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DEPARTMENT OF REVENUE
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JUN 20 1985
LEGAL DIVISION

STATE OF WISCONSIN
TAX APPEALS COMMISSION

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RICHARD PERKINS and
GLORIA PERKINS
1021 West Main Street
Russellville, AR 72801

Petitioners,

vs.

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

Respondent.

* * * * *

DOCKET NOs: I-I1285
and I-11286
RULING AND ORDER ON
MOTION TO DISMISS OR
FOR JUDGMENT ON THE
PLEADINGS OR FOR
SUMMARY JUDGMENT

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Pursuant to this Commission's notice, this Commission convened in Room 611A, GEF-2, 101 South Webster Street, Madison, Wisconsin, at 9:00 a.m., on June 10, 1985, for the purpose of hearing the respondent's motion to dismiss the petition for review in this matter on the following grounds:

. . . pursuant to sec.802.08, Stats., to enter judgment for the respondent on the grounds that there is no genuine issue as to any material fact and the respondent is entitled to a judgment as a matter of law.

The petitioner's, Richard and Gloria Perkins, failed to appear and were not represented. The respondent, Wisconsin Department of Revenue, appeared by its attorney, Veronica Folstad.

The respondent made motion to dismiss the petition for review on the grounds stated above. The respondent offered argument in support of its motion.

Having considered the pleadings, the record, the motion and the argument of the respondent thereon, this Commission finds as

FINDINGS OF FACT

1. That under date of October 30, 1984, petitioners filed a Wisconsin income tax return with the Wisconsin Department of Revenue reporting tax due from each of the petitioners in the amount of \$2,248.00. A remittance of \$4,496.00 was enclosed with the aforementioned return.

2. Under date of January 7, 1985, the Department of Revenue issued notices of assessment to each of the petitioners assessing delinquent interest and a late filing fee in the total amount of \$1,527.86.

3. Under date of January 11, 1985, petitioners filed a joint petition for redetermination of said assessment.

4. Under date of January 29, 1985, the respondent denied petitioners' petition for redetermination stating, in part, as follows: "Please be advised that interest is mandatory in accordance with Wisconsin Statutes. It can not be waived regardless of the circumstances."

5. Under date of April 1, 1985, petitioners filed a joint petition for review with the Wisconsin Tax Appeals Commission; that said petition for review is on file with the Wisconsin Tax Appeals Commission and a part of the record herein; that the sole issue raised by the petition for review for determination by the Wisconsin Tax Appeals Commission is a request for waiver of interest assessed by the Wisconsin Department of Revenue.

6. The respondent has shown good cause for the granting of its motion.

7. Under sec.71.13(1)(a), Wisconsin Statutes, that the imposition of said interest is mandatory and not discretionary;

that the petitioners have failed to state a claim upon which relief can be granted; that there is no genuine issue as to any material fact and respondent is entitled to judgement as a matter of law pursuant to sec.802.08, Wisconsin Statutes.

AUTHORITY: Alexander Gottschalk v. Wisconsin Department of Revenue,
Docket No. I-7642, November 17, 1981, Wisconsin State
Tax Rptr, CCH New Matters para 201-922

Leon D. Olken v. Wisconsin Department of Revenue,
Docket No. I-8203, July 30, 1982, Wisconsin State
Tax Rptr, CCH New Matters para 202-057.

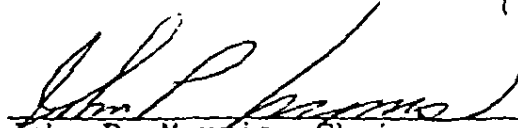
Therefore,

IT IS ORDERED

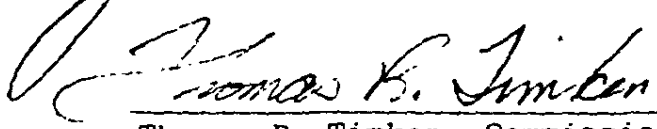
That respondent's motion for summary judgment is hereby granted and entered accordingly.

Dated at Madison, Wisconsin, this 19th day of June,
1985.

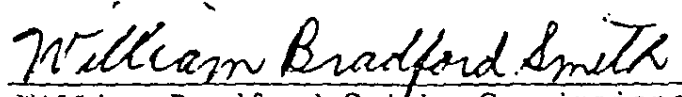
WISCONSIN TAX APPEALS COMMISSION



John P. Morris, Chairman



Thomas R. Timken, Commissioner



William Bradford Smith, Commissioner

Attachment: "NOTICE OF APPEAL INFORMATION"