

ZIMMERMAN ROBERT J BEATRICE B 87I159 87I160 072887 TAC

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STATE OF WISCONSIN  
DEPARTMENT OF REVENUE

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

JUL 29 1987  
**R E C E I V E D**  
LEGAL DIVISION

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ROBERT J. ZIMMERMAN	*	DOCKET NO. 87-I-159
and		
BEATRICE B. ZIMMERMAN	*	DOCKET NO. 87-I-160
5910 Dunn Road, Apt. 1A	*	
Sturgeon Bay, WI 54235	*	
Petitioners,	*	RULING AND ORDER ON
vs.	*	MOTION TO GRANT
WISCONSIN DEPARTMENT OF REVENUE	*	SUMMARY JUDGMENT
P.O. Box 8933	*	
Madison, WI 53708	*	
Respondent.	*	

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Pursuant to its notice, this Commission convened in its Hearing Room at 133 South Butler Street, Madison, Wisconsin, at 1:00 p.m., on July 23, 1987, for the purpose of hearing the respondent's motion to grant summary judgment to it in these matters on the following grounds:

That the petitions for review fail to state a claim upon which relief can be granted by the Commission; and

That there is no genuine issue as to any material fact and the respondent is entitled to an order affirming its assessments as a matter of law pursuant to sec. 802.06(3) of the Wisconsin Statutes, or, in the alternative, pursuant to sec. 802.08 of the Wisconsin Statutes.

The respondent made the following alternative motion:  
That if its motion to grant summary judgment is not granted by the Commission, that the petitioners be required to answer the respondent's interrogatories pursuant to the rules of the Commission.

The petitioners, Robert J. and Beatrice B. Zimmerman, appeared in person and represented themselves. The respondent, Wisconsin Department of Revenue, appeared by its attorney, Robert C. Stellick, Jr.

The parties stipulated that the above matters be consolidated for purposes of one hearing.

The respondent introduced exhibits, made its motion to grant summary judgment on the grounds stated above, and offered oral argument in support of its motion. The petitioners did not object to the granting of respondent's motion to grant summary judgment.

The respondent made its alternative motion to require the petitioners to answer its interrogatories. The petitioners did object to the granting of respondent's alternative motion. The parties offered oral arguments on the alternative motion.

Having considered the pleadings, the record, the motion to grant summary judgment and the argument of the respondent thereon, the alternative motion and the arguments of the parties thereon, this Commission finds as

## FINDINGS OF FACT

1. The petitioners filed a combined 1985 Form 1 with the respondent as their 1985 Wisconsin income tax return.

2. The respondent returned the Form 1 on March 18, 1986, indicating it was an incomplete form, and requesting a copy of the federal 1040 form and schedules, and a copy of the federal Schedule A or a separate listing of the federal itemized deductions.

3. The petitioner Robert Zimmerman resubmitted the Form 1 by letter of March 21, 1986, and stated: "I do not intend to give you a copy of my Federal Tax Return for 1985 or any other year as a matter of principal (sic), and hereby notify you that the failure to attach a copy was NOT an oversight".

4. The respondent informed the petitioners by letter dated May 21, 1986 that sec. 71.10(6), Wis. Stats., required them to provide complete copies of their federal returns and schedules, that the notice (of refund) attached was based upon submission of the requested documents, and that a failure to submit the requested documents would result in an assessment.

5. The petitioner Robert Zimmerman, by letter dated May 27, 1986, again indicated that as a matter of principle he would not give that return to anyone except an "... accredited agent of the United States Internal Revenue Department " and that he would "... take any required action to refuse payment on any 'assessment' due to our refusal to turn over private and personal documents in disregard to our Constitutional Rights as Citizens

of the United States of America ...".

6. Upon petitioners' failure to file a complete and proper 1985 Wisconsin income tax return as required by law, the respondent made the assessments which are the subject of these proceedings.

7. The petitioners are persons required to file 1985 Wisconsin income tax returns.

8. By letter dated September 2, 1986, the petitioner Robert Zimmerman filed petitions for redetermination with the respondent.

9. By letter dated November 19, 1986, the respondent provided to petitioners a copy of sec. 71.10(6), Wis. Stats., and sec. 2.10, Wis. Adm. Code, and again requested the petitioners' 1985 federal income tax return.

10. By notices dated February 23, 1987, mailed to the petitioners by certified mail, return receipt requested, and received by petitioners on February 24, 1987, the respondent denied the petitioners' petitions for redetermination of the assessments.

11. The petitioners' petitions for review of the respondent's actions on their petitions for redetermination were received and filed in the office of the Wisconsin Tax Appeals Commission on April 20, 1987.

12. Petitioner Robert Zimmerman's petition for review states, in part, that he does not "... recognize the right of the State of Wisconsin, or any other State, to require a copy of a

document properly filed with a Dept. of the Federal Government." He further states: "I believe only a properly authorized Agent of the US IRS can demand a copy of my return without obtaining a Court Order based on reasonable grounds of falsification."; that he has paid all the taxes due; and that he requests that the Tax Appeals Commission "... require a Representative of the Wisconsin Dept. of Revenue to appear and respond to my charges of making an illegal requirement for a private document and applying an arbitrary and unreasonable assessment upon my refusal to submit the document."

13. Petitioner Beatrice Zimmerman's petition for review also states that "... all money due the State of Wisconsin was paid ..." and repeats the request that the Tax Appeals Commission "... require a Representative of the Wisconsin Dept. of Revenue to appear and respond to my charges of making an arbitrary and unreasonable assessment on me due to my husband's refusal to submit a copy of our 1985 Federal Income Tax Return."

14. Petitioners failed to present any evidence to overcome the presumption of correctness inherent in respondent's estimated assessments, within the meaning of section 71.11(4), Wis. Stats.

15. The petitioners have not complied with the respondent's request that they file a proper 1985 Wisconsin individual income tax return.

16. Under the provisions of section 71.10(6), Wis. Stats., the petitioners were required to file with their 1985

Wisconsin income tax return a copy of their Federal 1040 for that year showing how they arrived at their total Wisconsin income.

Section 71.10(6), Wisconsin Statutes:

(6) To the extent necessary for the administration of the tax imposed by this chapter, when required under rules prescribed or orders issued by the department or upon the written request of the department, natural persons and fiduciaries subject to this chapter shall file with the department a true and complete copy of their federal income tax return and any other return or statement filed with, or made to, or any document received from, the internal revenue service.

Section Tax 2.10, Wisconsin Administrative Code:

2.10 Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns. (s. 71.10(6), Stats.) It is deemed necessary for the administration of the tax imposed by ch. 71, Stats., that at the time of filing Wisconsin income tax returns for the taxable year 1965 and for taxable years thereafter by partnerships and persons other than corporations, a complete copy of the federal income tax return for the same taxable year (including all schedules, statements, documents and computations) should be included and filed with the Wisconsin return. Accordingly, such complete copies of federal income tax returns are directed to be so filed except copies of the short form federal return which, at the time of adoption of this rule is designated as federal form 1040A.

17. There is no genuine issue as to any material fact, and the respondent is entitled to an order affirming its assessments as a matter of law.

18. Respondent has shown good and sufficient cause for the granting of its motion 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 estimated assessments as a matter of law pursuant to sec. 802.06(3), Wis. Stats., or in the alternative, pursuant to sec. 802.08, Wis. Stats.

**AUTHORITY:** Daniel D. Frawley v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-2745 (May 14, 1969).

Daniel T. Betow v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-8737, CCH Wisconsin State Tax Reporter, New Matters (Part II), 1979-82, ¶202-032 (June 10, 1982), affirmed Rock County Circuit Court, Branch 5, Case No. 82CV311 (January 14, 1983), affirmed Court of Appeals, Case No. 83-264 (unpublished, November 22, 1983).

Therefore,

**IT IS ORDERED**

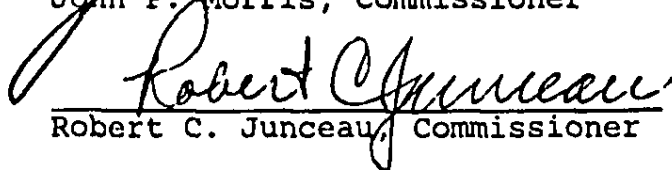
That respondent's motion for summary judgment is hereby granted and entered accordingly, and the estimated assessments are affirmed.

Dated at Madison, Wisconsin, this 28th day of July, 1987.

WISCONSIN TAX APPEALS COMMISSION

  
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Kevin C. Potter, Chairperson

  
\_\_\_\_\_  
John P. Morris, Commissioner

  
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Robert C. Junceau, Commissioner

pc: Petitioners  
Respondent

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"