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STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
RECEIVED
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LEGAL DIVISION

* * * * *
WINDELL L. WILLIAMS
920 West Ranchito Lane
Mequon, Wisconsin 53092

Petitioner,

vs.

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

Respondent.
* * * * *

DOCKET NO. I-10563

RULING AND ORDER ON
MOTION FOR SUMMARY
JUDGMENT OR FOR
JUDGMENT ON THE
PLEADINGS

Pursuant to this Commission's notice, this Commission convened in Room 611A, GEF-2, 101 South Webster Street, Madison, Wisconsin, on August 14, 1984 at 2:00 p.m., for the purpose of hearing arguments on respondent's motion that this Commission issue an order dismissing the matter set forth above in that the petitioner failed to file a proper petition for review in accordance with sections 71.12(1)(c) and 73.01(5)(b) of the Wisconsin Statutes and TA 1.15 of the Wisconsin Administrative Code within 60 days after receipt of the respondent's notice of denial of the petition for redetermination as required by s.73.01(5)(a) of the Wisconsin Statutes, and therefore the State of Wisconsin Tax Appeals Commission lacks jurisdiction to review the alleged grievances of the petitioner. The respondent's action was proper, as a matter of law, in estimating the taxable income and income taxes of the petitioner for the year 1982 pursuant to section 71.11(4) of the Wisconsin Statutes due to the continued refusal of the petitioner to properly file and report his income for income tax purposes for the year 1982 and the

respondent's action was proper, as a matter of law, in denying any and all claims for refund or offset, for the years 1978 through 1981.

The petition for review fails to state a claim upon which relief can be granted by the Commission.

There is no genuine issue as to any material fact, and the respondent is entitled to dismissal of petitioner's petition for review as a matter of law.

There exists no legal basis on which to grant relief to the petitioner, this Commission having dismissed the petitions for review on respondent's motion in Daniel T. Betow v. Wisconsin Department of Revenue, affirmed by Court of Appeals (November 22, 1983) and Michael J. Kinzinger v. Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-9485 (August 23, 1983).

In the alternative, respondent moves for an order pursuant to Rules TA 1.15, 1.31, and 1.39 of the Wisconsin Administrative Code and section 802.08 of the Wisconsin Statutes for an order granting Summary Judgment to the respondent on the grounds as set forth above.

The petitioner, Windell L. Williams, appeared in person, and representing himself. Respondent, Wisconsin Department of Revenue, appeared by its attorney, John R. Evans. Exhibits were received into the record. The petitioner objected to the granting of respondent's motion, the parties then offered oral arguments on the motion.

1. That on or about April 13, 1983, respondent received from the petitioner unsigned purported claims for refund or offset

for years 1978 through 1981 and a purported 1982 Wisconsin income tax form 1, also unsigned, claiming a refund of all taxes withheld for 1982.

2. That the petitioner failed to file a proper 1982 tax return as instructed by letter dated June 16, 1983 and the respondent by notice dated August 29, 1983 made an estimated assessment against the petitioner in the amount of \$4,142.50 as provided by section 71.11(4) of the Wisconsin Statutes and denied the alleged claims for refund or offset for years 1978 through 1981.

3. That by documents dated October 31, 1983, the petitioner objected to the respondent's assessment and denial of claims. Said documents were treated as a petition for redetermination for all such matters.

4. That by notice dated January 16, 1984, mailed to the petitioner by certified mail, return receipt requested, and received by the petitioner on January 19, 1984, the respondent denied the petitioner's petition for redetermination of the assessment.

5. That the petitioner's "Special Appearance to Challenge Jurisdiction" and a \$5.00 filing fee were received in the office of the Wisconsin Tax Appeals Commission on March 16, 1984, but these items were not accompanied by a proper petition for review as required by section 71.12(1)(c) and 73.01(5)(b) of the Wisconsin Statutes and TA 1.15 of the Wisconsin Administrative Code.

6. That the petitioner has not complied with the respondent's request that he file a 1982 Wisconsin individual income tax return.

7. At the hearing petitioner objected to respondent's motion in that respondent has not proven jurisdiction over the

person and subject matter; therefore demanded that the respondent's motion be dismissed.

8. Respondent properly assessed petitioner for the year 1982 by estimating his income in said year and denying petitioner's claim for refunds for the years 1978, 1979, 1980 and 1981.

9. Petitioner failed to present any evidence to overcome the presumption of correctness inherent in respondent's assessment and denial of the claim for refunds.

10. The arguments made by petitioner in this matter have been consistently rejected by the courts of this state and are totally frivolous.

11. Respondent has shown good and sufficient cause for the granting of its motions 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 assessment and denial of claims for refunds as a matter of law pursuant to section 802.06(3) of the Wisconsin Statutes, or in the alternative, pursuant to section 802.08 of the Wisconsin Statutes.

See: Betow v. Wisconsin Department of Revenue, CCH New Matters, Para. 202-032 (June 10, 1982)

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

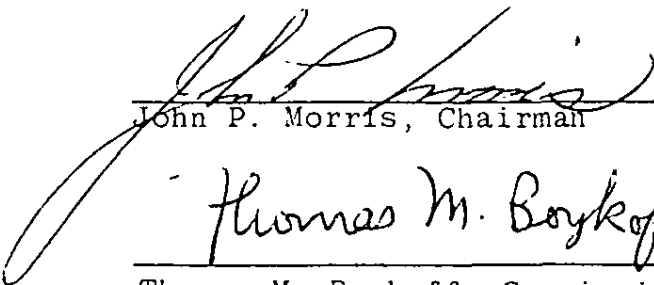
Therefore,

IT IS ORDERED

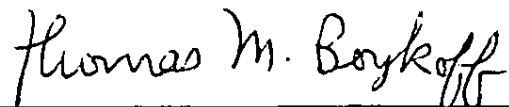
That respondent's motion for summary judgment in the above-captioned matter is hereby granted.

Dated at Madison, Wisconsin, this 27th day of August,
1984.


WISCONSIN TAX APPEALS COMMISSION



John P. Morris, Chairman



Thomas M. Boykoff, Commissioner



William Bradford Smith, Commissioner

Attachment: "NOTICE OF APPEAL INFORMATION"