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STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
RECEIVED
DEC 19 1986
LEGAL DIVISION

ANTHONY J. BRUNO
11839 26th Avenue
Kenosha, WI 53140

Petitioner,

vs.

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

Respondent.

*
* DOCKET NO. I-12034
* RULING AND ORDER ON
* MOTION TO DISMISS OR
* FOR SUMMARY JUDGMENT

Pursuant to its notice, this Commission convened in Room 139 of the Department of Natural Resources Building, 2300 N. Dr. Martin Luther King, Jr. Drive, Milwaukee, Wisconsin, at 2:00 p.m., on December 9, 1986, for the purpose of hearing the respondent's motion for an order dismissing the petition for review in the above-entitled matter on the following grounds:

- A. That the petitioner failed to file a proper petition for review in accordance with secs. 71.12(1)(c) and 73.01(5)(b), Stats., and §TA 1.15 of the Wisconsin Administrative Code within 60 days after receipt of the respondent's notice of denial of the petition for redetermination as required by sec. 73.01(5)(a), Stats., and therefore the State of Wisconsin Tax Appeals Commission lacks jurisdiction to review the alleged grievances

of the petitioner.

B. That the respondent's action was proper, as a matter of law, in estimating the taxable income and incomes taxes of the petitioner for the years 1982, 1983, and 1984 pursuant to sec. 71.11(4), Stats., due to the continued refusal of the petitioner to properly file and report his income for income tax purposes for the years 1982, 1983, and 1984.

C. That the petition for review fails to state a claim upon which relief can be granted by the Commission.

D. That there is no genuine issue as to any material fact, and the respondent is entitled to dismissal of petitioner's petition for review as a matter of law.

E. That there exists no legal basis on which to grant relief to the petitioner, this Commission having dismissed the petitions for review on respondent's motion in Daniel T. Betow v. Wisconsin Department of Revenue, affirmed by Court of Appeals (November 22, 1983); and Michael J. Kinzinger v. Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-9485 (August 23, 1983).

In the alternative, the respondent's motion moved for an order granting summary judgment to the respondent on the grounds set forth in paragraphs A. through E. above, pursuant to Rules §TA 1.15, 1.31, and 1.39 of the Wisconsin Administrative Code and Sec. 802.08, Wisconsin Statutes.

Without prejudice to the above motions, and conditioned upon the necessity to do so, the respondent answered the petition for review by denying any allegations of fact and contentions of law in the petition as are deemed pertinent to the issue, and with respect to any allegations of fact therein, put the petitioner to his proof thereof.

The petitioner, Anthony J. Bruno, failed to appear in person or by representative. The respondent, Wisconsin Department of Revenue, appeared by its attorney, Karen Gast, who introduced exhibits and then moved for dismissal or for summary judgment on the grounds stated above. The respondent offered oral argument in support of its motions.

Having considered the record herein, the respondent's motion and alternative motion, and the oral argument of the respondent thereon, this Commission hereby finds and decides as follows:

1. By letter dated September 18, 1985, the respondent informed the petitioner that no 1982, 1983, and 1984 Wisconsin income tax returns had been received from petitioner. Said letter requested that the petitioner file his returns within twenty days.

2. By letter dated October 14, 1985, respondent again requested that petitioner file his 1982, 1983, and 1984 Wisconsin income tax returns with respondent.

3. The petitioner did not file 1982, 1983, and 1984 Wisconsin income tax returns with the respondent.

4. Pursuant to sec. 71.11(4), Wis. Stats., the respondent made an estimated assessment of income tax against the petitioner, dated February 3, 1986, in the total amount of \$3,983.71.

5. Under date of February 15, 1986, petitioner filed with respondent a letter objecting to respondent's estimated assessment. Said letter was treated by respondent as a petition for redetermination.

6. By letters dated April 18, 1986 and May 9, 1986, respondent again requested that petitioner file his 1982, 1983, and 1984 Wisconsin income tax returns. Petitioner again did not file the returns for the years in question.

7. Under date of June 16, 1986, respondent issued to the petitioner, by certified mail, notice of denial of the petition for redetermination.

8. On August 8, 1986, petitioner filed a petition for review with this Commission.

9. The petitioner has not complied with the respondent's request that he file proper 1982, 1983, and 1984 Wisconsin income tax returns.

10. Respondent properly assessed petitioner for the

years 1982, 1983, and 1984 by estimating his income for such years.

11. Petitioner failed to appear at the hearing before this Commission and present any evidence to overcome the presumption of correctness inherent in respondent's estimated assessment.

12. Respondent has shown good cause and sufficient grounds for the granting of its alternative motion for summary judgment, in that there is no genuine issue as to any material fact; and the respondent is entitled to an order granting it summary judgment as a matter of law pursuant to sec. 802.08, Wis. Stats.

AUTHORITY: Daniel T. Betow v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission Docket No. I-8737, CCH Wisconsin State Tax Reporter, New Matters (Part II), 1979-82, para. 202-032 (June 10, 1982), affirmed Rock County Circuit Court, Branch 5, Case No. 82-CV-311 (January 14, 1983), affirmed Court of Appeals, Case No. 83-264 (unpublished, November 22, 1983).

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

Donald G. Tracy and Shirley Tracy v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission Docket Nos. I-10384 and I-10385, March 26, 1984, affirmed Rock County Circuit Court, Branch I, Case No. 84-CV-294, November 30, 1984.


Therefore,

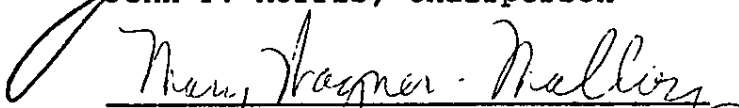
IT IS ORDERED

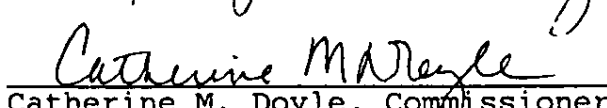
That respondent's alternative motion for summary judgment is hereby granted, and summary judgment for the respondent is entered accordingly.

Dated at Madison, Wisconsin, this 17th day of December, 1986.

WISCONSIN TAX APPEALS COMMISSION


John P. Morris, Chairperson


Mary Wagner-Malloy, Commissioner


Catherine M. Doyle, Commissioner

pc: Petitioner
Respondent

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"