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Wisconsin Tax Appeals Commission  
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STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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WILFRED AND MARCIA YUDIN,  
4552 North 92<sup>nd</sup> Street, # 2  
Milwaukee, WI 53225,

Petitioners,

vs.

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

Respondent.

\* DOCKET NO. 96-I-01  
\*  
\*  
\* RULING AND ORDER  
\* GRANTING SUMMARY  
\* JUDGMENT  
\*



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DON M. MILLIS, COMMISSIONER, JOINED BY MARK E. MUSOLF,  
COMMISSION CHAIRPERSON:

The above-entitled matter came before the Commission on respondent's motion for summary judgment. Respondent has filed a brief and supporting papers in support of its motion for summary judgment. Despite being given additional time to file supporting papers and a brief in opposition to respondent's motion for summary judgment, petitioners have failed to file any response to the motion. Petitioners represent themselves, although they have had the assistance of Andrew Cegelski, CPA. Respondent is represented by Attorney <sup>Kevin B.</sup> ~~Michael J.~~ <sup>Cronin</sup> ~~Buchanan~~. For the reasons stated below, the Commission grants respondent's motion.

Based upon the entire record in this matter, the Commission finds, rules, and orders as follows:

## UNDISPUTED MATERIAL FACTS

1. Respondent assessed petitioners on December 19, 1988, and then again on March 16, 1992, for estimated unpaid taxes for 1986 and 1987 when they failed to file state income tax returns for those years.
2. Respondent assessed petitioners on September 3, 1990, and then again on March 16, 1992, for estimated unpaid taxes for 1988 when they failed to file state income tax returns for 1988.
3. Respondent assessed petitioners on March 16, 1992, for estimated unpaid taxes for 1989 and 1990 when they failed to file state income tax returns for those years.
4. Petitioners failed to appeal respondent's March 16, 1992 assessment with regard to 1986 through 1990 by filing with the respondent a petition for redetermination.
5. Respondent filed a delinquent tax warrant against petitioners in the amount of \$20,533 with the Milwaukee County Circuit Court with regard to the March 16, 1992 assessment and proceeded to collect the amount provided in the tax warrant.
6. On September 6, 1994, petitioners filed their joint state income tax returns for 1986 through 1990 with respondent.
7. On December 28, 1994, respondent declined to accept petitioners' returns for 1986 through 1990.
8. Petitioners filed a petition for redetermination with respondent on February 21, 1995. Under the date of October 31, 1995, respondent denied the petition for redetermination. Petitioners filed their petition for review with the Commission on January 2, 1996.

## APPLICABLE WISCONSIN STATUTES

### 71.75 Claims for refund.

\* \* \*

(5) A claim for refund may be made within 2 years after the assessment of a tax ... including penalties and interest, under this chapter, assessed by office audit or field audit and paid if the assessment was not protested by the filing of a petition for redetermination. No claim may be allowed under this subsection for any tax, interest or penalty paid with respect to any item of income ... assessed as the result of any assessment made by the department with respect to which all the conditions specified in this subsection are not met. ...

### RULING

Petitioners bear the burden of showing that respondent's action on their petition for redetermination is in error. *Woller v. Dept. of Taxation*, 35 Wis. 2d 227, 232 (1967). However, because this matter is before the Commission on respondent's motion for summary judgment, respondent bears the burden of showing it is entitled to summary judgment. *Grams v. Boss*, 97 Wis. 2d 332, 338, 294 N.W.2d 473 (1980). Even though petitioners failed to file a response to respondent's motion, brief, and supporting papers, the Commission may grant the motion for summary judgment only if respondent meets this burden. In this case, respondent has shown that it is entitled to summary judgment as a matter of law.

The essential facts are undisputed. The petitioners were assessed for the years at issue on March 16, 1992, petitioners did not file a petition for redetermination, the assessment was collected by respondent, and on September 6, 1994, more than two years after the assessment, petitioners filed their state income tax returns for the years at issue. These facts fit squarely within § 71.75(5), *Stats.* Because petitioners failed to file their state income tax returns

within two years of the assessment, respondent was obligated not to accept the returns.

There is no genuine issue of fact, and respondent is entitled to summary judgment as a matter of law.

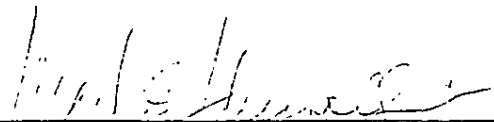
Therefore,

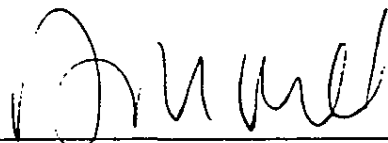
**IT IS ORDERED**

That respondent's motion for summary judgment is granted, and its action on petitioners' petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 20<sup>th</sup> day of November, 1996.

**WISCONSIN TAX APPEALS COMMISSION**

  
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Mark E. Musolf, Chairperson

  
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Don M. Millis, Commissioner

ATTACHMENT: "Notice of Appeal Information"