The Petitioners filed neither a motion nor a brief and, by email correspondence

sent to the Commission on June 29, 2017, the Petitioners' representative informed the Commission that the Petitioners had nothing further to submit. (Commission file.)

### *Evidentiary Facts*

8. On April 17, 2012, the Petitioners filed their 2011 Form 1 Wisconsin Income Tax Return as married filing jointly. On line 41 of the return, the Petitioners identified \$80,847 as their net tax. On line 43, the Petitioners identified \$106,400 as the estimated tax payments made and amount applied from their 2010 return. On line 51, the Petitioners identified \$25,553 as the amount overpaid. On line 53, the Petitioners identified \$25,553 as the amount they wanted to have applied to their 2012 estimated tax. (Stip. ¶ 5.)

9. On April 17, 2012, the Department transferred the amount of \$25,447<sup>1</sup> to the Petitioners' 2012 tax account. The Department credited the \$25,447 against Petitioners' \$26,600 estimated payment due on April 17, 2012. The Petitioners made additional estimated tax installment payments for tax year 2012 in September, 2012, and January, 2013, in the respective amounts of \$35,347 and \$20,300. (Stip. ¶ 6, Ex. E.)

10. On April 15, 2013, the Petitioners filed their 2012 Form 1 Wisconsin Income Tax Return as married filing jointly. On line 41 of the return, the Petitioners identified \$68,853 as their net tax. On line 43, the Petitioners identified \$81,094 as the estimated tax payments made and amount applied from their 2011 return. On line 51, the Petitioners identified \$12,057 as the amount overpaid.<sup>2</sup> On line 53, the Petitioners

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<sup>1</sup> The \$106 difference between Petitioners' carryforward request and the amount applied by the Department was due to the payment of underpayment interest in the amount of \$106.

<sup>2</sup> The difference between the tax owed of \$68,853 and the payments made of \$81,094 is \$12,241.

identified \$12,057 as the amount they wanted to have applied to their 2013 estimated tax. (Stip. ¶ 7.)

11. On April 15, 2013, the Department transferred the amount of \$12,053<sup>3</sup> to the Petitioners' 2013 tax account. The Department credited the \$12,053 against the Petitioners' \$20,300 estimated payment due on April 15, 2013. The Petitioners made additional estimated tax installment payments for tax year 2013 in June and September, 2013, and January 2014, in the respective amounts of \$22,543, \$17,300, and \$17,300. (Stip. ¶ 8, Ex. F.)

12. On April 15, 2014, the Petitioners filed their 2013 Form 1 Wisconsin Income Tax Return as married filing jointly. On line 40 of the return, the Petitioners identified \$93,982 as their net tax. On line 42, the Petitioners identified \$69,196 as the estimated tax payments and amount applied from their 2012 return. On line 53, the Petitioners identified \$25,051<sup>4</sup> as the amount of tax and underpayment interest due and remitted payment of \$25,047 with their 2013 return. (Stip. ¶ 9.)

13. In 2015, during the preparation of their 2014 tax returns, the Petitioners realized that there was a miscalculation of capital gain income for 2011, 2012, and 2013. On April 17, 2015, Petitioners filed Wisconsin Form 1X returns amending their original returns for tax years 2011, 2012, and 2013.<sup>5</sup> (Stip. ¶ 10.)

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<sup>3</sup> The \$4 difference between Petitioners' carryforward request and the amount applied by the Department was due to the payment of underpayment interest. The Department subtracted \$188 in underpayment interest from \$12,241 and transferred the amount of \$12,053.

<sup>4</sup> The reported tax was \$24,786 and underpayment interest was \$265, for a total of \$25,051.

<sup>5</sup> None of the amended returns reported underpayment interest.

14. In recalculating the tax owed for 2011, the 2011 Wisconsin Form 1X return reflected an increase of \$30,869, or a total tax liability of \$111,716. On line 30 of the amended 2011 return, the Petitioners identified \$106,400 as the estimated tax payments made. On line 45, the Petitioners identified no amount to be applied to their 2012 estimated tax, resulting in a reported tax owed of \$5,316. The Petitioners remitted payment of \$5,316 with the amended 2011 return. (Stip. ¶ 11.)

15. In recalculating the tax owed for 2012, the 2012 Wisconsin Form 1X return reflected an increase of \$16,191, or a total tax liability of \$85,044. On line 30 of the amended 2012 return, the Petitioners identified \$55,647 as the estimated tax payments made. This amount did not include the 2011 refund carryforward amount of \$25,447. On line 45, the Petitioners identified no amount to be applied to their 2013 estimated tax, resulting in a reported tax owed of \$29,397. The Petitioners remitted payment of \$29,397 with the amended 2012 return. (Stip. ¶ 12.)

16. In recalculating the tax owed for 2013, the 2013 Wisconsin Form 1X return reflected an increase of \$46,683, or a total tax liability of \$140,665. On line 30 of the amended 2013 return, the Petitioners identified \$57,143 as the estimated tax payments made. This amount did not include the 2012 refund carryforward amount of \$12,053 from the original return. On line 36, the Petitioners identified the amount of \$24,782 as the amount paid with the original return, plus additional payments after filing. On line 47, the Petitioners identified \$58,740 as the amount of tax owed and remitted payment of \$58,740 with the amended 2013 return. (Stip. ¶ 13.)

17. The Department issued its Notice of Amount Due in response to Petitioners' 2011 Form 1X. The Department assessed an additional \$30,763 in tax, plus underpayment and regular interest of \$12,750.06, less the Petitioners' payment of \$5,316 for a total of \$38,197.06. The basis for the additional assessment was the underreported capital gain income of \$30,763. The Department did not accept the Petitioners' reapplication of the 2011 carryforward of \$25,447 as payment toward the \$30,763 additional tax owed for 2011. (Stip. ¶ 14.)

18. On September 4, 2015, the Department issued Notices of Refund based upon the Petitioners' Form 1X for 2012 and 2013. For 2012, the Department calculated a refund of \$20,937.16, less the \$12,053 previously applied to estimated taxes for 2013. This resulted in the Department remitting a refund to the Petitioners in the amount of \$8,986.39.<sup>6</sup> For 2013, the Department calculated a refund of \$5,183.04 and remitted payment to the Petitioners in the amount of \$5,242.68.<sup>7</sup> (Stip. ¶ 15, Exs. G and H.)

19. By letter dated September 14, 2015, the Petitioners filed a Petition for Redetermination. The Petitioners disagreed with the Department's treatment of the funds previously carried-forward in 2011 and 2012, respectively. The Petitioners enclosed with the letter both refund checks of \$5,242.68 and \$8,986.39 (totaling \$14,229.07) for the purposes of correcting the account. (Stip. ¶ 16.)

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<sup>6</sup> This payment included \$102.23 in refunded interest.

<sup>7</sup> This payment included \$59.64 in refunded interest.

20. The Department credited the Petitioners' account for tax year 2011 in the respective amounts of \$5,242.68 and \$8,986.39 effective April 17, 2015, the date Petitioners filed their amended returns. (Stip. ¶ 17, Ex. I.)

21. On December 28, 2015, the Petitioners paid in full the remaining balance assessed for tax year 2011 in the amount of \$24,544.89, which included accrued underpayment interest, regular interest and \$856.95 of delinquency interest. (Stip. ¶ 18.)

22. By Notice of Action dated March 11, 2016, the Department denied the Petitioners' Petition for Redetermination. The basis for the Department's denial, as explained in a January 27, 2016 letter, was that once the Department applied the \$25,447 carryforward to the Petitioners' 2012 estimated tax payment, it could no longer be used to offset a tax deficiency reported in their amended 2011 return. The Department issued refunds for 2012 and 2013 based upon the original carryforward and other estimated payments that were made in addition to the payments the Petitioners submitted with their amended returns. (Stip. ¶ 19.)

23. The Petitioners do not dispute the additional tax owed on the Form 1X amended returns for 2011, 2012, and 2013. The Petitioners further do not dispute that underpayment and regular interest is owed on the additional assessments. (Stip. ¶ 20.)

## APPLICABLE LAW

### *Summary Judgment*

A motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2).

### *Burden of Proof*

Assessments made by the Department are presumed to be correct, and the burden is on the petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Puissant v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984).

### *Applicable Statutes*

#### Wis. Stat. § 71.09 Payment of estimated taxes.

(7) REFUND CARRY-FORWARD. If the taxpayer claims a refund on any tax return and, concurrent with or subsequent to the filing of the return upon which such refund is claimed, is required to pay an estimated tax, and at the time of paying that tax the refund has not been paid, he or she may deduct the amount of such refund from the first installment of estimated taxes, and any excess from the succeeding installments. ...



## DECISION

Section 71.09(7) of the Wisconsin Statutes permits a taxpayer to apply an overpayment of Wisconsin income tax in one year toward payment of their next estimated tax installment payment due for the subsequent year. That is precisely what the Petitioners did in filing their initial 2011 and 2012 Wisconsin individual income tax returns.

On April 17, 2012, the Petitioners filed their 2011 Wisconsin income tax return. The estimated tax payments made by the Petitioners toward their 2011 tax liability exceeded the net tax reported on the return by \$25,447. The Petitioners elected to have the overpayment applied to their 2012 estimated tax. As a result, the Department transferred the amount to the Petitioners' 2012 tax account, crediting it against Petitioners' \$26,600 estimated payment due on April 17, 2012. The Petitioners made additional estimated tax installment payments for 2012.

Similarly, on April 15, 2013, the Petitioners filed their 2012 Wisconsin income tax return showing that the estimated tax payments made by the Petitioners toward their 2012 tax liability (including the 2011 overpayment credited to their 2012 estimated tax account) exceeded the net tax reported on the return by \$12,053. The Petitioners elected to have the overpayment applied to their 2013 estimated tax, and the Department transferred the amount to the Petitioners' 2013 tax account, crediting it against Petitioners' \$20,300 estimated payment due on April 15, 2013. The Petitioners made additional estimated tax installment payments for tax year 2013.

In 2015, the Petitioners discovered that they had failed to include certain capital gain income on their returns filed in 2011 through 2013, and consequently filed amended returns reporting the additional taxable income. In calculating the tax due, however, the 2011 amended return included the total amount of 2011 estimated tax payments shown on the original 2011 return, ignoring the fact that the Petitioners had elected to apply \$25,447 of that amount to their first 2012 estimated tax payment. The 2012 amended return reflected total 2012 estimated payments which did not include the \$25,447 credited from the Petitioners' originally-filed 2011 return, but did include the \$12,053 the Petitioners had elected to apply to their 2013 estimated taxes. The estimated tax payments shown on the 2013 amended return did not include the \$12,053 the Department had, at the Petitioners' request, credited to the Petitioners' 2013 estimated tax account.

By ignoring the elections made on their originally-filed returns, and reallocating estimated tax payments to earlier years, the amended returns served to push the amount of the underpayments of tax into later years, thereby reducing the regular and underpayment interest owed by the Petitioners. The Department rejected this reallocation, concluding that once amounts were credited to the Petitioners' 2012 and 2013 estimated tax accounts, per the Petitioners' election, those amounts were paid and could not be later credited to earlier years. We agree with the Department.

When the Petitioners filed their 2011 Wisconsin income tax return on April 11, 2012, they elected to apply a \$25,447 overpayment to a 2012 estimated tax payment of \$26,600 due that same day. Once the Department credited that amount to the Petitioners'

2012 estimated tax account, the Petitioners had made a payment of estimated taxes every bit as much as if they had written a check for that amount, just as they had for their remaining 2012 estimated tax payments. There is no more a basis for reallocating that amount to a later-determined underpayment for 2011 than there is for reallocating any other estimated tax payments the Petitioners made for 2012.

Indeed, had the Petitioners not elected to apply the 2011 overpayment to their first 2012 estimated payment, the Department would have refunded that amount to the Petitioners and the Petitioners would have written a \$26,600 check that very day in payment of their first 2012 estimated tax payment. A payment is a payment. If we were to allow the Petitioners to reallocate the funds used to pay their first 2012 estimated tax payment, we would be opening the door to Wisconsin taxpayers reallocating estimated tax payments made for later years to the payment of a tax assessment for an earlier year to avoid the payment of statutory interest on the assessed amount and, effectively, shifting the assessment to the taxpayer's latest tax year. We find no basis under Wisconsin law for allowing such a reallocation of payments, nor do the Petitioners offer one.

The Petitioners have failed to prove by clear and convincing evidence that the adjustments the Department made to their amended returns were in error.

#### CONCLUSIONS OF LAW

1. There being no material facts in dispute, the stipulated facts are sufficient to support a ruling as a matter of law.

2. The Petitioners, having elected under Wis. Stat. § 71.09(7) to apply overpayments shown on their originally filed 2011 and 2012 Wisconsin income tax returns to their next-due estimated tax payments for 2012 and 2013, respectively, cannot require the Department to reallocate those funds to payment of tax deficiencies shown on later filed 2011 and 2012 amended returns.

**ORDER**

Based on the foregoing, the Commission orders as follows:

1. The Department's Motion for Summary Judgment is granted.
2. The Department's action on the Petitioners' Petition for Redetermination is affirmed.

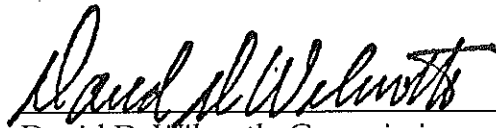
Dated at Madison, Wisconsin, this 22nd day of November, 2017.

**WISCONSIN TAX APPEALS COMMISSION**



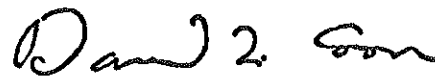
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Lorna Hemp Boll, Chair



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David D. Wilmoth, Commissioner



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David L. Coon, Commissioner

ATTACHMENT: **NOTICE OF APPEAL INFORMATION**

WISCONSIN TAX APPEALS COMMISSION  
5005 University Avenue - Suite 110  
Madison, Wisconsin - 53705

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. Alternatively, 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 Appeals Commission either in-person, by certified mail, or by courier, and served upon the other party (which usually is the Department of Revenue) 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 <http://wicourts.gov>.

This notice is part of the decision and incorporated therein.