

NEWMAN JAMES I11287 081285 TAC

Primary

STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
RECEIVED
AUG 13 1985
LEGAL DIVISION

JAMES F. NEWMAN	:	
501 W. Mitchell St., #212	:	
Milwaukee, WI 53204	:	DOCKET NO. I-11287
	:	
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 Order of July 15, 1985 granting petitioner's request for a rehearing, this Commission convened in Room 611A, GEF-2 Building, 101 S. Webster Street, Madison, Wisconsin, at 10:00 a.m., on August 7, 1985, for the purpose of rehearing respondent's motion for an order dismissing the petition for review in the above-entitled matter on the following grounds:

That the petitioner has failed to file a timely petition for redetermination with the Wisconsin Department of Revenue objecting to the assessment in issue, and, therefore, the Tax Appeals Commission lacks jurisdiction to review the alleged grievances of the petitioner, pursuant to s. 73.01(5), Wis. Stats.

In the alternative, respondent moves for an order granting summary judgment for respondent on the grounds that there is no genuine issue as to any material fact; that petitioner has failed to state a claim upon which relief can be granted; and that respondent is entitled to summary judgment as a matter of law, pursuant to TA 1.15, 1.31, and 1.39, Wis. Adm. Code, and s. 802.06(3) and 802.08, Wis. Stats.

The petitioner, James F. Newman, appeared in person and as his own representative. The respondent, Wisconsin Department of Revenue, appeared by its attorney, Veronica Folstad, who introduced an exhibit and then moved for dismissal or for summary judgment on the grounds stated above. The petitioner objected to the granting of the motion to dismiss or grant summary judgment and introduced an exhibit in support of his objection.

Having considered the record herein, the respondent's motion and alternative motion, and the oral arguments of the parties in support of and in opposition to such motions, this Commission hereby finds and decides as

FINDINGS OF FACT

1. Under date of November 15, 1984, respondent's auditor, E.N. Munson, requested that petitioner file his Wisconsin income tax returns for 1981 through 1983.

2. Under date of January 5, 1985, petitioner replied to the aforementioned letter and refused to file his income tax returns for 1981 through 1983.

3. Under date of February 11, 1985, respondent issued to petitioner an estimated assessment for the years 1981, 1982 and 1983 in the total amount of \$2,759.00, pursuant to s. 71.11(4), Wis. Stats.

4. The petitioner failed to file a petition for redetermination of the aforementioned estimated assessment with respondent.

5. Under date of April 6, 1985, petitioner filed a petition for review with this Commission.

6. The petition for review on file with this Commission alleges no genuine issue of fact or law and fails to state a claim upon which relief can be granted, but instead raises a series of

"objections" which have repeatedly been held frivolous by federal and state courts and by this Commission.

7. There is no genuine issue as to any material fact, and respondent is entitled to summary judgment as a matter of law.

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

9. The arguments made by petitioner in this matter 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), Wis. Stats., or in the alternative, pursuant to s. 802.08, Wis. 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, 1985), 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. 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.

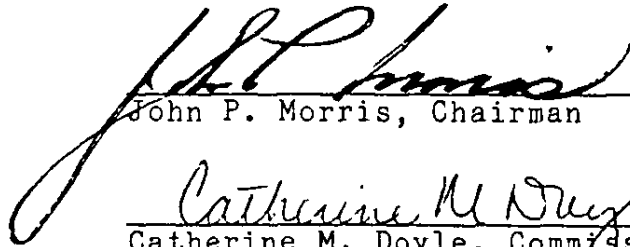
Therefore,

IT IS ORDERED .

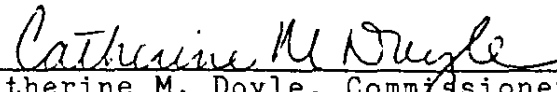
That respondent's alternative motion for summary judgment is hereby granted and judgment is entered accordingly.

Dated at Madison, Wisconsin, this 12th day of August, 1985.

WISCONSIN TAX APPEALS COMMISSION



John P. Morris, Chairman



Catherine M. Doyle, Commissioner



William Bradford Smith, Commissioner

cc: Petitioner
Respondent

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"