

Before the  
Administrative Hearing Commission  
State of Missouri



RAY WASYLUKA,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 12-1030 RG
	)	
DIRECTOR OF REVENUE,	)	
	)	
Respondent.	)	

**DECISION**

Ray Wasyluka is not entitled to a property tax credit of \$750 for tax year 2008.

**Procedure**

Wasyluka filed a complaint on June 6, 2012, appealing a denial of property tax credit by the Director of Revenue (“Director”).

This Commission convened a hearing on the complaint on December 4, 2012. Wasyluka appeared *pro se*. Legal Counsel Maria Sanders represented the Director.

The matter became ready for our decision on March 15, 2013, the last date for filing a written argument.

**Findings of Fact**

1. In tax year 2008, Wasyluka resided in St. Louis, Missouri. Wasyluka resided in a rental apartment that was part of a complex that included residential rental property and a commercial restaurant.

2. The residential portion of the complex was exempt from property tax in 2008.

Neither Wasyluka nor the property owner paid property tax on rent for Wasyluka's apartment in 2008.

3. On February 21, 2012, Wasyluka filed Form MO-1040P for tax year 2008, claiming a property tax credit of \$750. In this Form MO-1040P, Wasyluka requested a refund of \$750 based solely on the claimed property tax credit.

4. On February 24, 2012, the Director issued a notice of proposed changes for tax year 2008 denying Wasyluka's refund request.

### **Conclusions of Law**

This Commission has jurisdiction over appeals from the Director's final decisions.<sup>1</sup> Wasyluka has the burden to prove that he is entitled to a refund.<sup>2</sup> Our duty in a tax case is not merely to review the Director's decision, but to find the facts and to determine, by the application of existing law to those facts, the taxpayer's lawful tax liability for the period or transaction at issue.<sup>3</sup>

A refund is a limited waiver of sovereign immunity and is not allowed unless expressly permitted by statute.<sup>4</sup> "When a state consents to be sued, it may be proceeded against only in the manner and to the extent provided by the statute; and the state may prescribe the procedure to be followed and such other terms and conditions as it sees fit."<sup>5</sup> Sections 135.010, 135.020 and 135.030 provide:

135.010. As used in sections 135.010 to 135.030 the following words and terms mean:

\* \* \*

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<sup>1</sup>Section 621.050.1. Statutory references are to RSMo. 2000 unless otherwise noted.

<sup>2</sup>Sections 136.300.1 and 621.050.2.

<sup>3</sup>*J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

<sup>4</sup>*Community Fed. Sav. & Loan Ass'n v. Director of Revenue*, 796 S.W.2d 883, 885 (Mo. banc 1990).

<sup>5</sup>*State ex rel. Brady Motorfrate, Inc. v. State Tax Comm'n*, 517 S.W.2d 133, 137 (Mo. 1974).

(6) "Property taxes accrued", property taxes paid, exclusive of special assessments, penalties, interest, and charges for service levied on a claimant's homestead in any calendar year. Property taxes shall qualify for the credit only if actually paid prior to the date a return is filed...

\* \* \*

135.020. A credit for property taxes shall be allowed for the amount provided in section 135.030. If the amount allowable as a credit exceeds the income tax reduced by other credits, then the excess shall be considered an overpayment of the income tax.

\* \* \*

135.030.3. If the income on a return is equal to or less than the maximum upper limit for the calendar year for which the return is filed, the property tax credit shall be determined from a table of credits based upon the amount by which the total property tax described in section 135.025 exceeds the percent of income in the following list:

If the income on the return is:	The percent is:
Not over the minimum base	0 percent with credit not to exceed in actual property tax or rent equivalent paid up to \$750...

Sections 135.020 and 135.030.2 allow Wasyluka a tax credit up to \$750 in rent constituting property taxes accrued. For property taxes to accrue, someone must pay them. No one, including Wasyluka, paid property tax on rent for his apartment in tax year 2008. Therefore, he is not entitled to a property tax credit or refund for tax year 2008.

### Summary

Wasyluka is not entitled to a property tax credit of \$750 for tax year 2008.

SO ORDERED on April 24, 2013.

/s/ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner