

DONAHUE G JR I11596 072986 TAC

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STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
RECEIVED
JUL 3 1986
LEGAL DIVISION

G. B. DONAHUE, JR.
5024 38th Avenue
Kenosha, WI 53142,

Petitioner,

DOCKET NO. I-11596

vs.

RULING AND ORDER ON
MOTION TO DISMISS
OR FOR SUMMARY
JUDGMENT

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

Respondent.

Pursuant to this Commission's 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 1:00 p.m. on July 17, 1986, for the purpose of hearing respondent's motion for an order dismissing the petition for review in the above-entitled matter on the following grounds:

The petitioner failed to file a 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.

The respondent's action was proper, as a matter of

law, in estimating the taxable income and income taxes of the petitioner for the year 1983 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 year 1983.

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

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.

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, respondent moves for an order pursuant to Rules TA 1.15, 1.31, and 1.39 of the Wisconsin Administrative Code and sec. 802.08, Stats., for an order granting Summary Judgment to the respondent on the grounds as set forth above.

The petitioner, G. B. Donahue, Jr., failed to appear in person or by a representative. The respondent, Wisconsin Department of Revenue, appeared by its attorney, Karen A. Gast,

who introduced exhibits and then moved for dismissal or for summary judgment on the grounds stated above.

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

1. That on February 21, 1985, respondent received from the petitioner a purported claim for refund and 1983 tax form the original of which was returned to the petitioner with instructions that he should file a proper 1983 tax return.

2. That the petitioner failed to file a proper 1983 tax return as instructed and the respondent by notice dated April 8, 1985, made an estimated assessment against the petitioner in the amount of \$5,027.37 as provided by sec. 71.11(4), Stats.

3. That by letter received May 8, 1985, the petitioner objected to the respondent's assessment. Said letter was treated as a petition for redetermination.

4. That by notice dated August 5, 1985, mailed to the petitioner by certified mail, return receipt requested, and received by the petitioner on August 10, 1985, the respondent denied the petitioner's petition for redetermination of the assessment.

5. That under date of October 4, 1985, the petitioner filed a petition for review with the Wisconsin Tax Appeals Commission.

6. That the petition for review on file with the Wisconsin Tax Appeals Commission in this matter, alleges no genuine issue of fact or law and fails to state any claim upon which relief can

be granted.

7. That the petitioner has not complied with the respondent's request that he file a proper 1983 Wisconsin individual income tax return.

8. That there is no genuine issue as to any material fact and the respondent is entitled to a judgment as a matter of law.

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

10. Respondent has shown good and sufficient cause 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 affirming its estimated assessment as a matter of law pursuant to sec.802.06(3), Wis. Stats., or in the alternative, pursuant to sec. 802.08, Wis. Stats.

AUTHORITY: William A. Mitchell v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-10301 (July 5, 1984); affirmed Rock County Circuit Court, Case No. 84CV580; affirmed Court of Appeals, District IV, Case No. 85-0296 (June 19, 1986) 130 Wis. 2d _____.

Arthur F. Jackson vs. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-8581 (July 22, 1983); affirmed Rock County Circuit Court, Branch I, Case No. 83CV1642; affirmed Court of Appeals, District IV, Case No. 84-1094 (unpublished, October 24, 1985).

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. 82CV311 (January 14, 1983), affirmed

Court of Appeals, Case No. 83-264 (unpublished,
November 22, 1983).

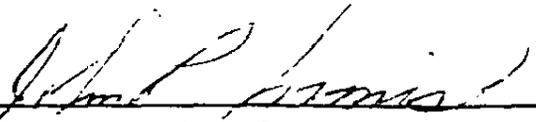
Therefore,

IT IS ORDERED

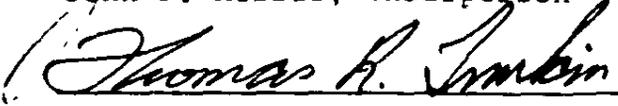
That respondent's motion for summary judgment is hereby
granted and entered accordingly.

Dated at Madison, Wisconsin, this 29th day of July,
1986.

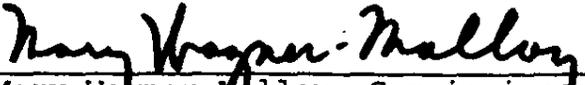
WISCONSIN TAX APPEALS COMMISSION



John P. Morris, Chairperson



Thomas R. Timken, Commissioner



Mary Wagner-Malloy, Commissioner

cc: Petitioner
Respondent

Attachment: "Notice of Appeal Information"