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STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE

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LEGAL DIVISION

* * * * *

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

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8933
Madison, WI 537083,

Respondent.

DOCKET NO. I-9559

DECISION AND ORDER

(Drafted by
Chairman Morris)

* * * * *

The above-entitled matter having come on to be heard before this Commission; the petitioner, R. James Beam, having appeared in person; the respondent, Wisconsin Department of Revenue, having appeared by its attorney, Donald J. Goldsworthy; and being fully advised in the premises, having considered all of the testimony, evidence, records and proceedings and having considered the briefs herein, this Commission hereby finds and decides as

FINDINGS OF FACT

1. This is a timely appeal to this Commission for review as to the respondent's decision on the petitioner's petition for redetermination of an assessment of a penalty for the underpayment of 1981 estimated Wisconsin income tax for the year 1981 in the amount of \$98.97 as of December 13, 1982.

2. During the period under review, R. James Beam, the petitioner, was a resident of Lake Geneva, Wisconsin, therefore was subject to the income and franchise tax provisions of Chapter 71 of the Wisconsin Statutes.

3. As and for its Findings of Fact in the above-entitled matter, this Commission hereby adopts the following facts as stipulated to by the parties, deleting only references to exhibits:

That the petitioner, R. James Beam, of 1573 Evergreen Lane, of Lake Geneva, Wisconsin was in the year 1981 and during the period under review a resident of the State of Wisconsin.

That in April--on April 15, 1982 the petitioner, R. James Beam, filed with the State of Wisconsin his Wisconsin combined individual income tax return dated April 15, 1982, and attached to that return was a check made to the Wisconsin Department of Revenue in the amount of \$976.

That in December, on December 29, 1981 the petitioner, R. James Beam, mailed to the Wisconsin Department of Revenue a check in the amount of \$600, and it was addressed to the Wisconsin Department of Revenue with no enclosures.

And that on December 30, 1982 the petitioner, R. James Beam, sent to the Wisconsin Department of Revenue a check in the amount of \$271.75. The check of \$271.75 did not have an enclosure.

As and for additional Findings of Fact this Commission hereby adopts the following:

4. The issue for this Commission to determine is whether the petitioner, R. James Beam should be assessed a penalty for underpayment of his 1981 estimated Wisconsin income tax.

5. The petitioner contends that there are four issues

for this Commission to determine, namely:

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

Is the respondent's re-allocation of payments received for tax year 1981, to 1980 tax obligations, in lieu of submitting a billing to the petitioner, acceptable practice as prescribed by the Wis. Stats?

Is the respondent's computation to the tax amount and penalty correct?

Does respondent's computation of penalty for underpayment of estimated tax adhere to recommended accounting standards and practices?

6. The respondent contends that there is only one issue and that is:

The issue for determination by the Commission is whether petitioner is exempt from the statutory penalty imposed for not filing Wisconsin declarations of estimated tax and making payments of the tax as prescribed in sec.71.21, Wis. Stats.

7. During the period under review, 1981, the petitioner was employed by the First National Bank of Chicago, Chicago, Illinois and maintained his residency at Lake Geneva, Wisconsin.

8. The petitioner stated that in the year 1976 he contacted his employer in Chicago, Illinois and requested that their payroll section withhold estimated withholding taxes for state income taxes for the state of Wisconsin. The petitioner's employer indicated that it was not required and it would not

withhold any taxes for Wisconsin state income tax purposes.

9. The petitioner, R. James Beam did not pursue, after that date, any further agreements with his employer regarding withholding state of Wisconsin taxes on income earned by petitioner in Chicago, Illinois.

10. In the year 1981, petitioner on December 29, 1981 mailed to the respondent, Wisconsin Department of Revenue, a check in the amount of \$600 with no instructions or forms indicating where the \$600 was to be allocated except on the check written by the petitioner was his social security number 266-68-7798 and 1980 income tax payment. Petitioner testified at the hearing that the \$600 was intended to be used for his estimated payment of taxes for the year 1981.

11. On April 15, 1982, petitioner, R. James Beam filed his Wisconsin income tax return indicating that he estimated tax credits and payments of \$600 and that the balance owing was \$976. The petitioner also on April 15, 1982 enclosed a check in the amount of \$976 which was credited to the petitioner's 1981 Wisconsin income tax.

12. That on December 13, 1982, the respondent, Wisconsin Department of Revenue sent to petitioner its notice of action stating:

"You are hereby notified, pursuant to Section 71.12(1) of the Wisconsin Statutes, that the petition for redetermination resulting from this additional assessment is denied.

"You have not shown that you satisfy an exemption to the penalty for the underpayment of 1981 estimated Wisconsin income tax."

13. That on December 30, 1982, the petitioner, by his check #2756, payable to the order of the Wisconsin Department of Revenue in the amount of \$271.75 was sent and stated on the check was "1980 taxes".

14. The respondent, Wisconsin Department of Revenue, had satisfied the 1980 tax regarding the above subtracting \$331.75 from the \$600 that they had placed in a reserve account with the petitioner's name on it which came from his December 29, 1981 payment.

15. That the petitioner did not send with his \$600 payment mailed December 29, 1981 any enclosures or forms stating what the \$600 was to be used for therefore, said monies were placed in reserve account by the respondent and later used for payment of his 1980 taxes.

16. On his 1981 Wisconsin income tax return, the petitioner reported Wisconsin total income in the sum of \$32,151.28, which amount consisted entirely of petitioner's salary earned by him as a banker for the First National Bank of Chicago in Chicago, Illinois.

17. On his 1981 Wisconsin Form 1, the petitioner computed his total Wisconsin income tax to be in the sum of \$1,576 at line 55 of said return.

18. Petitioner's employer withheld federal income taxes from his 1981 wages, but no state taxes were withheld from his 1981 wages.

19. Petitioner did not file a declaration of estimated income tax for the year 1981 with the respondent.

20. During the period under review, the petitioner did not properly estimate his Wisconsin withholding in accordance with Section 71.21 of the Wisconsin Statutes.

21. That in the year 1981, the petitioner acknowledged that he was earning income as a resident of the state of Wisconsin by being employed by the First National Bank of Chicago, Chicago, Illinois and therefore was required to file estimated payments in accordance with Section 71.21 Wisconsin Statutes.

22. The record shows that the petitioner filed a payment of \$600 on December 29, 1981 which had no enclosures or forms specifying where the monies were to be allocated and his only other payment for 1981 was April 15, 1982 when he filed his Wisconsin return.

23. The burden is on the petitioner to prove in what respects the respondent was in error in assessing the penalty of \$98.97 against petitioner for underpayment of his 1981 estimated Wisconsin income tax in accordance with Wisconsin Statutes, Section 71.21. Petitioner failed in his burden.

WISCONSIN STATUTE INVOLVED

Section 71.21"(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 income 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 or by \$100 or more for taxable year 1981 and thereafter. The declaration shall contain such information as the department by rule or forms prescribe. . . ."(Emphasis added)

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. Assessments made by respondent are presumed to be correct and the burden is upon petitioner to prove by clear and satisfactory evidence in what respects respondent erred in its determination.

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

AUTHORITY: R. James Beam vs. Wisconsin Department of Revenue
Docket No. 1-8725, August 27, 1982.

Therefore,

IT IS ORDERED

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

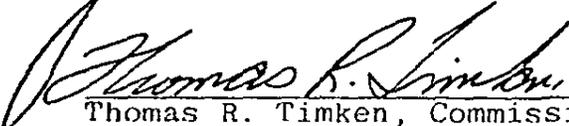
Dated at Madison, Wisconsin,

this 25th day of July, 1983.

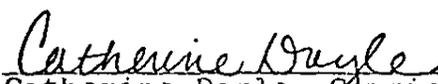
WISCONSIN TAX APPEALS COMMISSION



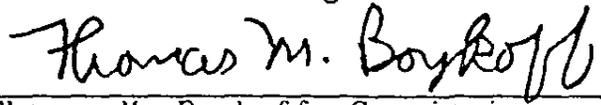
John P. Morris, Chairman



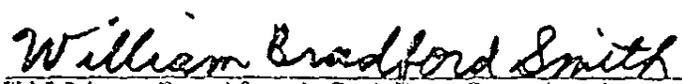
Thomas R. Timken, Commissioner



Catherine Doyle, Commissioner



Thomas M. Boykoff, Commissioner



William Bradford Smith, Commissioner

Attachment: "NOTICE OF APPEAL INFORMATION"