



Report on Litigation

Summarized below are recent significant Wisconsin Tax Appeals Commission (WTAC) and Wisconsin Court decisions. The last paragraph of each decision indicates whether the case has been appealed to a higher Court.


The following decision is included:

Homestead Credit

Definition of income – rollover from a traditional IRA to a Roth IRA

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HOMESTEAD CREDIT

 **Definition of income – rollover from a traditional IRA to a Roth IRA.** *James D. and Carol J. Clark vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, September 2, 2005). The issue in this case is whether the taxable portion of a rollover from a traditional Individual Retirement Account (IRA) to a Roth IRA is includable in household income for homestead credit purposes.

The taxpayers received a 2003 Form 1099-R indicating a gross distribution of \$10,318.80 resulting from a rollover from a traditional IRA into a Roth IRA. They determined that the taxable portion of the distribution was \$9,972.00, and included this amount as income on their 2003 federal and Wisconsin income tax returns.

The taxpayers filed a Schedule H with their 2003 Wisconsin income tax return, claiming \$668.00 in homestead credit. The amount they reported on line 7 of Schedule H (Wisconsin income from the 2003 Wisconsin income tax return) included the gross distribution resulting from the IRA rollover. After consulting the Schedule H instructions and speaking to a customer service representative at the department, they subtracted the taxable portion of the distribution on line 9d of Schedule H (pensions and annuities) in order to determine their total household income.

In determining the taxpayers' 2003 tax refund, the department disallowed the subtraction for the taxable amount of the distribution and added \$9,972.00 back to total household income. With the addition of this

amount, the total household income exceeded the maximum limit allowable to claim homestead credit.

On May 11, 2004, the department issued a Notice of Refund in the amount of \$161.00 for tax year 2003. The taxpayers' claim for homestead credit was denied. The taxpayers filed a timely petition for redetermination with the department, which the department subsequently denied. The taxpayers filed a timely petition for review with the Commission.

The Commission concluded that the taxable portion of the taxpayers' rollover distribution from a traditional IRA to a Roth IRA is not includable in household income for homestead credit purposes. The Wisconsin Administrative Code states that the following is excluded from income for homestead credit purposes:

Pension, annuity, or other retirement plan payments rolled over from one retirement plan to another [Section Tax 14.03(5)(a)7].

The plain language reading of this code section compels the conclusion that this exclusion applies to all pension, annuity, or other retirement plan payments that are rolled over from one retirement plan to another. This code section, as well as the department's instructions or publications, make no exception for "taxable" rollovers of retirement plans.

The department has not appealed this decision.

CAUTION: This is a small claims decision of the Wisconsin Tax Appeals Commission and may not be used as a precedent. The decision is not binding upon and will not be followed by the department in other cases.

The department's position is that taxable rollovers (conversions) from a traditional IRA to a Roth IRA are includable in household income for homestead credit purposes. Such amounts are included in Wisconsin income, and there is no statutory provision to subtract them in determining household income. [↗](#)