

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 15, 2005

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP266

Cir. Ct. No. 2004CV340

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

LEO E. WANTA,

PETITIONER-APPELLANT,

V.

**WISCONSIN DEPARTMENT OF REVENUE AND
WISCONSIN TAX APPEALS COMMISSION,**

RESPONDENTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Chippewa County:
RODERICK K. CAMERON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Leo E. Wanta appeals a judgment upholding a decision of the Tax Appeals Commission that Wanta's challenge to the Department of Revenue's personal income tax assessments for 1988 and 1989 is

barred by the doctrine of claim preclusion. Wanta argues that (1) claim preclusion does not apply to some of the issues he raises; (2) he is entitled to an accounting for revenues the Department received from the foreclosure sale of his property; (3) the Department should be bound by a letter from a revenue agent; and (4) Wanta should benefit from the Department's release of claims against Wanta's ex-wife under the innocent spouse provisions of WIS. STAT. § 71.10(6).¹ Because we conclude that claim preclusion bars relitigation of Wanta's tax assessment for 1988 and 1989 and other issues he attempts to raise are outside the scope of these proceedings, we affirm the judgment.

¶2 A jury convicted Wanta of tax fraud for 1988 and 1989 by concealing income. It also convicted him of four counts of concealing properties to evade collection or tax assessment. On June 3, 1996, the sentencing court ordered restitution of over \$14,000, representing the tax and penalties owed for Wanta's 1988 and 1989 unpaid taxes, less \$14,129 Wanta paid in June 1992. Wanta unsuccessfully appealed his convictions. In these proceedings, the Department of Revenue seeks enforcement of the restitution order.

¶3 The Commission properly concluded that Wanta's challenge to the tax assessment is barred by the doctrine of claim preclusion. Under the doctrine of claim preclusion, a final judgment is conclusive in all subsequent actions between the same parties as to all matters that were litigated or could have been litigated in the former proceeding. See *Northern States Power Co. v. Bugher*, 189 Wis. 2d 541, 550, 525 N.W.2d 723 (1995). Claim preclusion applies if there is identity

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

between the parties to the two actions, claims that arise from the same transaction, incident or factual situation, and an earlier adjudication by a court of competent jurisdiction. The parties, Wanta and the State, are the same, and Wanta does not contest the identity of parties. The criminal litigation and restitution order and the present litigation apply to the same underlying facts. The criminal court is a court of competent jurisdiction. Therefore, Wanta's defenses that he was not a resident of Wisconsin, did not owe the tax or had already paid the tax are barred because they could have been litigated in the criminal proceeding and restitution hearing.

¶4 After the Department's motion for summary disposition before the Commission, Wanta changed attorneys, and his new attorney attempted to interject numerous additional issues into the proceedings. As the Department's briefs repeatedly indicated, the sole issue before the Commission was the propriety of the Department's calculation of Wanta's personal income taxes due from 1988 and 1989. Wanta seeks a declaration that he is not responsible for the taxes generated by one of his businesses, Falls Vending Services, Inc.² If Wanta's personal tax liabilities for 1988 and 1989 included assigning him responsibility for taxes owed by Falls Vending Services Inc., any challenge to that assessment should have been raised as a defense at trial or at the restitution hearing before the sentencing court. If they were not included in that calculation, they are outside the scope of the present litigation.

² Much of this argument is based on Wanta's assertion that charges raised in the initial complaint regarding Falls Vending Services were dismissed in an "amended complaint." The document he describes as an amended complaint is actually an Information. The Information appears to charge the same six crimes charged as the initial complaint. As is typically the case, the Information does not have a probable cause section and therefore does not provide details regarding the nature of the underlying charges. The documents Wanta filed with the Commission do not establish that any specific accusations in the complaint were withdrawn or dismissed.

¶5 Wanta also seeks an accounting for \$60,000 generated from the foreclosure sale of his property. Documentary evidence shows that a \$44,000 payment was credited against unpaid fees in connection with other assessments that pre-dated the assessments at issue here. Wanta's belated attempts to secure an accounting regarding all of his tax liabilities raise issues that are outside the scope of these proceedings. He has presented no evidence that funds received by the Department after the date of the restitution hearing were or should have been applied to his 1988 and 1989 personal tax assessments.

¶6 Wanta also submitted a February 18, 1999 letter to the Commission from a revenue agent to Wanta's attorney stating "The Department of Revenue has no record of a delinquent tax account issued to Lee E. Wanta." Wanta argues that the Department should be precluded from contradicting the letter. He contends that the letter is admissible without authentication and should be construed to say that Wanta has no outstanding taxes owed to the State of Wisconsin. The Commission properly refused to consider the letter for several reasons. First, the Department reasonably contends that the words "delinquent tax account" should not be construed to indicate that no tax is owed. A tax account is not considered delinquent if the matter is still in litigation. Second, the letter refers to Lee, not Leo Wanta. Wanta argues without any evidence that the letter refers to him because it utilizes his social security number, and the revenue agent who authored the letter could not have been referring to a record search involving "Lee E. Wanta." In the absence of evidence presented by the letter's author, its meaning is subject to dispute, and it is not self-authenticating or exempt from authentication under WIS. STAT. § 909.01. In addition, Wanta offers no authority for the proposition that the Department can be estopped from collecting taxes based on one unclear sentence in a letter from one of its agents.

¶7 Finally, Wanta also seeks to take advantage of a letter addressed to his ex-wife releasing her from further obligations regarding these tax assessments under the innocent spouse provisions of WIS. STAT. § 71.10(6). Nothing in that letter suggests that the assessment has been paid or that the guilty spouse should benefit from the Department's decision not to pursue penalties against the innocent spouse.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

