

SEAVER JACQUELYN 111839 062486 TAC

Seaver

STATE OF WISCONSIN
TAX APPEALS COMMISSION

* * * * *
JACQUELYN R. SEAVER
101 Broad Street
Lake Geneva, Wisconsin 53147

Petitioner,

vs.

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

Respondent.
* * * * *

DOCKET NO. I-11839
RULING AND ORDER
(Drafted by
Commissioner
Wagner-Malloy)

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
RECEIVED
JUN 25 1986
LEGAL DIVISION

Pursuant to this Commission's notice, this Commission convened in Room 45 of the State Office Building, Milwaukee, Wisconsin, at 11:00 a.m. on June 19, 1986, for purposes of hearing the above-entitled matter. The petitioner, Jacquelyn R. Seaver, appeared represented by Richard Van Landeryt, CPA, Rt. 1, Box 555, Lake Geneva, Wisconsin 53147. The respondent, Wisconsin Department of Revenue, appeared represented by Veronica Folstad, its attorney.

The respondent made motion to dismiss the petition for review pursuant to sec. 802.08, Stats., to enter judgment for the respondent on the grounds that there is no genuine issue as to material fact and the respondent is entitled to a judgment as a matter of law. The petitioner and respondent offered argument on the motion. Having considered the pleadings, the record, the motion and the argument of the petitioner and respondent, this Commission finds as:

FINDINGS OF FACT

1. That under date of July 22, 1985, respondent issued a notice of assessment for tax years 1980-1983 for a total of \$1,654.44 tax and \$5,051.36 interest.
2. On September 25, 1985 the petitioner filed a petition for redetermination with the respondent appealing the interest charge assessed.
3. Under date of February 3, 1986 the respondent issued a notice of action denying the petitioner's petition for redetermination.
4. On March 17, 1986 the petitioner filed a petition for review with Wisconsin Tax Appeals Commission. The sole issue raised by the petition is the interest charged on the underpayment of 1980 tax in the amount of \$20,677.10 at the rate of 12% and the amount of interest credited to the petitioner on the overpayment of 1981 tax in the amount of \$20,401.40 at the rate of 9%. The petitioner argues that interest should be paid by her only for the year 1980 and that because of the refund due as a result of the audit on 1981 the amount due and amount overpaid should be off set and interest paid on the difference for the following years.
5. The respondent has shown good cause for the granting of its motion.
6. Under sec. 71.09(5)a & b, Wis. Stats., the computation of interest due or payable is clearly stated. There is no provision in the statutes to provide for the offset of tax due or tax overpaid as requested by the taxpayer/petitioner in the computation of interest.

7. The petitioner has failed to state a claim upon which relief can be granted; there is no genuine issue as to any material fact and respondent is entitled to judgment as a matter of law pursuant to sec. 802.08, Wis. Stats.

AUTHORITY: Richard Perkins and Gloria Perkins vs. Wisconsin Department of Revenue, Docket Nos. I-11285 and I-11286, WTAC (June 19, 1985)

Northern States Power Co. vs. Wisconsin Department of Revenue, Docket No. I-10578, WTAC (June 19, 1986)

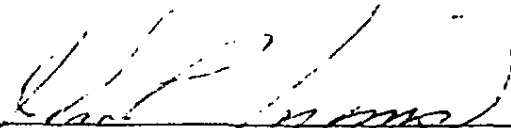
Therefore,

IT IS ORDERED

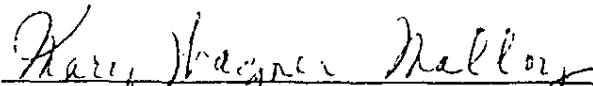
That respondent's motion for summary judgment is hereby granted and entered accordingly.

Dated at Madison, Wisconsin, this 24th day of June, 1986.

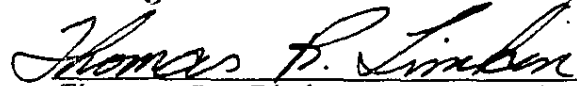
WISCONSIN TAX APPEALS COMMISSION



John P. Morris, Chairperson



Mary Wagner-Malloy, Commissioner



Thomas R. Timken, Commissioner

Attachment: "NOTICE OF APPEAL INFORMATION"