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STATE OF WISCONSIN
TAX APPEALS COMMISSION

6385

R. JAMES BEAM
1573 Evergreen Lane
Lake Geneva, Wisconsin 53147

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8933
Madison, Wisconsin 53708

Respondent.

DOCKET NO. I-8725

DECISION AND ORDER

(Drafted by
Chairman Boykoff)

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STATE OF WISCONSIN
DEPARTMENT OF REVENUE
RECEIVED
AUG 30 1982
LEGAL DIVISION

The above-entitled matter was heard by the Commission.

The petitioner, R. James Beam, appeared in person and on his own behalf. The respondent, Wisconsin Department of Revenue, appeared by its attorney, Deborah Rychlowski. Having considered the evidence and arguments of the parties, this Commission hereby finds and decides as

FINDINGS OF FACT

1. This is a timely filed appeal to this Commission for review of the respondent's decision on the petitioner's petition for redetermination of an assessment of additional income taxes and penalty for the tax year 1980.
2. During 1980, the petitioner was a full-year Wisconsin resident, subject to the income tax provisions of Chapter 71, Wis. Stats.
3. Under date of June 15, 1981, respondent issued

petitioner an assessment for \$322.82, which includes a \$49.82 penalty for underpayment of estimated tax under s.71.21(11), Wis. Stats. Under date of June 22, 1981, petitioner filed with respondent a petition for redetermination which, under date of December 21, 1981, respondent denied.

4. During 1980, petitioner earned \$26,457.56 as a banker for the First National Bank of Chicago in Chicago, Illinois. This amount was also petitioner's Wisconsin total income.

5. No state taxes were withheld from petitioner's 1980 wages.

6. Petitioner did not file a declaration of estimated income tax for 1980 with respondent.

7. Petitioner objects to the respondent's imposition of a penalty for underpayment of estimated tax for 1980. He testified that in 1975 he asked his non-Wisconsin employer to withhold Wisconsin income tax but the employer refused. He contended that as an employe, he has no obligation to withhold state taxes from himself, and that as an employe he is subject to the withholding provision of Wisconsin law and not the declaration of estimated tax provisions.

8. In 1980, petitioner's wife was Sue M. Beam whose Wisconsin total income was \$1,287.02. This included \$1,138.85 of wages from one employer from which \$21.75 was withheld for Wisconsin income taxes.

9. Petitioner and his wife filed a 1980 combined Wisconsin income tax return, long form, Form 1. On their combined

return, petitioner and his wife claimed itemized deductions totaling \$7,432.70. This amount was determined by reducing the total itemized deductions claimed on federal Schedule A by the taxes claimed as itemized deductions on federal Schedule A.

10. On their return, rather than dividing the \$7,432.70, petitioner claimed itemized deductions of \$16,301.62, reducing his Wisconsin net taxable income to \$10,155.94. Petitioner's wife claimed itemized deductions of minus \$8,868.92, increasing her Wisconsin net taxable income to \$10,155.94. The 2 itemized deduction figures net out to \$7,432.70. The allocation of itemized deductions resulted in an equal division of net taxable income between petitioner and his wife.

11. Respondent reallocated the itemized deductions, allowing petitioner the full \$7,432.70 and allowing his wife no itemized deductions.

WISCONSIN STATUTES INVOLVED

s.71.02(2)(b)6 and (f)
s.71.05(3)(f)
s.71.21(1),(2),(4),(5) and (11) to (16)

ISSUES FOR DETERMINATION

1. Is petitioner exempt from the statutory penalty imposed for not filing Wisconsin declarations of estimated tax and making payments of the tax as prescribed by s.71.21, Wis. Stats.?

2. May petitioner allocate his and his wife's total of \$7,432.70 in itemized deductions by his claiming \$16,301.62 and by his wife claiming a negative \$8,860.92 in itemized deductions?

CONCLUSIONS OF LAW

1. Petitioner was required by s.71.21, Wis. Stats. to file Wisconsin declarations of estimated tax and to make payments with those declarations and he did not do so.

2. Petitioner did not show that he qualifies for one of the exemptions provided for in s.71.21, Wis. Stats.

3. Respondent's imposition of the penalty under s.71.21(11), Wis. Stats. was correct.

4. Petitioner's allocation of \$7,432.70 in itemized deductions between him (\$16,301.62) and his wife (minus \$8,868.92), resulting in an equal division of their net taxable income between them was contrary to statute and not correct, and respondent's reallocation, and recomputation of tax based on that reallocation, was proper and correct.

Therefore,

IT IS ORDERED

That respondent's action on petitioner's petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 27th day of August, 1982.

WISCONSIN TAX APPEALS COMMISSION

Thomas M. Boykoff
Thomas M. Boykoff, Chairman

Thomas R. Timken
Thomas R. Timken, Commissioner

John P. Morris
John P. Morris, Commissioner

Catherine M. Doyle
Catherine M. Doyle, Commissioner

William Bradford Smith
William Bradford Smith, Commissioner

ATTACHMENT:
"Notice of Appeal
Information"

NOTICE OF APPEAL INFORMATION

As required by s.227.11(2), Wis. Stats., created by Chapter 378, Laws of 1981 (effective May 7, 1982), the following notice is supplied to you as part of the attached decision:

(1) Rehearing and Appeal Rights. Any party to which this decision is adverse has the right to petition the Tax Appeals Commission for rehearing (under s.227.12, Wis. Stats.) and the right to judicial review of the decision (under s.73.015(2), 227.15 and 227.16, Wis. Stats.).

(2) Time to Act (a) Petition for Rehearing. Any person aggrieved by a final order of the Tax Appeals Commission may, within 20 days after service of the order, file with the Commission a written petition for rehearing.

(b) Judicial Review. If a petition for rehearing by this Commission is not requested within 20 days after the service of the Commission decision on all parties, a petition for judicial review shall be served on the Commission and filed with the office of the clerk of circuit court for the county where the judicial review proceedings are to be held. If a rehearing by this Commission is requested, any party desiring judicial review shall so serve and file a petition for review within 30 days after service of the Commission order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of the petition for rehearing. The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the decision by the Commission.

Within 30 days of serving the Commission and filing in circuit court, copies of the petition must be served personally or by certified mail or, when service is timely admitted in writing, by first class mail on all parties who appeared before the Commission in the proceeding in which the order sought to be reviewed was issued.

(3) Identification of party or parties to be named as respondent. If an aggrieved party wishes to file either a petition for rehearing with this Commission or a petition for judicial review, the other party or parties to the dispute are those which are identified in the caption of the document to which this notice is attached.

A petition for rehearing must be filed with this Commission and a copy must be served on each adverse party or parties identified in the caption of the document attached to this notice. An adverse party may file a reply to the petition.

A petition for judicial review must be filed in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. A copy of the petition must be served on this Commission and on each adverse party or parties to this dispute which are identified in the caption of the document attached to this notice.

CAUTION: THIS NOTICE DOES NOT COVER EVERY POSSIBLE ASPECT OF APPEALING FROM COMMISSION DECISIONS. YOU SHOULD REVIEW THE PERTINENT LAWS OF THE STATE OF WISCONSIN AND MAY WISH TO SEEK THE ADVICE OF COUNSEL.

STATE OF WISCONSIN

TAX APPEALS COMMISSION

R. JAMES BEAM,

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DOCKET NO. I-8725

OPINION

Each issue dealt with in this opinion is discussed separately below.

A. Declaration of Estimated Tax Penalty

Section 71.21(1), Wis. Stats., provides in pertinent part:

"(1) Every individual deriving income subject to taxation under this chapter, other than wages as defined in s.71.19(1) upon which taxes are withheld by the individual's employer under s.71.20, shall make a declaration of estimated tax if the total tax on income of the year can reasonably be expected to exceed withholding on wages paid in the year by \$60 or more for taxable years prior to 1981. . . ." (emphasis added)

Applying the language of this statute to the case currently before this Commission, petitioner was undisputedly an "individual deriving income subject to (Wisconsin income) taxation. . . ." This income was "other than wages. . . upon which taxes are withheld by the individual's employer. . . ." The income consisted of wages upon which Wisconsin income taxes were not withheld by petitioner's employer.

No Wisconsin income taxes were withheld by petitioner's employer in 1980. Section 71.21, Wis. Stats. further provides certain exemptions from the underpayment penalty for failure to timely make declarations and the required estimated payments. The underpayment penalty may be applied unless an individual can demonstrate that he or she qualifies for one of the exceptions enumerated in the statute. The petitioner has failed to claim any exceptions from the underpayment penalty.

Petitioner has 2 main assertions as to why he is exempt from this penalty: (1) he is an employee, a special status that subjects him to withholding by his employer under s.71.20, Wis. Stats. and exempts him from the declaration requirements of s.71.21, Wis. Stats., and (2) s.71.21(1), Wis. Stats. exempts wages from the declaration requirements. Both contentions ignore the clear language of s.71.21(1), exempting from that statute only wages upon which state income taxes are withheld by the individual's employer.

The general purpose of s.71.21 is to require individuals who do not pay income taxes through withholding over the taxable year to make periodic payments to respondent of estimated income taxes nonetheless. Petitioner's position both ignores the specific language of s.71.21(1) and the interrelationship between ss.71.20 and 71.21, Wis. Stats.

B. Itemized Deductions

Section 71.05(3)(f), Wis. Stats. provides:

"Married persons electing itemized deductions in determining Wisconsin taxable income, may divide the total amount of itemized deductions between them, as they choose."

Petitioner's contention is that he and his wife may divide their \$7,432.70 in allowable itemized deductions between themselves in any possible mathematical way they choose, so long as the total does not exceed \$7,432.70. Petitioner, therefore, deducted \$16,301.62 and his wife deducted a negative \$8,868.92 (actually increasing her income), 2 numbers which equal \$7,432.70. This is an unusual and interesting assertion. However, I do not believe that the statutes permit it.

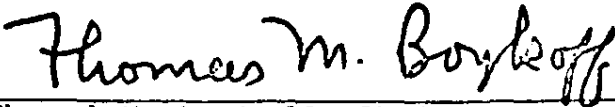
Petitioner's obvious intention is to compute equal amounts of net taxable income for him and his wife, so he can avoid the impact of graduated tax rates on his higher income. In effect, this would achieve roughly the same result as if Wisconsin's income tax statutes allowed a joint return.

However, Wisconsin does not allow spouses to file joint income tax return as does the federal Internal Revenue Service. For Wisconsin purposes, a husband and wife must report income and calculate their tax on their individual incomes. For the convenience of married persons, and to allow them to allocate certain amounts allowed by law between themselves, respondent allows a married couple to report their income taxes on a combined (not "joint") return. If this Commission were to adopt petitioner's reasoning, in effect, it would be authorizing the filing of joint returns by spouses. This is a major policy for the Legislature and Governor to enact by law, rather than for this Commission to adopt by contrived statutory interpretation.

This Commission cannot accept petitioner's interpretation for 2 additional reasons. First, to be an allowable itemized deduction, an amount must be paid and, if questioned, substantiated. Nowhere in the record does petitioner contend that he paid or could substantiate the amounts which he or his wife claimed. (It also defies logic to pay and substantiate a negative amount.)

Secondly, a well-accepted rule of statutory construction is that a construction of a statute which would produce an unreasonable or absurd result should be rejected in favor of one producing a reasonable result. State v. Clausen 105 Wis. 2d 231, 245 (1982); Falkner v. Northern States Power Co., 75 Wis. 2d 116, 124 (1977); and Volunteers of America of Madison, Inc. v. Industrial Commission, 30 Wis. 2d 607, 616 (1966). Allowing petitioner and his wife the amounts of itemized deductions which they claim on their Wisconsin return, when presumably only \$7,432.20 could be allowed based on Wisconsin statutes and the Internal Revenue Code and substantiated, would produce an unreasonable result.

Submitted by:



Thomas M. Boykoff, Chairman