

MAIER MARY F ET AL 19946 S9947 & 19948 022184 TAC 1

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STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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

\*\*\*\*\*  
 MARY F. MAIER, \*  
 CHARLES P. MAIER, and \*  
 CHARLES P. MAIER, \*  
 1924 Highway 24, \*  
 East Troy, Wisconsin 53120, \*  
 \*  
 Petitioners, \*  
 \*  
 vs- \*  
 \*  
 WISCONSIN DEPARTMENT OF REVENUE, \*  
 PO Box 8933, \*  
 Madison, Wisconsin 53708, \*  
 \*  
 Respondent. \*  
 \*  
 \*\*\*\*\*

DOCKET NOS. I-9946,  
S-9947, and  
I-9948

RULING AND ORDER  
(Drafted by  
Commissioner Boykoff)

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The above-entitled matters were heard by the Commission. The petitioners, Charles P. and Mary F. Maier, husband and wife, appeared in person and by Al Feustel, "assistance of counsel". The respondent, Wisconsin Department of Revenue, appeared by its attorney, Robert C. Junceau. Having considered the evidence and arguments of the parties, this Commission hereby finds and decides as

FINDINGS OF FACT

1. These are timely-filed appeals to this Commission for review of the respondent's decisions on the petitioners' petitions for redetermination of assessments of additional income, sales and use taxes for the tax years 1978 through 1981.

2. During the period under review, the petitioners were residents of East Troy, Wisconsin, subject to the income tax provisions of Chapter 71, Wisconsin Statutes.

3. Regarding Docket No. I-9946: Under date of September 27, 1982, respondent issued to petitioner Mary F. Maier an assessment amounting to \$551.34 (\$514.00 individual income tax and adjustment to homestead credit, and \$37.34 interest) covering tax years 1978 through 1981. Under date of November 22, 1982, petitioner submitted to respondent a document captioned "Notice of 'Special' Continuing Appearance and Appeal". Respondent deemed this a petition for redetermination and, under date of April 29, 1983, denied it in full.

4. Regarding Docket No. S-9947: Under date of September 27, 1982, respondent issued to petitioner Charles P. Maier an assessment amounting to \$5,778.02 (\$3,791.94 sales and use tax, \$1,308.09 interest and \$947.99 negligence penalty) covering tax years 1978 through 1981. Under date of November 22, 1982, petitioner submitted to respondent a document captioned "Notice of 'Special' Continuing Appearance and Appeal". Respondent deemed this a petition for redetermination and, under date of April 29, 1983, denied it in full.

5. Regarding Docket No. I-9948: Respondent issued to petitioner Charles P. Maier an assessment amounting to \$5,280.93 (\$3,516.72 individual income tax and adjustment to homestead credit, \$1,212.78 interest and \$551.43 negligence penalty) covering tax years 1978 through 1981. Under date of November 22, 1982, petitioner submitted to respondent a document captioned "Notice of 'Special' Continuing Appearance and Appeal". Respondent deemed this a petition for redetermination and, under date of April 29, 1983, denied it in full.

6. Petitioners filed combined individual income tax returns for the years 1978 through 1981. In addition, petitioners filed an amended individual income tax return for 1980. Petitioner Charles P. Maier also filed annual sales tax returns for tax years 1978 through 1981 relating to his veterinary practice.

7. In 1982, respondent conducted a field audit of petitioners' income and sales and use tax returns identified above. The field audit resulted in respondent's issuance of the three assessments identified above, giving rise to these appeals.

8. At the January 25, 1984 hearing on the above appeals, the matters were consolidated for hearing and decision. Respondent's counsel then offered into the record the above-identified assessments, petitions for redetermination, notices of action on the petitions for redetermination and tax returns. Over petitioners' objections, these exhibits were received into the record.

9. Petitioners' representative, Al Feustel, then objected to the hearing's continuing until respondent proved that it had jurisdiction to issue the above assessments; stated that the petitioners had not filed petitions for redetermination; acknowledged that this Commission had jurisdiction to hear these appeals and that the only ruling this Commission could make is to dismiss the assessments for the reason that respondent has not proven jurisdiction over petitioners; and repeatedly asserted that the only issue before the Commission was one of respondent's jurisdiction.

10. Petitioners' representative, Al Feustel, advised both petitioners not to be sworn in or to offer substantive testimony to the Commission regarding the assessments. After being asked several times whether or not they wished to offer testimony under oath regarding the assessments generating these appeals, both petitioners declined "until the Department of Revenue proves its jurisdiction" over them.

11. Respondent's counsel then moved that these appeals be dismissed for two reasons: (a) the assessments are presumed to be correct and petitioners have the burden of proof to show them in error, which they have not done; and

(b) s. 71.12(3), Stats., requires that any person against whom an income tax assessment is made may not question the assessment unless the "person shall have made full disclosure under oath at the hearing before the tax appeals commission of any and all income received by him" or her. This income tax provision is incorporated into the sales and use tax law by s. 77.59(6)(b), Stats.

12. Petitioners offered no evidence or testimony whatsoever to overcome the presumptive correctness of respondent's assessments nor to comply with ss. 71.12(3) and 77.59(6)(b), Stats.

#### WISCONSIN STATUTES INVOLVED

s. 71.11(1), (20), (21), (22) and (47)  
s. 71.12(1)(a) and (c), (2) and (3)  
s. 79.59(2), (3) and (6)  
s. 77.60 (1)(b) and (4)

#### CONCLUSIONS OF LAW

1. Petitioners have failed to meet their burden of proof with clear and satisfactory evidence in overcoming the presumptive correctness of respondent's assessments.

AUTHORITY: Department of Taxation v. O. H. Kindt Mfg. Co.  
13 Wis. 2d, 258, 267-268 (1961)  
Woller v. Department of Taxation  
35 Wis. 2d 227, 232-233 (1976)  
Skaar v. Department of Revenue  
61 Wis 2d 93, 101-102 (1973)

2. Petitioners have failed to comply with the requirement of s. 71.12(3), Stats. that they make full disclosure under oath at the hearing before this Commission of any and all income received by them to challenge the income tax assessments under review.

3. Petitioner Charles P. Maier has failed to comply with the full disclosure requirement of s. 71.12(3), Stats., adopted for sales and use taxes

by s. 77.59(2) and (6)(b),, Stats., in order to challenge the sales and use tax assessment under review.

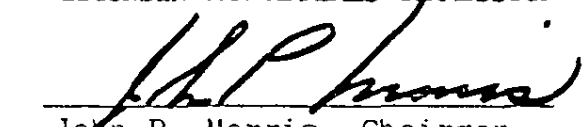
Therefore,

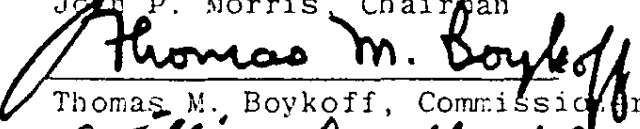
IT IS ORDERED

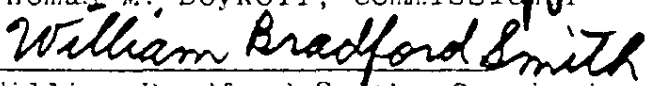
That respondent's motion to dismiss the three petitions for review involved in these matters is granted and the petitions are dismissed.

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

WISCONSIN TAX APPEALS COMMISSION

  
John P. Morris, Chairman

  
Thomas M. Boykoff, Commissioner

  
William Bradford Smith, Commissioner

CC: Petitioner  
Respondent

Attachment: Notice of Appeal Information.