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STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
RECEIVED
MAR 12 1981
LEGAL DIVISION

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GERTRUDE A. MCKENZIE,

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DOCKET NO. I-5407

DECISION AND ORDER

(Drafted by
Chairman Boykoff)

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The above-entitled matter was heard by the Commission. The petitioner, Gertrude A. McKenzie a/k/a Trudy A. McKenzie, appeared in person and on her own behalf. The respondent, Wisconsin Department of Revenue, appeared by its attorneys, Deborah Rychlowski and Robert C. Junceau. Having considered the evidence and arguments of the parties, this Commission hereby finds and decides as

FINDINGS OF FACT

1. This is a timely filed appeal to this Commission for review of the respondent's decision on the petitioner's petition for redetermination of an assessment of additional income taxes for the taxable years 1971 and 1972.

2. During at least part of each year in the period under review, the petitioner was a Wisconsin resident, subject to the income tax provisions of Chapter 71, Wis. Stats.

3. Under date of December 30, 1975, respondent issued

to petitioner a "Notice of Amount Due" for \$2,200 of Wisconsin individual income tax for the tax years 1971 and 1972. Attached to the notice was an explanation that because petitioner did not file a Wisconsin individual income tax return for either year nor reply to 2 of respondent's written requests to do so, respondent estimated petitioner's income for each year to be \$15,000 and computed a tax of \$1,100 for each year based on that income under its authority in s.71.11, Wis. Stats.

4. A document was sent by the petitioner and received by respondent on or about January 21, 1976 which respondent deemed and which constituted petitioner's petition for redetermination. The document did not include a Wisconsin individual income tax return for either year under review.

5. Under date of April 19, 1976, respondent denied petitioner's petition for redetermination.

6. At the June 17, 1980 hearing before this Commission on this appeal, petitioner offered no evidence regarding her income tax affairs for the period under review. Petitioner also stated that she would refuse to testify regarding her finances during the period under review if respondent called her as an adverse witness.

7. Petitioner did not meet her burden of proof in establishing that respondent's assessment was incorrect.

8. Also at the Commission's June 17, 1980 hearing on this appeal, petitioner generally asserted that the state statutes

imposing the Wisconsin individual income tax and prescribing the procedures for appealing from an income tax assessment of respondent are unconstitutional; and that the proper burden of proof on respondent's estimated assessment against her should be upon respondent, rather than the petitioner.

WISCONSIN STATUTES INVOLVED

ss.71.10(2)(c), 71.11(4) and 71.12(3), Wis. Stats.

ISSUES FOR DETERMINATION

1. Has petitioner met her burden of proof under s.71.12(3), Wis. Stats. to overcome the presumptive correctness of respondent's assessment.

2. Are Wisconsin's statutes imposing the individual income tax and prescribing procedures for appealing an income tax assessment of respondent unconstitutional?

CONCLUSIONS OF LAW

1. Income tax assessments made by respondent are presumptively correct and the burden of proof to establish that assessments are incorrect is on the assessed person. Petitioner has not met this burden of proof by making full disclosure under oath before this Commission under s.71.12(3), Wis. Stats. of any and all income received by her for taxable years 1971 and 1972. The assessment is, therefore, correct.

AUTHORITY: Leroy W. Knies v. Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-7168 (December 18, 1980)

Patrick J. Piper v. Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-7424 (October 21, 1980)

Randy Larsen v. Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-6564 (August 13, 1980)

Russell J. Neumann v. Department of Revenue, Docket No. I-6817, Wisconsin Tax Appeals Commission (June 30, 1980)

Carl L. Petsch v. Department of Revenue, Docket No. I-6304, Wisconsin Tax Appeals Commission (June 30, 1980)

Woller v. Department of Taxation, 35 Wis. 2d 227, 232-233 (1967)

2. Wisconsin's income tax and appeals procedure statutes are deemed constitutional unless declared unconstitutional by a court of record. This Commission does not have the authority to determine assertions of constitutionality and, therefore, issues no conclusion of law on petitioner's contention of unconstitutionality.

AUTHORITY: Carl L. Petsch v. Department of Revenue, supra

Kurz & Root Co. v. Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-6297 (April 3, 1980)

N. Jean Dorman v. Department of Revenue, Wisconsin Tax Appeals Commission, 10 WTAC 111 and 112 (1976)

Therefore,

IT IS ORDERED

That respondent's action on petitioner's petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 10th day of March,
1981.

WISCONSIN TAX APPEALS COMMISSION

Thomas M. Boykoff

Thomas M. Boykoff, Chairman

Thomas R. Timken

Thomas R. Timken, Commissioner

John P. Morris

John P. Morris, Commissioner

Catherine M. Doyle

Catherine M. Doyle, Commissioner