

STATE OF WISCONSIN
TAX APPEALS COMMISSION

ANGELA C. ELLIOTT
508 South 13th Street
Sheboygan, WI 53081,

DOCKET NO. 03-I-08

Petitioner,

vs.

DECISION AND ORDER

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8907
Madison, WI 53708-8907,

Respondent.

DON M. MILLIS, COMMISSION CHAIRPERSON:

This matter came before the Commission for trial on September 18, 2003, in Sheboygan. Both parties have submitted post-hearing briefs.

Petitioner appeared *pro se*. Respondent appeared by Chief Counsel Lili Best Crane.

Based upon the evidence received at trial, the submissions of the parties, and the entire record in this matter, the Commission hereby finds, concludes, and orders as follows:

FINDINGS OF FACT

1. For each of the years 1998 through 2001 (“years at issue”), petitioner claimed head-of-household filing status and the earned income credit (“EIC”) on her federal and Wisconsin income tax returns.

2. During each of the years at issue, petitioner resided with her mother, and petitioner's mother's income exceeded petitioner's income.

3. Page 73 of the Internal Revenue Service (“IRS”) publication *Reference Copies of Federal Tax Forms and Instructions* (Package X, Vol. 1) for 1998 contains the following example with respect to the EIC:

Example. You and your 5-year-old daughter moved in with your mother in April 1998. You are not a qualifying child of your mother. Your daughter meets the conditions to be a qualifying child for both you and your mother. Your modified AGI for 1998 was \$8,000 and your mother’s was \$14,000. Because your mother’s modified AGI was higher, your daughter is your mother's qualifying child. You **cannot** take any EIC, even if your mother does not claim the credit. [Emphasis in original.]

4. Substantially the same example is found in the corresponding IRS publications for 1999 and 2000.

5. Under the date of August 12, 2002, respondent issued an income tax assessment against petitioner for each of the years at issue in the principal amount of \$6,439 and interest in the amount of \$1,510.29.

6. In its assessment, respondent determined that petitioner was ineligible for head-of-household filing status because petitioner did not pay more than half the cost of keeping up the cost of her home. Respondent also determined that petitioner was not eligible for the EIC because her mother’s adjusted gross income was higher than hers.

7. Petitioner filed a timely petition for redetermination with respondent. Under the date of December 9, 2002, respondent denied the petition for redetermination. Petitioner filed a timely petition for review with the Commission.

CONCLUSIONS OF LAW

1. Petitioner's failure to be apprised of the qualifications for the EIC does not prevent respondent from assessing petitioner for the amounts she erroneously claimed under this credit.
2. Respondent issued the income tax assessment against petitioner within the four-year statute of limitations. Wis. Stat. § 71.77(2).

OPINION

Petitioner challenges only the adjustment denying her the EIC for each of the years at issue.¹ Petitioner does not assert that she properly claimed the EIC. Rather, she argues that it was the obligation of the IRS and/or respondent to do a better job in providing notice to her that she was not eligible for the EIC. Specifically, petitioner argues that she should have been given notice that she was ineligible for the EIC because she lived with her mother and her mother had a higher income.

It is as true in tax law as it is in other areas of the law: ignorance of the law is no excuse. While changes in the tax statutes and regulations are published in various official and unofficial media, neither the IRS nor respondent are responsible to list every possible permutation or situation in the booklets and forms that it provides

¹ Petitioner not only agrees that she was incorrect in claiming head-of-household status, she concedes that she should have known not to have claimed head-of-household status.

to taxpayers.² Petitioner has the obligation to understand the tax laws as they apply to her situation or find someone, e.g. a tax preparer, who does.

Petitioner is not without resources. Respondent and the IRS offer publications, telephone hotlines and web sites. In fact, IRS instructions for 1998 through 2000³ provided an example containing facts very similar to petitioner's situation. In this example, it is clear that a person in petitioner's situation was not eligible for the EIC.

Did petitioner look at these instructions, or did the IRS or respondent mail these particular instructions to petitioner? The record does not indicate an answer to these questions, and, as explained above, it would not affect the outcome of this case. We mention this only to show that there was information available from IRS publications to give petitioner more than adequate notice of the EIC eligibility requirements.

Petitioner also claims that respondent should have issued its assessment sooner so that she would not have continued to erroneously claim the EIC. Section 71.77(2) of the statutes authorizes respondent to issue assessments up to four years after an income tax return is filed. The assessment was issued on August 12, 2002, well within the four-year statute of limitations for 1998, the first year at issue. *See, Iverson v. Dep't of Revenue*, Docket No. 02-I-336, Slip Op. at 8 (WTAC Nov. 12, 2003).

² There have been many situations in which taxpayers have been treated much more harshly than petitioner. Petitioner clearly had the opportunity to know of the change in EIC qualifications because the law was amended prior to the due date for her 1998 income tax return. There have been many cases where the tax law has been retroactively amended and taxpayers with no possibility of advance notice have suffered dire consequences. *See, e.g., United States v. Carlton*, 129 L. Ed. 2d 22, 29 (1994); *Wiggins v. Commissioner*, 904 F.2d 311, 316-17 (5th Cir. 1990); *Fein v. United States*, 730 F.2d 1211 (8th Cir. 1984).

We note, in closing, that respondent has offered to assist petitioner's mother to file an EIC claim for 1999 through 2001. (Tax year 1998 is now closed to amendment.) We urge petitioner to encourage her mother to take respondent up on this offer before tax year 1999 is closed to amendment.

ORDER

Respondent's action on the petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 22nd day of January, 2004.

WISCONSIN TAX APPEALS COMMISSION

Don M. Millis, Commission Chairperson

Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"

³ The record does not indicate whether IRS instructions for 2001 contained this example.