

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MCKENZIE GERTRUDE 110321 062584 TAC

February

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
RECEIVED
JUN 26 1984
LEGAL DIVISION

6090010

STATE OF WISCONSIN
TAX APPEALS COMMISSION

GERTRUDE A. MC KENZIE	:	DOCKET NO. I-10,321
11 So. Ringold Street	:	RULING AND ORDER ON
Janesville, WI 53545	:	
	:	MOTION FOR JUDGMENT ON
Petitioner,	:	
vs.	:	THE PLEADINGS OR FOR
	:	SUMMARY JUDGMENT
WISCONSIN DEPARTMENT OF REVENUE	:	
P. O. Box 8933	:	(Drafted by
Madison, WI 53708	:	
	:	Commissioner Boykoff)
Respondent.	:	

Pursuant to this Commission's notice, this Commission convened in Room 611A of the GEF 2 State Office Building, 101 South Webster Street, Madison, Wisconsin, on March 6, 1984, at 3:00 p.m., for the purpose of hearing arguments on the respondent's motion that this Commission issue an order dismissing petitioner's petition for review on a judgment on the pleadings or, in the alternative, grant respondent a summary judgment in the above-entitled matter on the grounds that (a) petitioner has failed to state a claim upon which relief can be granted by this Commission; (b) petitioner has failed to allege in her petition for review any justiciable error by respondent in issuing its assessment to her; and (c) there is no genuine issue as to any material fact and the respondent is entitled to an order affirming its assessment as a matter of law under s. 802.06(3) or s. 802.08, Stats.

Petitioner filed a responsive answer to respondent's motion in which she requested additional time for an opportunity to amend her original petition.

Petitioner, Gertrude A. McKenzie, appeared in person and on her own behalf. Respondent, Wisconsin Department of Revenue, appeared by its attorney, Deborah Rychlowski. Exhibits were received into the record. Both parties then offered oral arguments on the motion.

Having considered the pleadings, the record, the respondent's motion and both parties' legal arguments thereon, this Commission finds, rules and orders as follows:

1. Under date of January 31, 1983, respondent issued an assessment to petitioner for \$5,612.04 income tax for calendar years 1978 through 1981. The assessment estimated petitioner's income as \$20,000 for each year and had the following explanation:

"SINCE WE HAVE NOT RECEIVED A REPLY TO OUR LETTER(S) REQUESTING YOU TO FILE WISCONSIN INCOME TAX RETURNS AND/OR EXPLANATORY INFORMATION AS TO WHY SUCH RETURNS ARE NOT REQUIRED, WE HAVE ESTIMATED YOUR INCOME IN ACCORDANCE WITH WISC. STATUTE 71.11 FOR THE YEARS SHOWN ABOVE. THIS ESTIMATE IS MADE WITH THE EXPRESS PURPOSE OF OBTAINING THE INFORMATION REQUESTED SO THAT YOUR CORRECT TAX LIABILITY MAY BE DETERMINED. . . ."

IN OUR EXPERIENCE MOST TAXPAYERS OWE CONSIDERABLY LESS TAX THAN OUR ESTIMATE. TO OBTAIN A DETERMINATION OF YOUR CORRECT LIABILITY, A WRITTEN NOTICE OF OBJECTION TO THIS ASSESSMENT MUST BE FILED WITH THE APPELLATE BUREAU. SUCH AN OBJECTION MUST BE RECEIVED WITHIN 60 DAYS OF THE RECEIPT OF THIS ASSESSMENT, AND SHOULD INCLUDE COMPLETE TAX RETURNS FOR THE ABOVE YEARS OR AN EXPLANATION AS TO WHY RETURNS ARE NOT DUE. . . ."

2. Under date of March 31, 1983, petitioner filed a petition for redetermination with respondent. The petition included arguments challenging respondent's authority to issue an assessment based on estimates of income and raising several constitutional challenges to the Wisconsin income tax.

3. Under date of September 26, 1983, respondent denied petitioner's petition for redetermination.

4. Petitioner filed a timely petition for review of respondent's action with this Commission on November 28, 1983.

5. At the March 6, 1984 hearing on the motion, petitioner continued to assert that she was not a person required to file a Wisconsin income tax for the years under review and that the respondent had no authority to assess her nor any jurisdiction over her. Her other arguments included the following: respondent acted contrary to law in not allowing her a conference at its Appellate Bureau level; respondent must prove that she had a tax liability before it issues an assessment; Wisconsin income tax is invalid under Article XVI of the U.S. Constitution; "income" is not defined in the Internal Revenue Code nor in the Wisconsin Statutes; salaries, wages and commissions received by individuals are not subject to income tax; rather, only those types of income received by corporations and persons specially licensed are taxable; and that she has a 5th Amendment right to refuse to file a Wisconsin income tax return.

6. In her petition for review with this Commission, petitioner further argues that federal reserve notes are not proper legal tender; that money received for exertion of labor is not taxable as "income" but only represents an equal exchange with no profit; and that neither the respondent nor this Commission has proven that either has jurisdiction over her.

7. From a review of the petitioner's petition for review,

petitioner's exhibits introduced in the hearing record, respondent's motion, the oral arguments of petitioner and respondent's attorney, and petitioner's written arguments, it appears that petitioner's objections are a series of constitutional and other objections which have been repeatedly rejected in both federal and state courts and before this Commission. In addition, the record does not reflect any intent on behalf of petitioner to cooperate with the respondent in complying with the income tax laws for 1978 through 1981 nor in demonstrating, in a logical or rational way, how or why the statutes have been improperly applied to petitioner.

8. The respondent has shown good and sufficient cause for the granting of its motion for summary judgment.

9. Petitioner has not shown good and sufficient cause for the granting of her request for additional time to amend her petition for review.

AUTHORITY: ss. 71.01(1) and 71.11(1), (4), (16), (21) and (22), Stats.

Gertrude A. McKenzie v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-5407 (March 10, 1981), affirmed by the Rock County Circuit Court, Case No. CV-296-A (November 24, 1981) and the Wisconsin Court of Appeals (unpublished opinion, May 31, 1982), appellant's petition to review to the Wisconsin Supreme Court denied (July 27, 1982).

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 by the Rock County Circuit Court, Branch 5, Case No. 82-CV-311 (January 14, 1983),

affirmed by 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).

Kaufmann v. Citizens State Bank of Loyal, 102 Wis. 2d 528 (Ct. App. 1981).

Therefore,

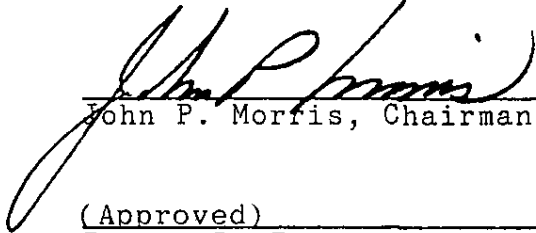
IT IS ORDERED

That petitioner's request for additional time to amend her petition for review is denied, and further,

That respondent's motion for summary judgment is granted.


Dated at Madison, Wisconsin, this 25th day of June, 1984.

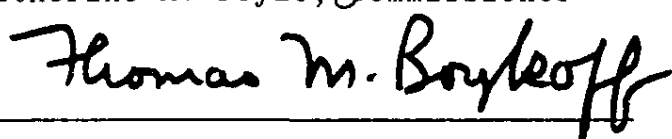
WISCONSIN TAX APPEALS COMMISSION

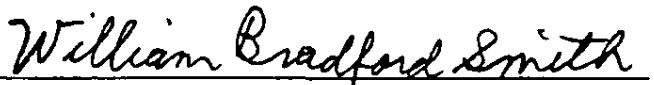

John P. Morris, Chairman

(Approved)

Thomas R. Timken, Commissioner


Catherine M. Doyle, Commissioner


Thomas M. Boykoff, Commissioner


William Bradford Smith, Commissioner

cc: Petitioner
Respondent

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"

STATE OF WISCONSIN
TAX APPEALS COMMISSION

GERTRUDE A. MC KENZIE, :
 :
 : Petitioner, : DOCKET NO. I-10,321
 :
 vs. : OPINION
 :
 WISCONSIN DEPARTMENT OF REVENUE, : (Drafted by
 :
 Respondent. : Commissioner Boykoff)

In this case, petitioner has not filed Wisconsin individual income tax returns for calendar years 1978 to 1981. She continually denies any requirement to file nor any liability for tax for those years on many procedural and constitutional grounds.

It is basic statute law that the Department of Revenue has the authority to assess income taxes under s. 71.11(1), (4) and (16), Stats. Section 71.11(4) provides that any person required to file an income tax return, who fails or refuses to do so, shall be "assessed by the department according to its best judgment". In this case, the Department issued an assessment under that authority.

Petitioner still refused to file returns, invoking constitutional and other arguments which have often been considered and rejected by this Commission, and by both state and federal courts. Petitioner invoked the jurisdiction of this Commission when she petitioned for review under ss. 71.12(1)(c) and 73.01(5), Stats. However, the petitioner continued to deny the authority

of the Department to assess petitioner. In addition, the record does not reflect any intent on behalf of petitioner to cooperate with the Wisconsin income tax laws for 1978 to 1981 nor in demonstrating, in a logical or rational way, how or why the statutes have been improperly applied to petitioner.

The instant petitioner is no stranger to these concepts. She similarly refused to file Wisconsin income tax returns for 1971 and 1972. In Gertrude A. McKenzie v. Wisconsin Department of Revenue, Court of Appeals, District IV, Case No. 82-056 (unpublished opinion, May 3, 1982), the Court stated the following in its summary affirmance of the Department of Revenue's action:

"The department (of revenue) assessed taxes against the appellant for the years 1971 and 1972. The appellant appealed to the tax appeals commission and contended it had no jurisdiction. The appeal was denied and the circuit court affirmed.

The department had the power to assess taxes under secs. 71.11(1) and (4), Stats. The appellant invoked the jurisdiction of the tax appeals commission when she petitioned for review pursuant to sec. 73.01(5), Stats. The appellant had a duty pursuant to sec. 71.12(3), Stats., to make full disclosure, but failed to do so. No evidence was presented before the tax appeals commission in support of her position. There is no right to a jury trial in a tax case. Walker v. Sauvinet, 92 U.S. 90 (1875); Cunningham v. Northwestern Improvement Co., 44 Mont. 180, 119 P. 554, 563 (1911). The assessment of the department is presumed to be correct and the burden of proof is upon the taxpayer to show error in the additional assessment. Woller v. Dept. of Taxation, 35 Wis. 2d 227, 232-233, 151 N.W. 2d 170, 172-173 (1976)."

As the balance of this opinion, I adopt, as if set forth here in full, the opinion in Daniel T. Betow v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-8737,

CCH Wisconsin Tax Reporter, New Matters (Part 2), 1979-82, (June 10, 1982)
affirmed by Rock County Circuit Court, Branch 5, Case No. 82-CV-311
(January 14, 1983), affirmed by Court of Appeals, District IV,
Case No. 83-264 (unpublished, November 22, 1983).

Submitted by:

Thomas M. Boykoff

Thomas M. Boykoff, Commissioner