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FILED  
Wisconsin Tax Appeals Commission  
NOV 24 1999  
Darlene Skolaski  
Deputy Clerk

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

**RAYMOND D. BERGLUND**  
N3497 County Road K  
Montello, WI 53949

Petitioner,

vs.

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

Respondent.

\* *2008*  
*distributed to FA Sups 3/13/00*

\* DOCKET NO. 99-I-91

\* **RULING AND ORDER**

\* **AWARDING RESPONDENT**

\* **SUMMARY JUDGMENT**

16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 - 7  
NOV 1999  
State of Wisconsin  
Department of Revenue  
Legal Services

**THOMAS M. BOYKOFF, COMMISSIONER:**

This matter is before the Commission on the motion for summary judgment of respondent, Wisconsin Department of Revenue ("Department"), under Wis. Stat. § 802.08 and on its motion for a judgment on the pleadings under Wis. Stat. § 802.06(3). Petitioner also moved for a default judgment on his allegation that the Department's not filing a detailed reply to his amended petition for review denies him due process of law. Both parties have submitted documents and briefs supporting their position. Petitioner appears *pro se*, and Attorney Veronica Folstad represents respondent.

Having considered the entire record, the Commission hereby finds, rules, and orders as follows:

## UNDISPUTED MATERIAL FACTS

1. Under date of August 28, 1998, the Department wrote to petitioner, stating that it had no record of receiving his 1996 and 1997 Wisconsin income tax returns and asking him to file these returns.

2. Under date of November 2, 1998, the Department sent its income tax assessment of \$6,846.50 for 1996 and 1997 to petitioner under its authority in Wis. Stat. § 71.74(3).

3. Under date of December 28, 1998, petitioner objected to the assessment by filing a petition for redetermination under Wis. Stat. § 71.88(1)(a). Petitioner's arguments are based on his belief that Wis. Stat. § 71.02 ("Imposition of tax") does not apply to him.

4. Under date of March 8, 1999, the Department denied petitioner's petition for redetermination.

5. On May 4, 1999, petitioner filed a timely petition for review with this commission. In his petition, petitioner's arguments included that he did not receive all of the items he requested from the Department; generally opposed the Department's authority and procedures in issuing the assessment under § 71.63(3); and asserted that his due process rights were violated under numerous U.S. Supreme Court cases from which quotes were cited.

6. Under date of June 8, 1999, the Department filed a motion for summary judgment under § 802.08 and a motion for a judgment on the pleadings under § 802.06(3).

7. On October 1, 1999, petitioner filed a motion requesting permission to amend his petition for review. His main argument was that he earlier did not know the rules for filing an appeal with this commission. Over the Department's objection, the Commission granted the motion.

8. Petitioner's amended petition was filed with this commission on November 4, 1999. The amended petition requests that the Department's assessment be reversed for reasons which include: the assessment "lacks in any present day legal or statutory merit"; the assessment was issued because of petitioner's failure to file two income tax returns but "is frivolous as the prerequisite requirements don't exist anymore"; and petitioner was denied his "due process right to be heard by the department...." Petitioner also asserts that the Department "acted without any factual, legal, or statutory merit in the making of its redetermination of the Petition at hand."

#### **CONCLUSIONS OF LAW**

1. There is no genuine issue of material fact, and this case is appropriate for summary judgment.

2. Wisconsin's statutes clearly impose Wisconsin's income tax on the income of state residents (among others).

3. Because petitioner did not file any Wisconsin income tax returns for 1996 and 1997, the Department's assessment under Wis. Stat. § 71.74(3) is proper and legal.

4. Petitioner has not met his burden of overcoming the

presumptive correctness of the Department's assessment.

5. Petitioner's assertion that Wisconsin's income tax does not apply to him, and his allegation that § 71.74(3) is invalid and denies him due process, are frivolous and groundless, thereby subjecting him to an additional assessment under Wis. Stat. § 73.01(4)(am).

### **RULING**

#### **Wisconsin's Income Tax Applies to Petitioner**

Petitioner asserts that the Department has cited no Wisconsin law requiring him to file an income tax return and pay income tax, and, therefore, he is not required to file and pay. To the contrary, the Department relies on the following statute:

#### **71.02 Imposition of tax.**

(1) For the purpose of raising revenue for the state and the counties, cities, villages and towns, there shall be assessed, levied, collected and paid a tax on all net incomes of individuals ..., by every natural person residing within the state....

Section 71.02(1) clearly imposes Wisconsin's income tax on petitioner.

#### **The Department's Assessment and The Burden of Proof**

When people (like petitioner) do not file income tax returns, the Department may issue an assessment to them according to its best judgment. Wis. Stat. § 71.74(3). The Department did this here.

The Wisconsin Supreme Court has often held "that the burden of

showing error in an assessment is on the taxpayer. Failure to present any evidence showing error means that the case must be decided against the taxpayer." *Woller v. Department of Taxation*, 35 Wis. 2d 227, 233 (1966).

In the present case, petitioner has failed to present *any* evidence showing any error in the Department's assessment. With only minimal effort, petitioner might have presented factual evidence to the Department on several occasions.

Petitioner's assertions are gobbledeygook. Similar attempts by other petitioners to explain away the income tax law and to show that it does not apply have consistently been given no credence by this commission. See, e.g., *Susan Boon v. Dep't of Revenue*, 1999 Wisc. Tax LEXIS 7 (WTAC 1999), *aff'd on other grounds* (Milwaukee County Cir. Ct. Aug. 23, 1999); and *Derick J. Norskog v. Dep't of Revenue*, 1999 Wisc. Tax LEXIS 19 (WTAC 1999).

The nonsensical nature of petitioner's arguments is further demonstrated in his motion for default judgment dated November 12, 1999. The Department is under no obligation to respond in detail to his amended document. Petitioner's assertion that this is a non-response which amounts to a denial of due process, entitling him to a default judgment, demonstrates the illogical nature of petitioner's arguments.

#### **Petitioner's Frivolous or Groundless Arguments**

Petitioner's arguments are both frivolous and groundless. Petitioner's written submissions did nothing to factually disprove the accuracy

of the Department's assessment. Instead, petitioner offered frivolous arguments (*e.g.*, that no legal basis exists for the Department's assessment against him) that have no support in the law.

Petitioner has also claimed that his remuneration from the Wisconsin Department of Corrections does not fall "within the federal definition of 'wages', pursuant to the exception for remuneration paid to U.S. Citizens by an employer, as set forth in 26 U.S.C. § 3401(a)(8)(A)(ii)"; that he has no "gross income" or "taxable income" as the terms are set forth on federal Form 1040; and, generally, that he is not subject to either the state or federal income tax. These assertions are without merit.

Having determined that petitioner's position in these proceedings is frivolous and groundless, we assess petitioner \$500 damages under Wis. Stat. § 73.01(4)(am).

#### **ORDER**

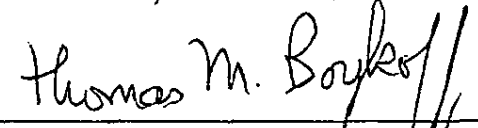
1. Petitioner's motion for default judgment is denied.
2. The Department's motion for summary judgment is granted, and its action on petitioner's petition for redetermination is affirmed.
3. Petitioner is assessed an additional \$500 pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 24th day of November, 1999.

**WISCONSIN TAX APPEALS COMMISSION**

  
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Mark E. Musolf, Chairperson

  
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Don M. Millis, Commissioner

  
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Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"