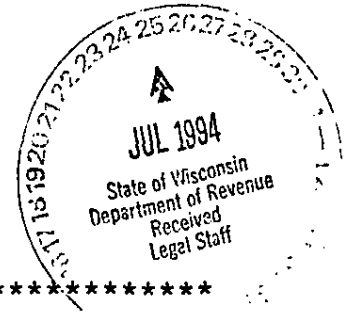


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FANDREY ALBERT L & RUBY F 94I44 072294 TAC

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STATE OF WISCONSIN  
TAX APPEALS COMMISSION

\*\*\*\*\*

ALBERT L. AND RUBY F. FANDREY \*  
Route 1, Box 213 \*  
Birnamwood, WI 54414-0213 \*

Petitioners, \*

DOCKET NO. 94-I-44

vs. \*

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE \*  
P.O. Box 8933 \*  
Madison, WI 53708 \*

ON MOTION TO DISMISS

PETITION FOR REVIEW

Respondent. \*

\*\*\*\*\*

Pursuant to its notice, this commission convened in its Hearing Room, 6th Floor, 101 East Wilson Street, Madison, Wisconsin, at 1:30 p.m., on July 21, 1994, for the purpose of hearing the above-entitled matter on its merits. At the hearing, the respondent presented a prima facie case on the merits and then made a motion to dismiss the petition for review in this matter on the following grounds:

- 1) That the petitioners failed to meet the personal appearance requirements of § 71.89(2), Wis. Stats., and §§ TA 1.03 and 1.51(2), Wis. Adm. Code, and
- 2) That the petitioners failed to prosecute their petition for review.

The petitioners, Albert L. and Ruby F. Fandrey, failed to appear either in person or by representative. The respondent, Wisconsin Department of Revenue, appeared by its attorney, Michael J. Buchanan.

The respondent introduced exhibits, presented a prima facie case on the merits, made motion to dismiss the petition 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. On or about June 29, 1992, petitioners filed with respondent a "Return of Information" for the year 1990, wherein petitioners requested a refund of Wisconsin income tax withheld in the amount of \$310.29.

2. On or about June 29, 1992, petitioners filed with respondent a "Return of Information" for the year 1991, wherein petitioners requested a refund of Wisconsin income tax withheld in the amount of \$99.63.

3. By letter dated December 16, 1992, respondent informed petitioners that the "Return of Information" they filed with respect to the years 1990 and 1991 did not constitute proper Wisconsin income tax returns, and requested that petitioners file proper Wisconsin income tax returns for each of the years 1990 and 1991 pursuant to § 71.03(6)(b), Wis. Stats.

4. On or about January 19, 1993, petitioners filed with respondent a 1991 Wisconsin income tax return on which they reported \$0 income, Wisconsin income tax withheld in the amount of \$99.63, and farmland tax relief credit due in the amount of \$269.01, requesting a total refund of \$368.64.

5. On April 19, 1993, the respondent issued a notice of estimated assessment of income tax against the petitioners for the years 1990 and 1991 in the total amount of \$4,660. The explanation of the estimated assessment informed petitioners that the Wisconsin income tax returns they had submitted for the years 1990 and 1991 reporting \$0 income for each year were incomplete because they did not contain sufficient income information for respondent to make a determination of the correct tax liability.

6. On or about June 7, 1993, respondent received a three-page document from petitioners signed by Ruby F. Fandrey.

7. By letter dated October 25, 1993, respondent again requested petitioners to file completed 1990 and 1991 Wisconsin income tax returns.

8. On November 29, 1993, respondent issued its notice of action to petitioners denying their claim for refund on the basis that petitioners had not filed completed 1990 and 1991 Wisconsin income tax returns as requested.

9. On January 31, 1994, the petitioners filed with this commission a petition for review of respondent's denial.

10. On July 20, 1994, this commission received from petitioners a **NOTICE OF APPEARANCE BY FILING OF THE ENCLOSED**

**DOCUMENTS**, with several documents attached.

10. This commission served good and sufficient notice of hearing upon the petitioners at their last known address (see § 73.01(5)(b), Wis. Stats.).

11. The petitioners failed to appear at the hearing before this commission to make full disclosure under oath and to prosecute their petition for review on file herein.

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

13. Under the provisions of § 71.89(2), Wis. Stats., and §§ TA 1.03 and 1.51(2), Wis. Adm. Code, the petitioners' failure to appear at the hearing and failure to prosecute their petition for review bars them from questioning the assessment at issue.

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

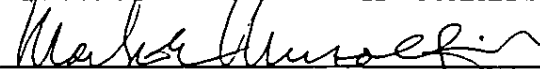
Therefore,

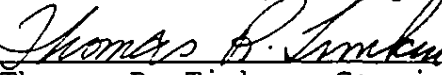
**IT IS ORDERED**


That the petition for review in the above-entitled matter be dismissed.

Dated at Madison, Wisconsin, this 22nd day of July, 1994.

WISCONSIN TAX APPEALS COMMISSION

  
Mark E. Musolf, Chairperson

  
Thomas R. Timken, Commissioner

  
Joseph E. Mettner, Commissioner

pc: Petitioners  
Respondent

ATTACHMENT: "NOTICE OF  
APPEAL INFORMATION"