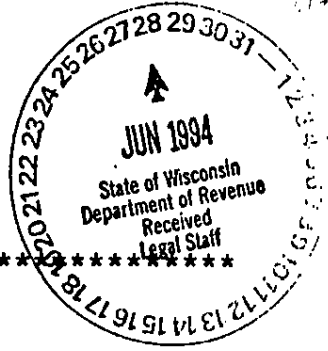


PICARD LLOYD BETTY LOU 93I483 062794 TAC

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STATE OF WISCONSIN
 TAX APPEALS COMMISSION

LLOYD E. AND BETTY LOU M. PICARD *
 N4815 County Road O *
 Ellsworth, WI 54011-4621 *

Petitioners, *

DOCKET NO. 93-I-483

vs. *

RULING AND ORDER

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

GRANTING RESPONDENT'S

MOTION TO DISMISS

Respondent. *

On October 8, 1993 the respondent, Wisconsin Department of Revenue, filed a NOTICE OF MOTION AND MOTION TO DISMISS the petition for review filed by the petitioners with this commission.

Respondent's motion was heard in Eau Claire, Wisconsin, on June 23, 1994, at 9:00 a.m., with Commissioner Thomas R. Timken presiding.

Both petitioners, Lloyd E. and Betty Lou M. Picard, appeared in person.

The respondent, Wisconsin Department of Revenue, appeared by its counsel, Michael J. Buchanan.

The respondent has moved this commission for an order dismissing the petition for review in this matter, claiming it fails to state a claim upon which relief can be granted pursuant to § 802.06(2)(f) of the Wisconsin Statutes and TA 1.31 of the Wisconsin Administrative Code, on the grounds that the petitioners' allegations do not constitute a legal defense to respondent's

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assessment as a matter of law.

Both parties made argument in support of their respective positions.

After reviewing the entire record before us, this commission hereby finds and decides as follows:

1. On February 15, 1993 the respondent, Wisconsin Department of Revenue, issued an Additional Income Tax Assessment against the petitioners, Lloyd E. and Betty Lou M. Picard, in the total amount of \$23,363.77 covering the years 1988-1991, inclusive.

2. In its assessment, the respondent made the following adjustments to income previously taxed:

- Reduced the \$3,000 capital loss claimed each year to the \$500 allowed by law
- Disallowed itemized deductions claimed for each year as subtraction modifications
- Added interest, dividend, and pension income for 1989 per a federal audit adjustment
- Allowed an itemized deduction credit for each year which, by law, limits investment interest expense to \$1,200

3. On April 15, 1993, the petitioners filed a timely petition for redetermination with the respondent, which it denied on July 19, 1993.

4. On September 9, 1993, the petitioners filed a timely appeal with this commission.

5. The petitioners do not dispute either the

respondent's application of Wisconsin tax law or its computation of additional taxes due for each of the years under review. They request "some relief and adjustment in this matter" based on their allegations that:

- they prepared their own tax returns and were not aware of the changes in the tax law
- the law is complicated and unfair
- they received bad advice
- they should have been advised of the changes
- the assessment took too long

6. The Wisconsin Income Tax Instruction Booklet issued by the respondent for each of the years involved (which the petitioners acknowledge receiving) contained an explanation of the changes involved in this dispute.

7. The assessment in issue was issued within the time allowed by law.

8. Neither the respondent nor this commission has the authority to grant the petitioners the relief they seek, based on their complaints.

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

10. Pursuant to § 802.06(2)(f), Wis. Stats., and TA 1.31, Wis. Adm. Code, the petitioners have failed to state a claim upon which relief can be granted.

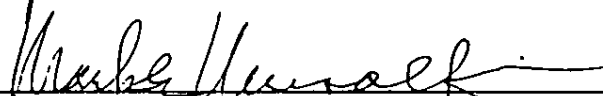
Therefore,

IT IS HEREBY ORDERED

That the respondent's motion to dismiss is granted and its action on petitioners' petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 27th day of June, 1994.


WISCONSIN TAX APPEALS COMMISSION



Mark E. Musolf, Chairperson



Thomas R. Timken, Commissioner



Joseph P. Mettner, Commissioner

Attachment: "NOTICE OF APPEAL INFORMATION"