

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

B00N SUSAN 99I55SC 060302 TAC

FILED  
Wisconsin Tax Appeals Commission  
JUN - 3 2002  
Darlene Skolaski  
Deputy Clerk

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

JUN 2002  
State of Wisconsin  
Department of Revenue  
Received  
Legal Staff

SUSAN B. BOON  
4501 96th Street  
Franksville, WI 53126,

DOCKET NO. 99-I-55-SC

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE  
P.O. Box 8907  
Madison, WI 53708,

AWARDING SUMMARY

JUDGMENT

Respondent.

**THOMAS M. BOYKOFF, COMMISSIONER:**

This matter comes before the Commission on the motion of respondent Wisconsin Department of Revenue ("Department") for judgment on the pleadings or for summary judgment. The Department's stated grounds for the motion are: (1) petitioner has failed to state a claim upon which relief can be granted, in failing to allege in her petition for review any justiciable error by the Department's issuing an assessment to her; (2) petitioner has failed to state justiciable facts tending to show that the Department's action in issuing an assessment to petitioner is not in compliance with statutory requirements; or (3) the petition for review fails to state a justiciable controversy.

Petitioner represents herself. Attorney Sheree Robertson represents the Department.

1006098603330

On April 19, 1999, petitioner filed an affidavit and exhibits to present her view of the pertinent facts in this appeal. On May 12, 1999, the Department filed its motion with an affidavit and exhibits.

On February 21, 2000, the Commission issued a notice holding this case in abeyance pending the final outcome of petitioner's appeal of a prior case she brought before the Commission in Docket No. 98-I-167, which was ultimately decided by the Wisconsin Court of Appeals. See *Susan Boon v. Wisconsin Dep't of Revenue*, 1999 Wisc. Tax LEXIS 7 (WTAC), petition for rehearing denied (WTAC April 20, 1999), *aff'd* on other grounds (Milwaukee County Cir. Ct. Aug. 23, 1999), and *aff'd* by the Wisconsin Court of Appeals in an unpublished decision (Case No. 99-2062 June 27, 2000).

Petitioner has not filed a response to the Department's motion. Neither party has filed a brief, but in its motion, the Department cites as precedent *Susan Boon*, *supra*.

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

#### UNDISPUTED MATERIAL FACTS

1. Under date of October 15, 1998, petitioner filed with the Department a 1997 Wisconsin income tax form showing that she had no income in that year and requesting a refund of \$3,410.16. Attached to that income tax form was a Form W-2 issued by the Glendale/River Hills School District, which stated that, in 1997, \$60,763.38 was paid by the school district to petitioner and \$3,410.16 of Wisconsin income tax was withheld. Also attached to petitioner's Wisconsin income tax form was

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100

a copy of her 1997 federal income tax form. On it, she stated that she had no income during 1997 and requested a full refund from the Internal Revenue Service of the federal income taxes withheld. Attached to the federal tax form was a two-page document which generally asserted that the federal income tax laws are defective and that they do not apply to her. Some of her reasons include: (1) no section of the Internal Revenue Code ("I.R.C.") make her liable for taxes; (2) the I.R.C. requires that she pay income tax "on the basis of a [tax] return", and her tax return shows no tax due; (3) the Privacy Act notice in the Form 1040 booklet states that she does not have to file; (4) income taxes are only payable on foreign earned income, and she has none; (5) information on a tax return may be used against her, despite her having a Fifth Amendment right not to be a witness against herself; (6) the U. S. Supreme Court has defined "income" in a way that does not apply to her in *Merchants' Loan & Trust Co. v. Smietanka*, 255 U.S. 509 (1921); and (7) the word "income" is not defined in the I.R.C.

2. Under date of January 4, 1999, the Department issued an assessment to petitioner covering 1997 for \$921.73, consisting of income tax, interest, and a penalty, which was asserted due in addition to the taxes withheld and not refunded to petitioner.

3. Under date of January 22, 1999, petitioner filed a letter with the Department which was deemed a petition for redetermination. The letter stated that petitioner was aggrieved by the assessment and that she disagreed with the auditor who, in her opinion, did not follow the law, did not answer her questions, and did not comply with tax regulations. She also requested a hearing in Milwaukee regarding the

assessment.

4. Under date of March 8, 1999, the Department denied petitioner's petition for redetermination because the Department concluded that, contrary to her belief, her income reflected on Form W-2 *was* taxable. No hearing on the assessment was scheduled.

5. Under date of April 9, 1999, petitioner filed a timely petition for review with the Commission, in which she stated that she was appealing but did not specify reasons. She also requested a hearing in Milwaukee.

#### CONCLUSIONS OF LAW

1. There is no genuine issue of material fact, and this case is appropriate for summary judgment under Wis. Stat. § 802.08 as a matter of law.

2. The Wisconsin Statutes impose the Wisconsin income tax on petitioner's wages which are stated on her 1997 Form W-2.

3. Petitioner did not file a complete and proper Wisconsin income tax return for 1997, and the Department has properly issued an assessment. *See* Wis. Stat. § 71.74(1).

4. By petitioner's insistence that income tax laws are defective or do not apply to her, it appears that this case has been instituted and maintained by petitioner primarily for delay, or that this proceeding is frivolous and groundless.

#### RULING

Section 802.08(2) of the Wisconsin Statutes provides that summary judgment "shall be rendered if the pleadings . . . on file, together with the affidavits, if

any, show that there is *no genuine issue of any material fact* and that the moving party is entitled to a judgment as a matter of law." [Emphasis supplied.]

The Department has moved for summary judgment, attaching an affidavit and exhibits to its motion. Petitioner has filed no response and, after being given the opportunity, has filed no brief. Therefore, the only documents that may be reviewed to act on the motion have been filed by the Department. Those submissions support the motion for summary judgment.

Under date of July 5, 2000, the Department wrote the Commission, sending a copy to petitioner, that the Court of Appeals has affirmed the circuit court in petitioner's appeal of a prior case involving tax year 1996 and similar facts. In a July 10, 2000 letter, petitioner responded that the Court of Appeals summarily dismissed her appeal on a procedural matter. This, however, does not diminish the conclusive ruling of the Court or the fact that petitioner did not prevail and has exhausted her appeals of that case. The result is that the Commission's prior ruling stands as precedent. See *Susan Boon, supra*.

With petitioner's 1997 Wisconsin and federal income tax forms which she submitted to the Department, she attached a two-sided page containing arguments that the federal income tax laws are deficient and do not apply to her. Some of her arguments are summarized in Undisputed Material Fact 1., above. These arguments and ones like them, involving petitioner and other individuals, have been rejected in prior cases by this commission and by state and federal courts. See *Boon, supra*; *Derick J. Norskog v. Dep't of Revenue*, 1999 Wisc. Tax LEXIS 19 (WTAC 1999); *Tracy v. Dep't of*

*Revenue*, 133 Wis. 2d 151 (Ct. App. 1986); and *Lonsdale v. CIR*, 661 F.2d 71 (5th Cir. 1981).

In a March 20, 2002 Scheduling Order, the Commission established a schedule for briefs to be filed in the current case. Petitioner filed no brief. Instead, in a document filed on April 19, 2002, she objected to the Scheduling Order, stating that she has three civil cases pending against two current commissioners (Don Millis and Thomas Boykoff) and one prior commissioner (Mark Musolf) in which she is requesting \$25 million from each for, in her opinion, wrongfully deciding *Susan Boon, supra*.

In an April 22, 2002 Order, Commission Chairperson Millis responded to petitioner's April 19, 2002 document, in part, as follows:

The Commission will remain impartial and objective as it considers petitioner's appeal. The mere fact that petitioner has sued members of the Commission cannot and should not compromise the Commission's impartiality. Were this the case, any petitioner could evade the jurisdiction of the Commission by suing its members.

I agree.

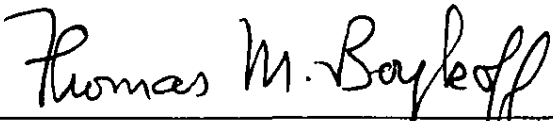
#### ORDERS

1. The Department's motion for summary judgment is granted, and its action on petitioner's petition for redetermination is affirmed.

2. Petitioner is assessed an additional \$500, as it appears that her position in this proceeding was instituted and maintained primarily for delay, and, further, that her position is frivolous and groundless under Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 3rd day of June, 2002.

WISCONSIN TAX APPEALS COMMISSION

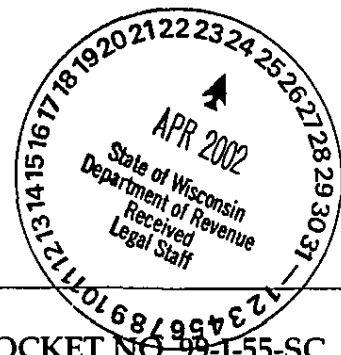
---

Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"



STATE OF WISCONSIN  
TAX APPEALS COMMISSION



SUSAN B. BOON,

DOCKET NO. 99-1-55-SC

Petitioner,

vs.

ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

Under the date of March 20, 2002, the Commission issued a Scheduling Order to facilitate consideration of respondent's motion for summary judgment. On April 19, 2002, petitioner filed her Objection to the Scheduling Order.

Citing her claims filed against members of the Commission which are currently pending before the Wisconsin Court of Appeals, petitioner suggests that the Commission cannot be objective and that the Scheduling Order constitutes retaliation for her prosecution of the claims against the members of the Commission.

The Commission will remain impartial and objective as it considers petitioner's appeal. The mere fact that petitioner has sued members of the Commission cannot and should not compromise the Commission's impartiality. Were this the case, any petitioner could evade the jurisdiction of the Commission by suing its members.

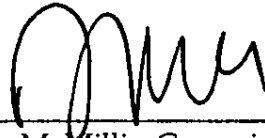
Therefore, petitioner's Objection will be denied, and petitioner shall comply with the March 20, 2002 Scheduling Order. Of course, the Commission will entertain any reasonable request for an extension of a deadline established in the Scheduling Order.

ORDER

Petitioner's Objection to the Scheduling Order of March 20, 2002, is denied.

Dated at Madison, Wisconsin, this 22<sup>nd</sup> day of April, 2002.

WISCONSIN TAX APPEALS COMMISSION



---

Don M. Millis, Commission Chairperson  
122 W. Washington Ave. - Suite 800  
Madison, WI 53703  
(608)266-1391

pc: Susan B. Boon  
Attorney Sheree Robertson