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STATE OF WISCONSIN
DEPARTMENT OF REVENUE
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LEGAL DIVISION

STATE OF WISCONSIN
TAX APPEALS COMMISSION

ROBERT C. MARONN	:	
506 W. 20th Avenue	:	
Oshkosh, WI 54901	:	DOCKET NO. I-11271
	:	
Petitioner,	:	RULING AND ORDER ON
	:	
vs.	:	MOTION TO DISMISS OR
	:	
WISCONSIN DEPARTMENT OF REVENUE	:	FOR SUMMARY JUDGMENT
P.O. Box 8933	:	
Madison, WI 53708	:	
	:	
Respondent.	:	

Pursuant to this Commission's notice, this Commission convened in Room F, Fond du Lac County Courthouse, 160 S. Macy Street, Fond du Lac, Wisconsin, at 3:00 p.m., on October 29, 1985, 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:

A. That the petitioner failed to file a proper petition for review within 60 days after receipt of the respondent's notice of denial of the petition for redetermination as required by secs. 71.12 and 73.01(5)(a), Stats., and TA 1.15, Wis. Adm. Code, 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 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;

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

D. 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.

In addition, the respondent's motion moved for summary judgment on the grounds stated in paragraphs B. through E. above, pursuant to sec. 802.08, Stats., and ss. TA 1.15, 1.31 and 1.39, Wis. Adm. Code.

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, Robert C. Maronn, failed to appear in person or by a representative. The respondent, Wisconsin Department of Revenue, appeared by its attorney, Sheree Robertson, 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 thereon, this Commission hereby finds and decides as follows:

1. Under date of May 2, 1984, petitioner submitted to

respondent a signed 1983 Wisconsin Form 1 Long Form income tax form. Said form contained the words "none" and "object" on all lines pertaining to petitioner's taxable income.

2. Pursuant to s. 71.11(4), Stats., the respondent made an estimated assessment of income tax against the petitioner, dated July 16, 1984, in the total amount of \$2,469.00.

3. Under date of August 30, 1984, petitioner filed with respondent a letter objecting to any income tax assessment as a penalty for having claimed a right against self-incrimination. Said letter was treated by respondent as a petition for redetermination.

4. Under date of January 28, 1985, respondent issued to petitioner, by certified mail, notice of denial of the petition for redetermination.

5. On April 2, 1985, petitioner filed a petition for review with this Commission.

6. The petitioner has not filed a proper 1983 Wisconsin income tax return.

7. Respondent properly assessed petitioner for the year 1983 by estimating his income for such year.

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

9. The arguments made by petitioner in his petition for review have been continuously rejected by the courts of this State and are totally frivolous.

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 s. 802.06(3), Stats., or in the alternative, pursuant to s. 802.08, 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,

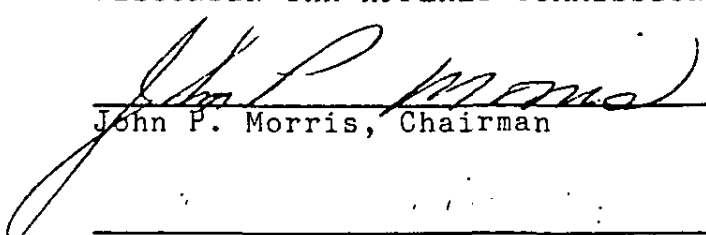
IT IS ORDERED

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 12th day of November, 1985.

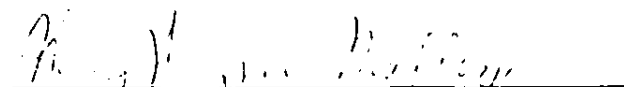
WISCONSIN TAX APPEALS COMMISSION

cc: Petitioner
Respondent


John P. Morris, Chairman

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"

Catherine M. Doyle, Commissioner


Mary Wagner-Malloy, Commissioner