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Project Cover Sheet

File Name

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STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
RECEIVED
JUN 5 1984
LEGAL DIVISION

EDWARD F. BISKOBING,
W164N9441 Water Street,
Menomonee Falls, Wisconsin 53051,

Petitioner,

vs-

WISCONSIN DEPARTMENT OF REVENUE,
PO Box 8933,
Madison, Wisconsin 53708,

Respondent.

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DOCKET NO. I-10,445

RULING AND ORDER ON MOTION
FOR JUDGMENT ON THE PLEADINGS OR
FOR SUMMARY JUDGMENT

(Drafted by Commissioner Morris)

Pursuant to this Commission's notice, this Commission convened in Room 214 of the State Office Building, 141 NW Barstow Street, Waukesha, Wisconsin on May 23, 1984 at three o'clock in the afternoon for the purpose of hearing respondent's motion for a judgment on the pleadings or, in the alternative, grant respondent summary judgment in the above-entitled matter on the grounds that (a) petitioner has failed to state a claim in his petition 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 pursuant to Section 802.06(3) or Section 802.08, Wisconsin Statutes.

The petitioner, Edward F. Biskobing, appeared in person, and by David Schimmels, his representative. 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.

1. By notice dated July 11, 1983, respondent issued an assessment against petitioner for additional income tax of \$337.00, interest of \$16.62, and penalty of \$204.25, totaling \$557.87, covering the tax year 1982.

2. Petitioner, Edward F. Biskobing, submitted to the respondent, Wisconsin Department of Revenue, a 1982 Wisconsin income tax Form 1 which indicated Wisconsin total income of '0'.

3. Petitioner filed his petition for redetermination with the respondent, Wisconsin Department of Revenue, dated August 22, 1983 and mailed on or about August 26, 1983.

4. By notice dated November 21, 1983 respondent denied the petitioner's petition for redetermination.

5. On January 19, 1984 petitioner filed a petition for review with this Commission, with the heading, "Notice of 'Special' Continuing Appearance and Appeal." The form asserts that petitioner was appearing specially and not generally; denies owing any tax to respondent; demands a hearing before this Commission to give respondent an opportunity to prove its jurisdiction over petitioner by production and pleading of jurisdictional facts.

6. At the hearing petitioner objected to respondent's motion in that respondent has not proven jurisdiction over the person and subject matter; therefore demanded that the respondent's motion be dismissed.

7. Respondent properly assessed petitioner for the year 1982 by estimating his income in said year.

8. Petitioner failed to present any evidence to overcome the presumption of correctness inherent in respondent's assessment.

9. The arguments made by petitioner in this matter have been consistently rejected by the courts of this state and are totally frivolous.

10. Respondent has shown good and sufficient cause for the granting of its motion for summary judgment in that 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 pursuant to Section 802.06(3) of the Wisconsin Statutes, or in the alternative, pursuant to Section 802.09 of the Wisconsin Statutes.

See: Betow v. Wisconsin Department of Revenue, CCH New Matters, Para. 202-032 (June 10, 1982),

Paul W. Christian and Yvonne D. Christian v. Wisconsin Department of Revenue, Marathon County Circuit Court, Case No. 82-CV-1208 (May 4, 1984)

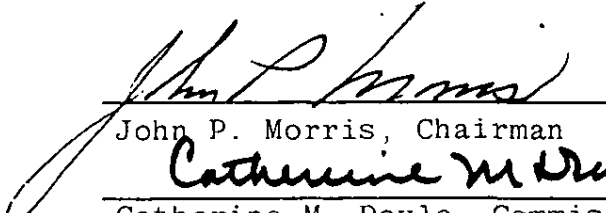
Therefore,

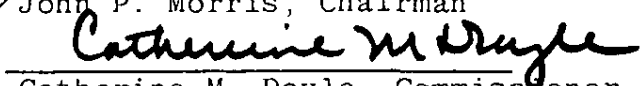
IT IS ORDERED

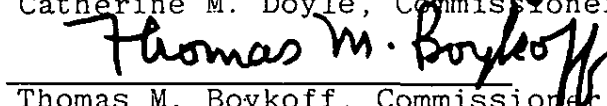
That respondent's motion for summary judgment in the above-captioned matter is hereby granted.

Dated at Madison, Wisconsin, this 4th day of June, 1984.

WISCONSIN TAX APPEALS COMMISSION


John P. Morris, Chairman


Catherine M. Doyle, Commissioner


Thomas M. Boykoff, Commissioner

CC: Petitioner

Respondent
Attachment: Notice of Appeal Information.