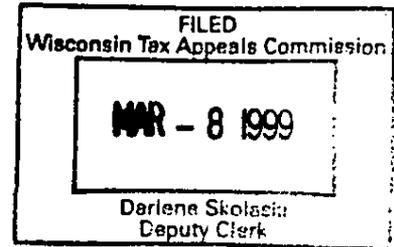


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**STATE OF WISCONSIN
TAX APPEALS COMMISSION**



10609067

SUSAN BOON
4501 96th Street
Franksville, WI 53126

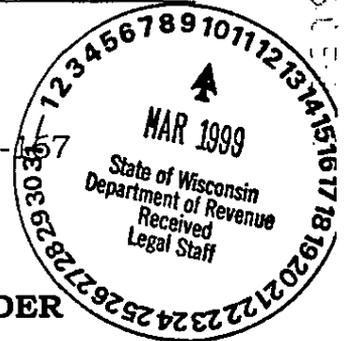
Petitioner,

vs.

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

Respondent.

- * DOCKET NO. 98-I-157
- * **RULING AND ORDER**
- * **AWARDING SUMMARY**
- * **JUDGMENT**



THOMAS M. BOYKOFF, COMMISSIONER:

This case comes before the Commission on respondent's Motion for Summary Judgment. Both parties have submitted documents and briefs supporting their positions on the motion.

The petitioner appears on her own behalf, "In Propio Persona Sui Juris", as she states. The respondent appears by Attorney Sheree Robertson.

Having considered the entire record, including motions, affidavits, and briefs of the parties, the Commission hereby finds, rules, and orders as follows:

SUMMARY OF UNDISPUTED FACTS

1. Petitioner filed with respondent a 1996 "Wisconsin Income Tax" Form 1, dated September 21, 1997. On each line of page one of the Form

1 petitioner wrote zeros, with three exceptions. The exceptions are that on line 22 (income tax withheld), on line 29 (total credits against income tax due), and on line 30 (amount of refund), petitioner wrote "3,857.03".

2. Attached to the above income tax form was a Form W-2, issued by the Glendale/River Hills School District to petitioner. Among the items on the Form W-2 is \$58,992 on line 1 ("Wages, tips, other compensation") and on line 17 ("State wages, tips, etc."). In addition, \$3,607.03 was typed on line 18 ("State income tax").

3. Also attached to the Wisconsin income tax form was another Form W-2, issued by Building & Hardware Specialties, Inc., in Milwaukee, Wisconsin. Among items on this form is \$6350.00 on line 3 ("Other Income") and \$250.00 on line 11 ("State income tax withheld").

4. Also attached to the Wisconsin Form 1 was a copy of federal Form 1040, titled "U.S. Individual Income Tax Return." On most lines, petitioner inserted "-0-". However, on line 52 (federal income tax withheld), line 58 (total payments), line 59 (amount overpaid), and line 60a (refund requested), petitioner wrote "3193.38".

5. Under date of November 24, 1997, respondent issued to petitioner an income tax assessment for year 1996 for \$2,574.24, representing income tax and interest.

6. Under date of November 25, 1997, petitioner sent a letter to respondent objecting to the assessment. This letter was deemed a petition for

redetermination.

7. By notice dated May 11, 1998, respondent denied petitioner's petition for redetermination.

8. Under date of July 9, 1998, petitioner sent a letter to the Tax Appeals Commission objecting to the assessment and enclosing a \$25 filing fee. This letter is deemed a petition for review.

9. Under date of August 5, 1998, respondent filed with the Commission a Notice of Motion and Motion and a sworn affidavit of respondent's attorney. The motion requested an Order under §§ TA 1.15, 1.31, and 1.39, Wis. Adm. Code, and Wis. Stat. §§ 802.06(3) and 802.08, requesting judgment on the pleadings. In the alternative, respondent requested summary judgment on the grounds that petitioner has failed to state a claim upon which relief can be granted by failing to allege (A) any justiciable error by respondent in issuing the assessment, (B) justiciable facts tending to show that respondent's action in issuing the assessment did not comply with the statutes or (C) a justiciable controversy she raises as her "objections" to respondent's denial of her petition for redetermination.

10. In opposition to respondent's motion, petitioner submitted a brief stating her case. A sworn affidavit was included. Petitioner also moved that the Commission deny respondent's motion and schedule the matter for hearing. The crux of petitioner's argument is that neither the Wisconsin statutes nor federal laws are worded properly to require her to compute or pay

a tax on her income.

CONCLUSIONS OF LAW

1. There is no genuine issue of material fact, and this matter is appropriate for summary judgment as a matter of law.

2. Wisconsin's statutes and the federal laws which the state statutes adopt clearly impose Wisconsin's income tax on petitioner's wages which are reflected on her two 1996 Forms W-2.

3. Petitioner did not file a complete and proper Wisconsin income tax return for 1996, and respondent therefore properly issued an assessment pursuant to Wis. Stat. § 71.74(3).

4. Petitioner's semantic gymnastics in trying to explain the imperfections of the language in the laws which impose the state income tax are frivolous and groundless, thereby subjecting petitioner to an additional assessment pursuant to Wis. Stat. § 73.01(4)(am).

RULING

The primary argument of petitioner starts by her stating that Article VIII, Section 1 of Wisconsin's Constitution authorizes the imposition of taxes on "incomes". Because this word is not defined in the Constitution, and because Wis. Stat. § 71.02(1) imposes a tax on "net incomes of individuals", petitioner argues that no Wisconsin statute properly imposes a tax on "incomes".

This is gobbledygook. In § 71.02(1), the phrase "net incomes"

contains the word "incomes" with the adjective "net". This adjective in no way diminishes the statute imposing tax on "incomes".

To so argue and to act upon this argument by filing a defective income tax form is silly and potentially perilous. Both civil and criminal statutes prescribe penalties for not filing a proper income tax return. It is foolish for petitioner to contemplate the possibility of combating the imposition of these penalties by arguing that the word "net" before "incomes" negates the word "incomes" and, thereby, constitutes an invalid income tax imposition statute.

In her brief, petitioner also asserts that respondent did not act properly in estimating her "incomes" and in calculating the income tax which she believes is not really due upon it. Again she asserts that her income tax form was properly completed, under her view that the statutes do not properly impose a tax on "incomes". Therefore, no estimated tax may be imposed because of the defect in the statutes, she argues. She then objects to one element of respondent's estimate of her taxable income and admits "earnings".

This assertion is also without merit.

Petitioner has had several opportunities to either file a proper income tax return or to provide respondent with acceptable information so it may properly calculate her tax due. She has chosen to provide semantic arguments rather than accurate data. This commission refuses to invalidate respondent's assessment based on petitioner's assertions. Correct procedures

under § 71.74(3) were followed, the presumption of correctness of respondent's assessment has not been overcome, and respondent has shown entitlement to summary judgment as a matter of law.

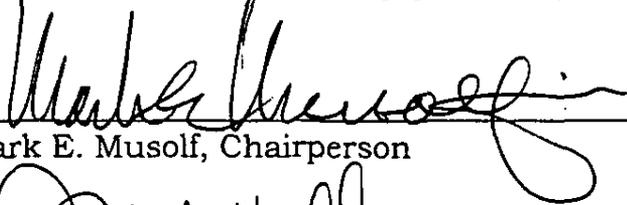
Therefore,

IT IS ORDERED

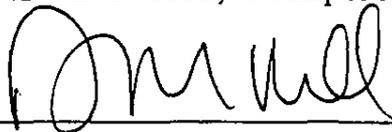
1. Respondent's motion for summary judgment is granted, and its action on the petition for redetermination is affirmed.
2. Petitioner is assessed an additional \$500, as it appears to the Commission that petitioner's position in this proceeding is frivolous and groundless, pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 8th day of March, 1999.

WISCONSIN TAX APPEALS COMMISSION



Mark E. Musolf, Chairperson



Don M. Millis, Commissioner



Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"