

# Project Cover Sheet

File Name

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STATE OF WISCONSIN  
TAX APPEALS COMMISSION

STATE OF WISCONSIN  
DEPARTMENT OF REVENUE  
**RECEIVED**  
AUG 22 1984  
LEGAL DIVISION

\* \* \* \* \*  
JEFFREY A. BENTON  
and MARY T. BENTON  
3669 Briarwood Drive  
Cedarburg, Wisconsin 53012  
  
Petitioners,  
  
vs.  
  
WISCONSIN DEPARTMENT OF REVENUE  
P.O. Box 8933  
Madison, Wisconsin 53708  
  
Respondent.  
\* \* \* \* \*

DOCKET NOs. I-10,442  
and I-10,443  
  
RULING AND ORDER ON  
MOTION FOR JUDGMENT  
ON THE PLEADINGS OR  
FOR SUMMARY JUDGMENT  
  
(Drafted by  
Commissioner Boykoff)

Pursuant to this Commission's notice to the parties, this Commission convened at Room 611A of GEF-2, a State Office Building, 101 South Webster Street, Madison, Wisconsin on July 24, 1984 at 9:00 a.m., for the purpose of hearing arguments on the respondent's motions that this Commission issue orders dismissing petitioners' petitions for review on judgments on the pleadings or, in the alternative, grant respondent summary judgments in the above-entitled matters on the grounds that (a) petitioners have failed to state a claim in their petitions for review upon which relief can be granted by this Commission, and (b) there is no genuine issue as to any material fact and the respondent is entitled to an order affirming its assessment as a matter of law under s.802.06(3) or s.802.08, Stats.

Petitioners, Jeffrey A. Benton and Mary T. Benton, husband and wife, appeared in person. Respondent, Wisconsin Department of Revenue, appeared by its attorney, Donald J. Goldsworthy. Exhibits were received into the record. The parties then offered oral arguments on the motions.

Having considered the pleadings, the record, the respondent's motions and the parties' arguments thereon, the Commission finds, rules and orders the following:

1. Under date of July 11, 1983, respondent issued petitioner Jeffrey A. Benton an assessment totalling \$1,315.62 (\$831.37 income tax, \$41.00 interest and \$443.25 penalty under s.71.11(47), Stats.) covering tax year 1982. Under date of November 21, 1983, respondent issued petitioner Mary T. Benton, an assessment totalling \$2,124.75 (\$1,530.75 income tax, \$75.50 interest and \$518.50 penalty) covering tax year 1982. Each was accompanied by the explanation that wages are includable in gross income and, for this reason, each petitioner's claim for refund for the years 1978 through 1982 is denied.

2. Under dates of August 22 and 29, 1983, petitioners, Jeffrey A. Benton and Mary T. Benton, respectively, filed a 5-page, fill-in-the-blanks-type of petition for redetermination with respondent. In the appeal document, petitioners' arguments included their assertion that the respondent has not proven that it has jurisdiction over either of them and that neither of them is required to file Wisconsin individual income tax returns for the period under review because the compensation they received for their labor was merely an equal exchange, not resulting in any profit to which Wisconsin's tax laws apply.

3. Under date of November 21, 1983, respondent denied each petition for redetermination.

4. Under date of April 10, 1983, petitioner Jeffrey A. Benton filed 2 1982 Wisconsin individual income tax forms, Forms 1A, with respondent. On both, he wrote that he had no wages,

salaries or tips, no total federal income nor any additions to federal income. On one form, he subtracted \$17,895.78 "Per 31 USC 742" from federal income, listed this amount as his net Wisconsin taxable income as a negative figure, listed \$1,013 as Wisconsin income tax withheld and requested this amount as a refund. On the other form, he similarly subtracted \$23,047.68 "Per 31 USC 742" from federal income, listed this amount as his net Wisconsin taxable income as a negative figure, listed \$941.63 as Wisconsin income tax withheld and requested this amount as a refund. Attached to this second form was a copy of a W-2 form, on which he wrote "INCORRECT", which was issued to this petitioner by the W.H.Brady Co. of Milwaukee and showed \$23,047.66 as wages, \$1,941.42 as federal tax withheld, \$1,544.19 as FICA tax withheld, and \$941.63 as Wisconsin income tax withheld.

5. Under date of April 10, 1983, petitioner Mary T. Benton filed a 1982 Wisconsin individual income tax form, Form 1, with respondent. She declared that she had no wages, salaries or tips, no total federal income nor any additions to federal income. She subtracted \$26,216.33 "Per 31 USC 742" from federal income, listed this amount as her Wisconsin taxable income as a negative figure, listed \$543.25 as Wisconsin income tax withheld and requested this amount as a refund. Attached to this form was a copy of a W-2 form on which was written "INCORRECT", which was issued to this petitioner by Johnson Controls, Inc. of Milwaukee and reflected \$26,216.33 as wages, \$2,085.83 as federal income tax withheld, \$1,756.49 as FICA tax withheld, and \$543.25 as Wisconsin income tax withheld.

6. None of the above 3 described tax forms constitute a properly filled out 1982 Wisconsin individual income tax return.

7. Under date of April 13, 1983, each petitioner filed a 7-page fill-in-the-blanks-type document with respondent requesting a refund of all 1982 Wisconsin income tax withheld-- and on this form, Mr. Benton also requested a refund of his 1980 Wisconsin income taxes--on several grounds, including their assertion that Chapter 71, Stats. is invalid; and that the federal reserve notes they received were not taxable and gold and silver are the only valid legal tender under the U.S. Constitution, Article I, Section 10, Clause 1.

8. Under date of June 21, 1983, each petitioner filed a 6-page, fill-in-the-blanks-type document with respondent. Each document asserts, among other things, that the DOR lacks jurisdiction over them; that the DOR must prove jurisdiction; that all "receipts" of each petitioner are exempt from Wisconsin taxes as being merely an equal exchange for their labors; and that the federal reserve notes they received are exempt from Wisconsin taxation under 31 U.S.C. s.742.

9. The respondent has requested both petitioners, on several occasions in writing, to file proper tax returns or to provide information regarding their tax affairs in 1982 to supplement the minimal information which they provided.

10. On January 18, 1984, each petitioner filed a one-page petition for review with this Commission. Each page was headed "Notice of 'Special' Continuing Appearance and Appeal" and, again, appears to be a photocopy of a form, with blank spaces

filled in for each petitioner. The form asserts that each petitioner was appearing specially and not generally (sic!); denies owing any tax to respondent; demands a hearing before this Commission to give respondent an opportunity to prove its jurisdiction over each petitioner; and contains other verbiage generally expressing indignant displeasure with respondent and the assessments here in question.

11. At the hearing before this Commission on respondent's motions, petitioners objected to respondent's motions and again asserted that they had determined that the respondent had no jurisdiction over them, demanded respondent to prove that it did, and refused to testify to anything until respondent proved that it had jurisdiction over them.

12. Neither in their pleadings, nor in documents filed with the respondent and with this Commission, nor in their oral argument before this Commission did either petitioner demonstrate any reasonable, rational attitude to resolve this tax dispute in a meaningful way.

13. Respondent has shown good and sufficient cause for the granting of its motions for summary judgment.

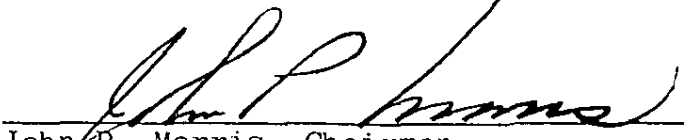
Therefore,

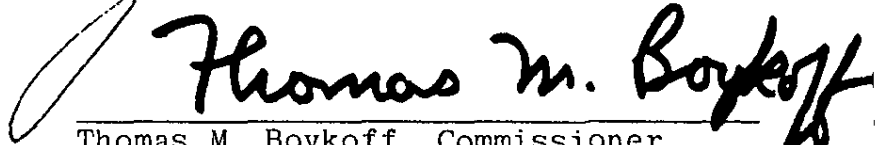
IT IS ORDERED

That respondent's motions for summary judgment in the above-captioned matters are granted.

Dated at Madison, Wisconsin, this 21st day of August,  
1984.

WISCONSIN TAX APPEALS COMMISSION

  
John P. Morris, Chairman

  
Thomas M. Boykoff, Commissioner

  
William Bradford Smith, Commissioner

Attachment: "NOTICE OF APPEAL INFORMATION"

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

\* \* \* \* \*

JEFFREY A. BENTON  
and MARY T. BENTON,

Petitioners,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

\* \* \* \* \*

DOCKET NOS. I-10,442  
and I-10,443

O P I N I O N

In these cases, petitioners filed Wisconsin individual income tax forms for calendar year 1982. The Department of Revenue reviewed these forms, determined that they were not properly completed, requested additional information about the tax year, and issued an assessment based on the W-2 forms attached to a tax form submitted by each petitioner and on an estimate of interest income.

The Department has the statutory authority to assess income taxes under s.71.11(1), (4) and (16), Stats. Section 71.11(16) authorizes the Department to audit Wisconsin individual income tax returns as it deems advisable and to make assessments, corrections or adjustments to such returns to correct them. Section 71.11(4) provides that any person required to file an income tax return who fails or refuses to do so shall be "assessed by the department according to its best judgment". Because petitioners refused to file proper income tax returns for 1982, the Department issued each an assessment under this statutory authority.

In petitioners' communications with the Department of Revenue and in their assertions before this Commission, petitioners



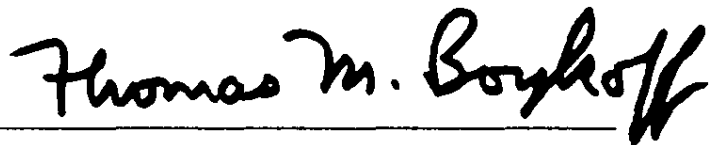
raised vague challenges to the Department's authority to issue these assessments. They continually challenged the Department to prove its jurisdiction over them. Their pleadings also invoked constitutional and other arguments which have been considered and rejected by this Commission and by state and federal courts.

Petitioners invoked the jurisdiction of this Commission when they petitioned for review under ss.71.12(1)(c) and 73.01(5), Stats. However, the petitioners continued to deny the authority of the Department to assess petitioners. In addition, the record does not reflect any intent on behalf of petitioners to cooperate with the respondent in complying with the Wisconsin income tax laws for the period under review. Nor have petitioners demonstrated in a logical or rational way, how or why the statutes have been improperly applied to or may not apply to them.

Any wages paid to petitioners in checks which were cashed to produce federal reserve notes are clearly taxable as income by this state. Taxable income includes wages or compensation for services. Lonsdale v. Commissioner, 661 F.2d 71, 72 (5th Cir. 1980); United States v. Buras, 633 F.2d 1356, 1361 (9th Cir. 1980). Federal reserve notes are legal tender. Kaufman v. Citizens State Bank of Loyal, 102 Wis. 2d 528, 533, 307 N.W. 2d 325, 328 (Ct. App. 1981). Petitioners' contention that federal reserve notes are not valid is blatantly frivolous in light of the clear holding of the Kauffman case. This state may tax federal reserve notes as money. 31 U.S.C.S. ss.5154 (1983).

As the balance of this opinion, I adopt, as if set forth here in full, the opinion in Daniel T. Betow v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-8737, CCH Wisconsin Tax Reporter, Transfer Binder (Part 2), 1979-82, para. 202-032 (June 10, 1982); affirmed by Rock County Circuit Court, Branch 5, Case No. 82-CV-311 (January 14, 1983); affirmed by Court of Appeals, District IV, Case No. 83-264 (unpublished, November 22, 1983).

Submitted by:



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Thomas M. Boykoff, Commissioner