

STATE OF WISCONSIN
TAX APPEALS COMMISSION

THE GRAPHIC EDGE,

DOCKET NO. 19-I-220

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

LORNA HEMP BOLL, COMMISSIONER:

This case comes before the Commission for decision on cross-motions for summary judgment. The Petitioner, The Graphic Edge, Inc., a Wisconsin corporation, is represented by Scott Tennies, CPA, of Midwest Accounting of West Bend, Inc. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorneys Mark S. Zimmer and Jared M Boucher.

The determinative issue is whether income in the form of Depreciation Recapture and 4797 Gain from Petitioner's sale of certain printing equipment should have been included in the calculation of Petitioner's 2014 Manufacturing Credit. Because the equipment at issue was not manufactured by Petitioner, we find that the Depreciation Recapture and 4797 Gain generated from the sale of these items cannot be included in the calculation of the Manufacturing Credit. Therefore, we find for the Department.

FACTS

1. Petitioner, The Graphic Edge, Inc., is a Wisconsin corporation with its principal place of business in Hubertus, Wisconsin. (Joint Stipulation of Facts ("Stip."), ¶ 1.)

2. At all times relevant to this case, Petitioner did business in Wisconsin as a commercial printing company, operating under the name Graphic Edge Printing. (Stip., ¶ 2.)

3. At all times relevant to this case, Petitioner was a Subchapter C corporation filing on a calendar year basis. (Stip., ¶ 3.)

4. At all times relevant to this case, 100% of Petitioner's income was properly apportioned to the State of Wisconsin. (Stip., ¶ 4.)

5. For 2014, Petitioner qualified as a manufacturer for purposes of the Manufacturing and Agriculture Credit, Wis. Stat. § 71.28(5n) (2013-2014). (Stip., ¶ 5.)

6. Petitioner electronically filed a 2014 Wisconsin Corporation Franchise or Income Tax Form 4 on or about April 13, 2015, along with Petitioner's Schedule MA-M. On that originally-filed Schedule MA-M, Petitioner claimed no direct costs allocable to Production Gross Receipts on line 3 and \$1,443,808 of indirect costs on line 6. Petitioner left line 8, all gross receipts, blank on the originally-filed Schedule MA-M. (Stip., ¶ 6, Ex. A.)

7. On Petitioner's 2014 Form 4 as filed, Petitioner claimed a Manufacturing and Agriculture Credit in the amount of \$4,950. (Stip., ¶ 7.)

8. Together with the 2014 Form 4, Petitioner filed with the Department a copy of its federal Form 1120 U.S. Corporation Income Tax Return. (Stip., ¶ 8, Ex. B.)

9. In 2014, Petitioner sold or disposed of two pieces of printing equipment that had been purchased by Petitioner in earlier years, had been depreciated by Petitioner, and were subject to Depreciation Recapture upon sale or disposition. The amount of Depreciation Recapture for that printing equipment for 2014 was \$185,859 (the "Depreciation Recapture") as reported on line 9 of Petitioner's federal Form 1120. (Stip., ¶ 9.)

10. On Petitioner's federal Form 4797, Sales of Business Property, Petitioner reported on line 7 a gain on disposition of certain business property held more than one year in a total amount of \$12,763 (the "4797 Gain"). (Stip., ¶ 10, Ex. B.)

11. All of the property referenced in the two preceding paragraphs was printing equipment that had been purchased by Petitioner and was used in its business. Petitioner did not itself produce any of that property. (Stip., ¶ 11.)

12. On office audit, the Department adjusted the Petitioner's computations on a revised 2014 Schedule MA-M to break out the direct costs (\$824,717) and indirect costs (\$619,091) of Petitioner. (Stip., ¶ 12, Ex. C.)

13. The division of costs between direct costs and indirect costs referenced in the preceding paragraph was provided by the Petitioner to the auditor. (Stip., ¶ 13.)

14. On March 27, 2018, the Department issued a Notice of Office Audit Amount Due, which adjusted Petitioner's returns for three years including 2014. For tax year 2014, the Department disallowed Petitioner's claimed Manufacturing Credit in full. (Stip., ¶ 14, Ex. D.)

15. Petitioner's representative sent a letter received by the Department on April 24, 2018, which was treated by the Department as a timely Petition for Redetermination. (Stip., ¶ 15, Ex. E.)

16. The Petition for Redetermination included a revised 2014 Schedule MA-M, which included the auditor's revised direct and indirect costs on line 3 and 6 respectively, but subtracted the Depreciation Recapture and 4797 Gain from the "All gross receipts" on line 8, and added the Depreciation Recapture and 4797 Gain to the Cost of Goods Sold Allocable to Production Gross Receipts on line 2 of the revised Schedule MA-M. (Stip., ¶ 16, Ex. E, p. 4.)

17. On July 9, 2019, the Department issued a Notice of Action, denying the Petition for Redetermination. (Stip., ¶ 17, Ex. F.)

18. Petitioner timely filed a Petition for Review via certified mail, date stamped August 27, 2019. (Stip., ¶ 18, Ex. G.)

19. In its Petition for Review, Petitioner agreed with the adjustments for the other tax years, so only tax year 2014 remains at issue in this appeal. (Stip., ¶ 19.)

20. After the commencement of this appeal, on or about June 9, 2020, Petitioner provided to the Department a third 2014 Schedule MA-M, which, among other

changes, included the Depreciation Recapture and 4797 Gain in the \$1,825,733 figure on line 2, Cost of Goods Sold. (Stip., ¶ 20, Ex. H.)

DECISION

This case turns on whether Petitioner's Depreciation Recapture and 4797 Gain is includable in the calculation of the Manufacturing Credit. The Assessment excludes these items from the calculations, rendering the Manufacturing Credit zero.

A. Applicable Law

The following definitions are essential for an understanding of the issues and the calculation of the Manufacturing Credit:

Statutory Definitions

Wis. Stat. § 71.28(5n)(a)6. "Production gross receipts" means gross receipts from the lease, rental, license, sale, exchange, or other disposition of qualified production property.

Wis. Stat. § 71.28(5n)(a)9.a. "Qualified production property" means either of the following:
Tangible personal property manufactured in whole or in part by the claimant on property that is assessed as manufacturing property under s. 70.995.

Wis. Stat. § 71.28(5n)(8). "Qualified production activities income" means the amount of the claimant's production gross receipts for the taxable year that exceeds the sum of the cost of goods sold that are allocable to such receipts, the direct costs that are allocable to such receipts, and the indirect costs multiplied by the production gross receipts factor. "Qualified production activities income" does not include any of the following: [6 examples that are not relevant to the facts of this case]

Calculation of Wisconsin Manufacturing Credit

Wis. Stat. § 71.28(5n). MANUFACTURING AND AGRICULTURE CREDIT.¹

(b) *Filing claims.* Subject to the limitations provided in this subsection, a claimant may claim as a credit against the tax imposed under s. 71.23, up to the amount of the tax, an amount equal to one of the following percentages of the claimant's eligible qualified production activities income in the taxable year: (emphasis added)

...

2. For taxable years beginning after December 31, 2013, and before January 1, 2015, 3.75 percent.

Per the relevant subsections of this statute, for the tax year in question, a claimant may claim as a credit an amount equal to 3.75% of the claimant's eligible Qualified Production Activities Income. Subsection 8 explains how to calculate the claimant's Qualified Production Activities Income²:

Wis. Stat. § 71.28(5n)(8). "Qualified production activities income" means the amount of the claimant's production gross receipts for the taxable year that exceeds the sum of the cost of goods sold that are allocable to such receipts, the direct costs that are allocable to such receipts, and the indirect costs multiplied by the production gross receipts factor.

In somewhat clearer shorthand, Qualified Production Activities Income is calculated as follows:

Production Gross Receipts
Less: Cost of goods sold
Less: Direct Costs
Less: Indirect Cost multiplied by production gross receipts factor
= Qualified Production Activities Income

¹ This statutory section also provides an agricultural credit which is not relevant to this discussion.

It is this portion of the Manufacturing Credit calculation that provides the point of disagreement between the parties.²

B. Analysis

Petitioner appeals the disallowance of the Manufacturing Credit, submitting three different Schedule MA-Ms, all factoring in Depreciation Recapture and 4797 Gain generated by the sale of printing equipment not manufactured by the Petitioner. The Department disallowed the Manufacturing Credit based upon Petitioner's inclusion of these amounts.

Standard of Review and Burden of Proof

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, show 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). Here, both parties have moved for summary judgment. The effect of cross motions for summary judgment is an assertion by the parties that the facts are undisputed, that in effect the facts are stipulated, and that only issues of law remain. *Healthcare Services Group, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-

² Per Wis. Stat. § 71.28(5n)(d)2, the "eligible" amount of Qualified Production Activities is found by multiplying the Qualified Production Activities Income by the Manufacturing Property Factor which is defined in Wis. Stat. § 71.28(5n)(a)(5)a. The Eligible Qualified Production Activities Income is then multiplied by Credit Rate in effect for the taxable year (for 2014, that Credit Rate was 3.75%) to determine the amount of the Manufacturing Credit. The parties do not dispute this portion of the calculation.

086 (WTAC 2016). We find no material facts are in dispute, so we find this case is ripe for summary judgment.

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 determinations. *Calaway v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-856 (WTAC 2005), citing *Puissant v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984). Tax exemptions, deductions, and privileges are matters of legislative grace and are strictly construed against the taxpayer. *Ramrod, Inc. v. Dep't. of Revenue*, 64 Wis. 2d 499, 504 (1974). Tax credits are subject to the same strict construction. *L&W Construction Co., Inc. v. Dep't. of Revenue*, 149 Wis. 2d 684, 690 (Ct. App. 1989).

Statutory Interpretation

Statutory interpretation begins with the language of the statute. *State ex. rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. If the Commission finds a "plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning." *Id.*, ¶ 46. The test for whether a statute is ambiguous examines the language of the statute to determine whether the statutory language "reasonably gives rise to different meanings." *Id.*, ¶ 47. If the meaning of the statute is clear from its plain language, we do not look beyond that language to ascertain its meaning. *Dep't of Revenue v. Microsoft*, Wis. Tax Rptr. (CCH) ¶ 402-333 (Ct. App. 2019).

We do not find any reasonable alternative meanings for the phrase “manufactured in whole or in part by the claimant.” The parties have stipulated that the Petitioner purchased and did not manufacture the equipment in question. Therefore, it was not manufactured in whole or in part by the claimant. There is no ambiguity in the language of the Manufacturing Credit.

Production Gross Receipts

The Manufacturing Credit turns on Qualified Production Activities Income, which is a function of Production Activities Receipts, which comes only from the disposition of Qualified Production Property which is property manufactured in whole or in part by the claimant.

Petitioner disposed of two pieces of printing equipment. The parties stipulated that the property in question, was “purchased by Petitioner in earlier years” and that “Petitioner did not itself produce any of that property.”³

Petitioner’s initial position was that the Depreciation Recapture and 4797 Gain should be included in Production Gross Receipts. That position is contrary to the language of the statute. Under Wis. Stat. § 71.28(5n)(a)6, Production Gross Receipts are “gross receipts from the lease, rental, license, sale, exchange, or other disposition of ‘qualified production property,’” which, according to Wis. Stat. § 71.28(5n)(a)9.a, must be manufactured in whole or in part by the claimant. The printing equipment was not manufactured by Petitioner. By the clear language of the statute, the Depreciation

³ Stip., ¶¶ 9 and 11.

Recapture and 4797 Gain from the sale of the printing equipment were not from the disposition of Qualified Production Property. Therefore, they are not includable in Production Gross Receipts, and they do not flow into Qualified Production Activities Income for the purposes of calculating the Manufacturing Credit. Without these amounts, the Manufacturing Credit is zero.

Cost of Goods Sold and Indirect Costs

In the alternative, Petitioner has attempted to include the Depreciation Recapture and 4797 Gains by essentially adding them in as negative costs.⁴ Petitioner's later submissions specifically request that the Depreciation Recapture and 4797 Gain be included in the cost of goods sold. This argument is without merit. First, as income items generated by the sale of assets, the inflows from Depreciation Recapture and 4797 Gains are not costs. Second, even Petitioner recognizes that the Manufacturing Credit language refers to cost of goods sold "allocable to production gross receipts." Production Gross Receipts come from the disposition of Qualified Production Property. The printing equipment was not "manufactured in whole or in part" by the Petitioner, so it is not Qualified Production Property. Therefore, even if these items of income could be construed as "costs," they are not "allocable to Production Gross Receipts" and cannot be included in these costs for the purposes of calculating the Manufacturing Credit.

⁴ "We have tried to add the recapture to sales income, subtract it from cost of goods sold and subtract it from indirect costs (through amendments) but the department has denied using the recapture anywhere in the Manufacturing Credit calculation." Pet. Bf. Filed June 1, 2021.

Equity

Petitioner makes a general argument that the result is unfair because the original depreciation should be able to be offset by the recapture. We decline to comment on depreciation taken in prior years and remind the parties that the Commission does not have equitable powers. “The legislature has empowered [the Tax Appeals Commission] to determine and apply Wisconsin tax statutes, but not to preempt application of a statute under a doctrine of equity.” *Peterson v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 203-026 (WTAC 1989). Our role is simply to interpret and enforce the statutes as written. When the language is clear, no further inquiry is needed. *Kalal*, ¶ 46. Under the language of the relevant statute, the income in question is not includable in the Qualified Production Activities Income used to calculate the Manufacturing Credit.

CONCLUSIONS OF LAW

1. The record contains sufficient facts on which to decide this Motion, and no material facts are in dispute, so the case is ripe for summary judgment.
2. Because the printing equipment at issue was not tangible personal property manufactured in whole or in part by the Petitioner, it is not Qualified Production Property.
3. Because Petitioner's income from Depreciation Recapture and 4797 Gain from the sale of the equipment was not generated from the disposition of Qualified Production Property, the income is not includable in Production Gross Receipts.

4. Because Petitioner's receipts from Depreciation Recapture and 4797 Gain from the sale of the equipment is an inflow, it is not a cost or expense. It also not allocable to the Production Gross Receipts. Therefore, it cannot be included in cost of goods sold or as a direct or indirect cost in calculating the Manufacturing Credit.

5. Because Petitioner's income from Depreciation Recapture and 4797 Gain from the sale of the equipment was not includable in Production Gross Receipts or any cost category, it is not part of Petitioner's Qualified Production Activities Income, which serves as the basis for the Manufacturing Credit.

6. The Department properly disallowed the inclusion of the Depreciation Recapture and the 4797 Gain in the calculation of Petitioner's Manufacturing Credit.

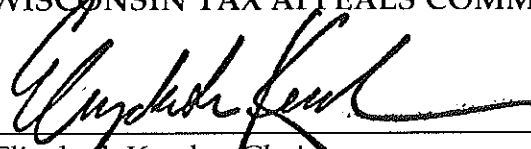
7. The exclusion of this amount reduces Petitioner's Manufacturing Credit to zero.

ORDER

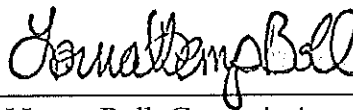
IT IS HEREBY ORDERED, for the reasons stated above, that the Department's Assessment is upheld and the Petition for Review is dismissed.

Dated in Madison, Wisconsin, this 20th day of December, 2021.

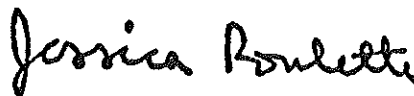
WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Chair



Lorna Hemp Boll, Commissioner



Jessica Roulette, 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. 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.