

MITCHELL WILLIAM A & LINDA S I8653 THRU I8655 100882 TAC

STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
RECEIVED
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LEGAL DIVISION

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* * * * *
WILLIAM A. AND LINDA S. MITCHELL
1719 Tamarack Lane
Janesville, Wisconsin 53545

Petitioner,

vs.

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

Respondent.
* * * * *

DOCKET NOS. I-8653,
I-8654
and I-8655

RULING AND ORDER

ON MOTION TO DISMISS

(Drafted by
Chairman Boykoff)

Handwritten signature

Pursuant to this Commission's notice, this Commission convened at 131 West Wilson Street, Room 1003, Madison, Wisconsin on September 8, 1982 at 10:30 a.m., for the purpose of hearing arguments on the respondent's motions that this Commission issue orders dismissing petitioners' petitions for review in the above-entitled matters on the grounds that (a) petitioners have failed to state a claim upon which relief can be granted in that they failed to allege in their petition for review any justiciable error on the part of respondent in issuing an assessment or in denying petitioners' claims for refund of Wisconsin income taxes for 1977, 1978 and 1979 or justiciable facts tending to show that respondent's actions were incorrect, and (b) that petitioners have failed to state a justiciable controversy as they raise as their objections to respondent's actions only a series of constitutional objections which have been repeatedly rejected in both federal and state courts and by this Commission.

Petitioner William A. Mitchell appeared in person and on his own behalf, as well as on behalf of Linda S. Mitchell, who did not appear in person. Respondent, Wisconsin Department of Revenue, appeared by its attorney, Robert M. Finley. Jurisdictional exhibits were received into the record showing that the proper procedural steps prescribed by statute had been taken to bring the matters before the Commission. The parties then offered arguments on the motions.

Having considered the record and respondent's motions, this Commission finds, rules and orders as follows:

1. Under dates of April 17, 1978, February 13, 1979 and April 14, 1980, petitioners filed with respondent 1977, 1978 and 1979 Wisconsin income tax returns, respectively, long forms, declaring income from wages and salaries, and attaching to each tax return W-2 forms issued to petitioners by their employers, reflecting that amounts were paid to them as wages.

2. Under date of March 5, 1981, petitioners filed an amended Wisconsin income tax return for 1977, 1978 and 1979 claiming refunds of Wisconsin income tax for 1977 of \$1,270.43 (Mr. Mitchell) and 2.39 (Mrs. Mitchell), for 1978 of \$1,824.27 (Mr. Mitchell) and 57.60 (Mrs. Mitchell) and for 1979 of \$1,617 (Mr. Mitchell). Each amended return contained the statement "The statements on this form are involuntary and were extracted from us under threat of statutory punishment." Each amended return claimed a refund for Wisconsin income taxes paid on wages, and were treated by respondent as claims for refund.

3. Under date of March 23, 1981, each claim for refund was denied.

4. Under date of May 21, 1981, petitioners filed with respondent a petition for redetermination covering each denial, claiming that the income they received as wages was not taxable.

5. Under date of October 8, 1981, respondent issued its notices of action denying the petition for redetermination, stating, in part, "It is our position that compensation for services is gross income as defined by Section 61 of the Internal Revenue Code and that such income is subject to Wisconsin income tax assessment."

6. Under date of April 6, 1981, respondent issued to petitioner William A. Mitchell an assessment for \$94.94 (\$81.93 income tax and \$13.01 interest) covering tax years 1977, 1978 and 1979. The asserted basis of the assessment was that the state income tax refund received in each year (which, in 1979, included an amount as property tax credit) was income which should have been, but was not, reported as income in the year received. Petitioner's May 21, 1981, petition for redetermination in the other 2 matters discussed above also was treated as a petition for redetermination of this assessment. Under date of October 8, 1981, respondent denied petitioner's petition for redetermination in the dispute over the assessment.

7. On December 7, 1981, petitioners filed a petition for review with this Commission covering all 3 petitions for redetermination in dispute; i.e., the petition covered respondent's denial of Mr. Mitchell's claim for refund, respondent's denial of

Mrs. Mitchell's claim for refund, and respondent's assessment of Mr. Mitchell, all covering tax years 1977, 1978 and 1979. In this petition and in petitioner William A. Mitchell's September 8, 1982 arguments before this Commission in opposition to respondent's motions, petitioners advanced 3 primary contentions: (a) the wages and salaries which petitioners' employers gave them in exchange for their labor amounted to an equal exchange, and not to any profit or gain upon which either petitioner is taxable; (b) because Article I, Section 10 of the U.S. Constitution provides that no state "make anything but gold and silver coin as tender in payment of debts", even if petitioners' wages were subject to Wisconsin's individual income tax, the Constitution prohibits them from paying Wisconsin in greenbacks or by check to extinguish the debt, as respondent wishes; and (c) "wages" are not subject to Federal or Wisconsin income tax because that word is not included in the alleged imprecise definition of "income" in section 61 of the Internal Revenue Code.

8. Respondent contended that the petitioners failed in their petition for review to state any error in respondent's denials of refund or assessment; that petitioners do not raise any dispute on the facts, but merely contend they should prevail as a matter of law; and that petitioners' legal arguments are incorrect and have been decided often enough by state and federal tribunals against persons advancing them to render them meritless, frivolous and of no substance in the cases currently before this Commission.

9. The respondent has shown good and sufficient cause for the granting of its motions.

Therefore,

IT IS ORDERED

That respondent's motions to dismiss the 3 appeals in the petition for review are granted and petitioners' petition for ~~review~~ ~~of the~~ ~~Commission~~ is dismissed.

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

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:

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":

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

Dated at Madison, Wisconsin, this 8th day of October,

1982.

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

William Bradford Smith

William Bradford Smith, Commissioner

Attachment: "NOTICE OF APPEAL INFORMATION"

WISCONSIN TAX APPEALS COMMISSION
NOTICE OF APPEAL INFORMATION

As required by s.227.11(2), Wis. Stats., created by Chapter 378, Laws of 1981 (effective May 7, 1982), the following notice is supplied to you as part of the attached decision:

- (1) Rehearing and Appeal Rights. Any party to which this decision is adverse has the right to petition the Tax Appeals Commission for rehearing (under s.227.12, Wis. Stats.) and the right to judicial review of the decision (under s.73.015(2), 227.15 and 227.16, Wis. Stats.).
- (2) Time to Act (a) Petition for Rehearing. Any person aggrieved by a final order of the Tax Appeals Commission may, within 20 days after service of the order, file with the Commission a written petition for rehearing.

(b) Judicial Review. If a petition for rehearing by this Commission is not requested within 20 days after the service of the Commission decision on all parties, a petition for judicial review shall be served on the Commission and filed with the office of the clerk of circuit court for the county where the judicial review proceedings are to be held. If a rehearing by this Commission is requested, any party desiring judicial review shall so serve and file a petition for review within 30 days after service of the Commission order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of the petition for rehearing. The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the decision by the Commission.

Within 30 days of serving the Commission and filing in circuit court, copies of the petition must be served personally or by certified mail or, when service is timely admitted in writing, by first class mail on all parties who appeared before the Commission in the proceeding in which the order sought to be reviewed was issued.

- (3) Identification of party or parties to be named as respondent. If an aggrieved party wishes to file either a petition for rehearing with this Commission or a petition for judicial review, the other party or parties to the dispute are those which are identified in the caption of the document to which this notice is attached.

A petition for rehearing must be filed with this Commission and a copy must be served on each adverse party or parties identified in the caption of the document attached to this notice. An adverse party may file a reply to the petition.

A petition for judicial review must be filed in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. A copy of the petition must be served on this Commission and on each adverse party or parties to this dispute which are identified in the caption of the document attached to this notice.

CAUTION: THIS NOTICE DOES NOT COVER EVERY POSSIBLE ASPECT OF APPEALING FROM COMMISSION DECISIONS. YOU SHOULD REVIEW THE PERTINENT LAWS OF THE STATE OF WISCONSIN AND MAY WISH TO SEEK THE ADVICE OF COUNSEL.

STATE OF WISCONSIN

TAX APPEALS COMMISSION

WILLIAM A. AND LINDA S. MITCHELL,
Petitioner,

DOCKET NOS. I-8653,
I-8654
and I-8655

vs.

O P I N I O N

WISCONSIN DEPARTMENT OF REVENUE,
Respondent.

(Drafted by
Chairman Boykoff)

As my opinion in this proceeding, I adopt my opinion
in Daniel T. Setow v. Wisconsin Department of Revenue, Wisconsin
Tax Appeals Commission, Docket No. I-8737 (June 10, 1982) by
reference as if set forth in full.

Submitted by.

Thomas M. Boykoff

Thomas M. Boykoff, Chairman

STATE OF WISCONSIN
TAX APPEALS COMMISSION

* * * * *
DANIEL T. BETOW,

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

* * * * *

DOCKET NO. I-8737

O P I N I O N

In recent years, cases such as the one currently before the Commission, where a petitioner claims complete exemption from income taxation while having income, have been increasing. This may result from a general citizen frustration with taxes and federal and state bureaucracies; dissatisfaction with the current economic climate contributing to a litigious attitude; or other personal, political or philosophical reasons.

These cases absorb a large portion of this Commission's time, energy and resources. In my opinion, these cases take a disproportionate amount of the state's legal resources, compared to the meritless arguments which they advance. While they may result from dissatisfaction with the current economic climate, they certainly contribute to this Commission's inability to devote its resources to more meritorious tax disputes and they generate a public dissatisfaction over the length of time which cases take to be resolved and this Commission's "backlog".

Paraphrasing the U.S. Court of Appeals, 5th Circuit, petitioner's arguments are stale ones, long settled against their proponents. As such, they are meritless and frivolous. Even

bending over backwards, in indulgence of petitioner's pro se status, as this Commission has long and often done, this Commission should not encourage this petitioner and future similar petitioners to continue advancing these hollow and long-defunct arguments. See Lonsdale v. Commissioner of Internal Revenue 81-2 USTC para. 9772 (November 12, 1981).

And paraphrasing from the often quoted forewarning in McCoy v. Commissioner of Internal Revenue, 76 T.C. 1027, 1029 (1981) (on appeal, 9th Cir., September 15, 1981): It may be appropriate to note further that this Commission has been flooded with a large number of so-called tax protester cases in which thoroughly meritless issues have been raised in, at best, misguided reliance upon lofty principles. Such cases tend to disrupt the orderly conduct of serious litigation in this Commission, and the issues raised therein are of the type that have been consistently decided against such petitioners and their contentions often characterized as frivolous. The time has arrived when the Commission should deal summarily and decisively with such cases without engaging in scholarly discussion of the issue or attempting to sooth the feelings of the petitioners by referring to the supposed "sincerity" of their wildly espoused positions. This is all the more impelling today in view of the ever increasing case load of and the increasing complexity of the issues presented to this Commission.

I recognize that this may appear inconsistent with my position and this Commission's Ruling and Order in Paul W. and Yvonne D. Christian v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket Nos. I-8162 and I-8163 (July 21, 1981).

In that instance, this Commission denied a similar motion of the Department of Revenue in a similar circumstance, emphasizing the following language from Ollerman v. O'Rourke Co., Inc., 94 Wis. 2d 17,24: "The pleadings are to be liberally construed with a view to substantial justice to the parties."

Since the time of that ruling, a sufficient number of this type of case has been filed with and heard by this Commission, and has appeared in published decisions of courts throughout the nation to cause me to review the situation. Still regarding the above quotation controlling, in light of the subsequent experience of this Commission, I believe that (a) even liberally construing the pleadings, the current case is without merit; and (b) this conclusion results in substantial justice, not only to the parties, but this Commission, to the judiciary, and to the public at large.

Submitted by:

Thomas M. Boykoff

Thomas M. Boykoff, Chairman