

STATE OF WISCONSIN
TAX APPEALS COMMISSION

JAMES D. KURTZ,

DOCKET NO. 19-I-044

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

DAVID L. COON, COMMISSIONER:

This case comes before the Commission for decision on Respondent's Motion for Summary Judgment. The Petitioner, James D. Kurtz, of Plymouth, Wisconsin, appears *pro se*. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Jenine E. Graves.¹ The Department filed a brief and affidavit with exhibits in support of its Motion. Petitioner has provided a response. For the reasons stated below, we find for the Department.

FACTS

1. On September 4, 2018, Petitioner filed Wisconsin Form 1 tax returns for the 2015, 2016, and 2017 tax years ("Tax Period"), which included Petitioner's claims for

¹ Department was initially represented by Attorney Axel Candelaria.

the Veteran's and Surviving Spouse Credit ("Veteran's Credit"). (Affidavit of Mary Nelson, Resolution Supervisor, Wisconsin Department of Revenue ("Nelson Aff.") ¶ 2.)

2. Petitioner sought credit for property taxes assessed against 41 Selma Street, Plymouth, Wisconsin 53703 ("Selma Property") during the Tax Period. (Nelson Aff. ¶ 3, Ex. A.)

3. Petitioner listed his home address as 41 Selma Street, Plymouth, Wisconsin, on the tax returns.² (Nelson Aff. ¶ 2, Ex. A.)

4. On October 31, 2018, the Department issued separate Notices of Changes - Individual Income Tax to Petitioner for each year of the Tax Period, denying his claim for the Veteran's Credit because he had not paid the property taxes on his principal dwelling as required by Wis. Stat. § 71.07(6e)(a)(5). (Nelson Aff. ¶ 4, Exs. A and B.)

5. The 2015, 2016, and 2017 Real Estate Tax Summaries submitted by Petitioner as part of his tax filing for the Veteran's Credit showed that he had not made any property tax payments on the subject property during those years. (Nelson Aff. ¶ 3, Ex. A.)

6. On November 28, 2018, Petitioner filed a timely Petition for Redetermination of the denial of the Veteran's Credit. (Nelson Aff. ¶ 5, Ex. C.)

7. On February 15, 2019, the Department issued a Notice of Action denying Petitioner's Petition for Redetermination, upholding its determination that Petitioner was not entitled to claim the Veterans Credit because he did not pay property taxes on the subject property during the Tax Period. (Nelson Aff. ¶ 7, Ex. E.)

² The address listed in Mr. Kurtz's tax returns has a minor error. The correct address is 41 Selma Street instead of 41 Selma Avenue as listed in his tax returns. The correct address is reflected in the Certified Property Tax Records and other correspondence, including from the Petition to the Commission.

8. As of May 3, 2019, certified Real Estate Tax Summary documents (“Certified Property Tax Records”) provided by the Sheboygan County Treasurer show that Petitioner has outstanding property tax balances for 2016 and 2017. The Certified Property Tax Records also show that the outstanding 2015 property tax balance was paid on March 21, 2019. (Affidavit of Jenine Graves, Attorney for the Wisconsin Department of Revenue, ¶ 3, Ex. F.)

9. Petitioner filed a timely Petition for Review with the Commission. (Nelson Aff. ¶ 8, Commission File.)

10. On May 31, 2019, the Department filed a Motion for Summary Judgment with affidavits and exhibits. Petitioner filed a brief in opposition to the Motion for Summary Judgment along with an affidavit. The Department filed a letter in reply.

APPLICABLE LAW

Summary Judgment Standard

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). “When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or denials of the pleadings but the adverse party's response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue for trial.” Wis. Stat. § 802.08(3).

Applicable Statutes

Wis. Stat. § 71.07(6e)(a)(5)

"Property taxes" means real and personal property taxes, exclusive of special assessments, delinquent interest, and charges for service, paid by a claimant, and the claimant's spouse if filing a joint return, on the eligible veteran's or unremarried surviving spouse's principal dwelling in this state during the taxable year for which credit under this subsection is claimed, less any property taxes paid which are properly includable as a trade or business expense under section 162 of the Internal Revenue Code....

Wis. Stat. § 71.07(6e)(a)4

"Principal dwelling" has the meaning given in sub. (9) (a) 2.

Wis. Stat. § 71.07(9)(a)2

"Principal dwelling" means any dwelling, whether owned or rented, and the land surrounding it that is reasonably necessary for use of the dwelling as a primary dwelling of the claimant and may include a part of a multidwelling or multipurpose building and a part of the land upon which it is built that is used as the claimant's primary dwelling.

ANALYSIS

When claiming the Veteran's Credit, the statute requires that property taxes have been paid during the tax year on the taxpayer's principal dwelling. Wis. Stat. § 71.07(6e)(a)(5). The first issue is to identify the Petitioner's principal dwelling.

On his tax returns for the tax period, Petitioner claimed the credit on the Selma Property, attaching to each return a Real Estate Tax Summary for the respective tax years showing his ownership of the Selma Property.³

In all correspondence with the Department and the Commission, Petitioner used the Selma Property address, including on the Petition for Review. As noted above, including the typographical error, Petitioner used the Selma Property address on his returns filed for the Tax Period. Based upon Petitioner's tax returns and the use of the Selma address, the Department reasonably determined this to be his principal dwelling. In his Brief opposing Summary Judgment, Petitioner acknowledged that the Selma Property address is his mailing address and that the Selma Property is where he actually lives.⁴ In his tax filings, he chose the Selma Property.

Based upon the foregoing, we find that, for purposes of the Veteran's Credit, Petitioner's principal dwelling is the Selma Property. Having established his principal dwelling, the question becomes whether he paid property tax on that residence during the Tax Period.

³ Petitioner also included some handwritten, rambling, nearly unintelligible documents related to some other claims that he has against various governmental agencies and officials, apparently related to other properties that he alleges were taken from him and ownership transferred from him to other parties. Further, Petitioner's 2015 Wisconsin Tax Return includes a page for tax year 2013 regarding a property in the Town of Rhine on Racetrack Road, with a billing party listed as Lammers Little Lambs, LLC. Property tax payments are shown to have been received in 2014, not 2015. Whatever this document attempts to show, the payments are outside of the Tax Period.

⁴ Petitioner claims that he is "forced" to live at the Selma address by governmental agencies and officials that he alleges took his Racetrack Road property from him. From his filings, including the tax returns, it appears that record ownership of the Racetrack Road property was changed away from him in about 2009. He makes allegations about the reason for losing the Racetrack Road property, including reference to "default of the land contract," but those issues are beyond the scope of this review.

Petitioner attached Real Estate Tax Summaries to each of the tax returns for the Tax Period. Each Summary showed that no payments had been made as of the date the summary was generated and that the property taxes remained completely unpaid for each year.

The Department has provided updated certified copies of the Real Estate Tax Summaries for each year of the tax period. These show that the balance due for 2016 and 2017 remain unpaid as of May 3, 2019. For 2015, the balance due, plus interest, penalties and other charges, was paid in full on March 21, 2019, well outside the time of the Tax Period.⁵

Petitioner does not provide any receipts, cancelled checks, or other evidence of payment of property tax on the Selma property. He alleges, without other proof or evidence, that the certified copies are not true and correct. He also alleges, without other proof or evidence, that the County Treasurer is falsifying records in some sort of conspiracy against him.

In the performance of its duties, the County Treasurer has provided certified copies of the property tax records. The certified property tax records are self-authenticating under Wis. Stat. § 909.02.

Petitioner “may not rest on allegations or the pleadings” to defend against a summary judgment motion. Wis. Stat. § 802.08(3). Failing to provide anything beyond mere allegations, Petitioner fails to show that there are genuine issues of material fact related to his non-payment of property tax on the Selma property during the Tax Period. Having paid

⁵ For what it is worth, Petitioner alleges that someone else paid the 2015 tax bill on his behalf.

no property tax on his principal dwelling during the tax period, Petitioner is not eligible for the Veterans Credit.

CONCLUSIONS OF LAW

1. Petitioner's principal dwelling is the Selma Property.
2. The Petitioner did not pay property tax on his principal dwelling during the Tax Period.
3. Petitioner is not eligible for the Veteran's Credit.


ORDER

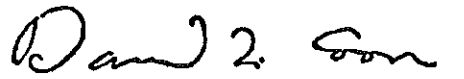
The Department's Motion for Summary Judgment is granted, and the Petition for Review is dismissed.

Dated at Madison, Wisconsin, this 22nd day of November, 2019.

WISCONSIN TAX APPEALS COMMISSION


Elizabeth Kessler, Chair


Lorna Hemp Boll, Commissioner


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. 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.