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STATE OF WISCONSIN
DEPARTMENT OF REVENUE
OCT 26 1988
LEGAL DIVISION

STATE OF WISCONSIN
TAX APPEALS COMMISSION

ROBERT AXTELL * DOCKET NO. 87-I-112
and *
EILEEN AXTELL * DOCKET NO. 87-I-113
5380 S. New Hall Drive *
Tucson, AZ 85746 *

Petitioners, *

vs. * RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE * ON MOTION TO DISMISS
P.O. Box 8933 *
Madison, WI 53708 *

Respondent. *

Pursuant to its notice, this Commission convened in its Hearing Room, Suite 501, 217 South Hamilton Street, Madison, Wisconsin, at 1:30 p.m., on October 18, 1988, for the purpose of hearing the above-entitled matters on their merits. At the hearing, the respondent made motion to dismiss the petitions for review, on the following grounds:

That the petitioners failed to meet the personal appearance requirements of s. 71.12(3), Wis. Stats., and ss. TA 1.03 and 1.51(2), Wis. Adm. Code; therefore, this Commission lacks jurisdiction to hear the matters of which the petitioners complain in their petitions for review.

The petitioners, Robert and Eileen Axtell, failed to appear either in person or by representative. The respondent,

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Wisconsin Department of Revenue, appeared by its attorney, James L. Greenwald.

The matters were consolidated for hearing purposes.

The respondent introduced exhibits; modified its assessments against petitioners based upon the fact that the petitioners have now filed 1983 and 1984 income tax returns by cancelling the estimated assessments for those years, reserving the right to audit the 1983 and 1984 returns filed; made motion to dismiss the petitions for review on the grounds stated above; and offered oral 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. By notices dated May 19, 1986, the respondent made assessments of income tax against the petitioners for the years 1982, 1983 and 1984 in the amounts of \$5,721.40 each, including interest, penalty and late fee.

2. On July 22, 1986, the petitioners filed petitions for redetermination with the respondent.

3. By notices dated January 9, 1987, the respondent granted in part and denied in part the petitioners' petitions for redetermination.

4. On March 12, 1987, the petitioners filed with this Commission petitions for review of respondent's partial denials.

5. This Commission served good and sufficient notice

of hearing upon the petitioners at their last known address (see s. 73.01(5)(b), Wis. Stats.).

6. The petitioners failed to appear at the hearing before this Commission and make full disclosure under oath.

7. The respondent refused to waive the appearance of the petitioners at the hearing.

8. Under the provisions of s. 71.12(3), Wis. Stats., and ss. TA 1.03 and 1.51(2), Wis. Adm. Code, the petitioners' failure to appear at the hearing before this Commission bars them from questioning the 1982 assessments remaining.

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

Therefore,

IT IS ORDERED

That the respondent's actions on petitioners' petitions for redetermination be modified to reflect cancellation of the 1983 and 1984 estimated assessments, and that the petitions for review be dismissed.

Dated at Madison, Wisconsin, this 24th day of October, 1988.

WISCONSIN TAX APPEALS COMMISSION


Kevin C. Potter, Chairperson


Robert C. Junceau, Commissioner


John P. Morris, Commissioner

pc: Petitioners
Respondent

ATTACHMENT: NOTICE OF
APPEAL INFORMATION