

Project Cover Sheet

File Name

MITCHELL WILLIAM A 110301 070584 TAC



2/ delivery

STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE

RECEIVED
JUL 6 1984

LEGAL DIVISION

* * * * *

WILLIAM A. MITCHELL
1719 Tamarack Lane
Janesville, WI 53545,

Petitioner,

vs.

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

Respondent.

* * * * *

DOCKET NO. I-10,301
RULING AND ORDER ON
MOTION FOR JUDGMENT O
THE PLEADINGS OR FOR
SUMMARY JUDGMENT
(Drafted by
Commissioner Boykoff)

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 10:30 A.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 his petition for for review any justiciable error by respondent in issuing its assessment to him; 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, William A. Mitchell.

appeared in person and on his own behalf. Respondent, Wisconsin Department of Revenue, appeared by its attorney, Robert M. Finley. 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 May 2, 1983, respondent issued an assessment to petitioner for \$3,076.98 (\$2,079 income tax, \$289.23 interest, \$703.75 negligence penalty, and \$5 late filing fee) covering calendar years 1980 and 1981. An appended explanation read in part: "You have failed to file a Wisconsin income tax return for this year (sic!) as previously requested. In accordance with Section 71.11 (4) of the Wisconsin Statutes we are estimating your income."

2. Under date of July 1, 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 respondent's procedures.

3. Under date of September 19, 1983, respondent denied petitioner's petition for redetermination in full.

4. Petitioner filed a timely petition for review of respondent's action with this Commission on November 18, 1983.

5. Under date of June 15, 1981, petitioner submitted to respondent a 1980 "Long Form" Wisconsin income tax form 1. Petitioner entered a zero ("0") on lines requesting wages, salaries and tips; total federal income; total adjustments; federal adjusted gross income; total additions to and subtractions from federal adjusted gross income; Wisconsin net taxable income; and Wisconsin net tax. However, he attached to that document a W-2 form issued to him by AA Electric Division of "Automation Engr Co Inc" reflecting \$39,531.85 in wages, \$1,666.98 federal income tax withheld, \$1,587.67 FICA tax withheld, and \$1,729.19 Wisconsin income tax withheld. On his 1980 tax form, petitioner requested a full refund of the \$1,729.19 Wisconsin income tax withheld. Next to his signature on the form is typed "The statements on this form are involuntary and were extracted from us (sic!) under threat of statutory punishment." Attached to the form was a copy of a similarly completed federal form 1040 for the year and several pages citing federal cases and generally arguing that the federal and Wisconsin income taxes were invalid.

6. The materials submitted by petitioner on, and attached to, a 1980 Wisconsin income tax form do not constitute a properly completed 1980 Wisconsin income tax return but may be characterized as a document, with attachments, submitted in lieu of a 1980 Wisconsin income tax return.

7. Petitioner neither filed with respondent a proper 1981 Wisconsin income tax return nor submitted a document in lieu of a 1981 Wisconsin income tax return.

8. At the March 6, 1983 Commission hearing on this motion, petitioner stated that he was appearing by "special appearance" and that his appearance did not confer jurisdiction over this matter upon the respondent or on this Commission. His other arguments included the following: the Department of Revenue and the Tax Appeals Commission do not have jurisdiction over him as an individual regarding this tax matter; he has not voluntarily submitted himself to the jurisdiction of the respondent; somehow, the respondent is denying him of unspecified constitutional rights not to have to file a Wisconsin individual income tax return; specifically, he is being denied his rights under the U.S. Constitution Article I for a "redress of grievances" and Article V, his right to not be compelled to bear witness against himself; the respondent has not defined "income" to let him know how to file; income tax only applies to "gain", not to his wages which were merely an equal exchange for his labor; and the income tax applies to corporations and persons licensed to pursue certain occupations, not to ordinary individuals like him.

9. In his petition for review with this Commission, petitioner further argues that federal reserve notes are not proper legal tender; and extensively argues 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 him.

10. 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 the 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 1980 and 1981 nor in demonstrating, in a logical or rational way, how or why the statutes have been improperly applied to petitioner.

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

Therefore,

IT IS ORDERED

That respondent's motion for summary judgment is granted.

AUTHORITY:(a) Wages and salaries are not equal exchange for labor resulting in no income tax has been rejected:

Lonsdale v. Commissioner of Internal Revenue, 81-2 USTC para. 9772, U.S. Ct. of Appeals, 5th Circuit (November 12, 1981)

Robert C. Brandt v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-7969 (March 20, 1981)

(b) Gold and silver contention has been rejected:

Birkenstock v. Commissioner of Internal Revenue, 81-1 USTC para. 9382, U.S. Ct. of Appeals, 7th Circuit (March 3 and 16, 1981) and cases cited therein

Kauffman v. Citizens State Bank of Loyal, 102 W.2d 528 (Ct. App., 4th Dist., March 19, 1981) and authorities cited therein.

(c) Wages are included in "income" has been upheld:

Internal Revenue Regulations secs. 1.61-1 and 1.61-2

Robert C. Brandt v. Wisconsin Department of Revenue, supra.

Commissioner of Internal Revenue v. Kowalski, 434 U.S. 77, 82-83 (1977) and 77-2 USTC para. 9748

(d) Generally:

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

William A. and Linda S. Mitchell v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket Nos. I-8653, I-8654 and I-8655 (October 8, 1982).

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).

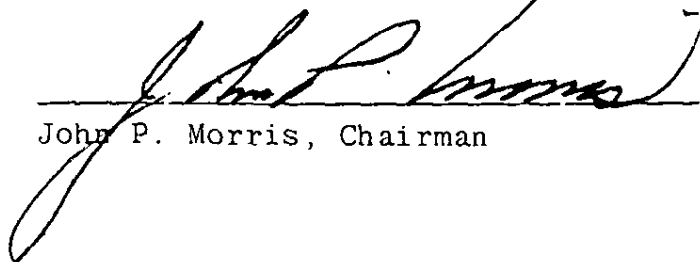
Paul W. and Yvonne D. Christian v. Wisconsin Department of Revenue, Circuit Court for Marathon County, Branch IV, Case No. 82-CV-1208 (May 4, 1984).

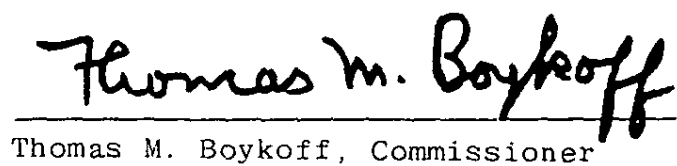
Kaufmann v. Citizens State Bank of Loyal, 102 Wis. 2d 528 (Ct. App. 1981).

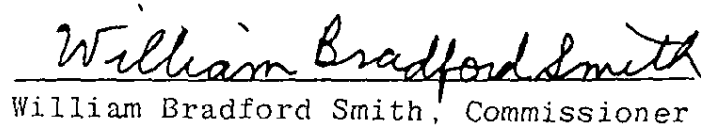
Dated at Madison, Wisconsin, this 5th day of July,

1984.

WISCONSIN TAX APPEALS COMMISSION


John P. Morris, Chairman


Thomas M. Boykoff, Commissioner


William Bradford Smith, Commissioner

ATTACHMENT:
"Notice of Appeal Information"

STATE OF WISCONSIN
TAX APPEALS COMMISSION

* * * * *
WILLIAM A. MITCHELL,
Petitioner,
vs.
WISCONSIN DEPARTMENT OF REVENUE,
Respondent.
* * * * *

DOCKET NO. I-10,301
O P I N I O N

In this case, petitioner has not filed a properly completed Wisconsin individual income tax return for 1980 and has not filed any return for 1981. He continually denies any requirement to file nor any liability for tax for those years, asserting that the Department of Revenue has no jurisdiction over him and asserting several 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), (16), (21) and (22), 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 he 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 and of this Commission to review the matter. In addition, the record does not reflect any intent on behalf of petitioner to cooperate with the Wisconsin income tax laws for 1980 and 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. He and his wife similarly refused to file Wisconsin income tax returns for 1977, 1978 and 1979. In William A. and Linda S. Mitchell v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission Docket Nos. I-8653, I-8654 and I-8655 (October 8, 1982), this Commission granted a Department of Revenue motion for summary judgment after petitioners therein refused to file proper income tax returns and asserted many of the same arguments in the instant case.

A similar case is Patrick J. Piper v. Wisconsin Department of Revenue, Case No. 81-1115, Court of Appeals, District 2 (unpublished June 11, 1982), petition for review denied by Wisconsin Supreme Court (September 20, 1982). In its per curiam decision, the Court succinctly addressed several arguments of both Mr. Piper and Mr. Mitchell in the instant case as follows:

On appeal, the petitioner contends that the respondent lacked authority to make the assessment. In addition, he argues that he was not required to present evidence after he had asserted his fifth amendment privilege. . . .

The respondent had the power to make the assessment pursuant to sec. 71.11(1) and (4), Stats. The assessment is presumed to be correct, and, when the assessment is contested, the burden of proof shifts to the taxpayer to show that the assessment is erroneous. Woller v. Department of Taxation, 35 Wis.2d 227, 232, 151 N.W. 2d 170, 172 (1967). The petitioner had a duty pursuant to sec. 71.12(3), Stats., to make full disclosure of the facts regarding his income in 1977, but he refused to do so. "Failure to present any evidence showing error means that the case must be decided against the taxpayer." Id. at 233, 151 N.W. 2d at 173. See also Skaar v. Department of Revenue, 61 Wis. 2d 93, 101, 211 N.W. 2d 642, 646 (1973), cert. denied, 416 U.S. 906 (1974). Piper failed to present any evidence in support of his position before the commission, and thus, the assessment is presumed to be correct.

The petitioner's contention that he was not required to present evidence after the assertion of his fifth amendment privilege is unavailing. This matter is a civil proceeding, and the fifth amendment protection does not apply to noncriminal matters. United States v. Apfelbaum, 445 U.S. 115, 125 (1980). It is true that the fifth amendment privilege may, in certain circumstances, be asserted in a civil case. Maness v. Meyers, 419 U.S. 449, 464 (1975). However, those instances are limited to where the party asserting the privilege had reasonable cause to believe that the information sought could be used in a subsequent criminal prosecution. Hoffman v. United States, 341 U.S. 479, 486 (1951). The witness is not excused from answering simply because he asserts the privilege. Id. It is for the court to determine whether the assertion of the privilege is appropriate under the circumstances. Id. Here, the record does not show that the information sought would have been used in a criminal prosecution. There is no basis in the record to hold that the fifth amendment privilege should have been recognized.

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), 1979-1982, par:

202-032, (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