

BOWER KEITH & ELLEN 99119 051199 TAC

STATE OF WISCONSIN
TAX APPEALS COMMISSION

Wisconsin Tax Appeals Commission
MAY 11 1999
Darlene Skolaski
Deputy Clerk

1968

KEITH AND ELLEN BOWER
20900 Brook Park Drive
Brookfield, WI 53045

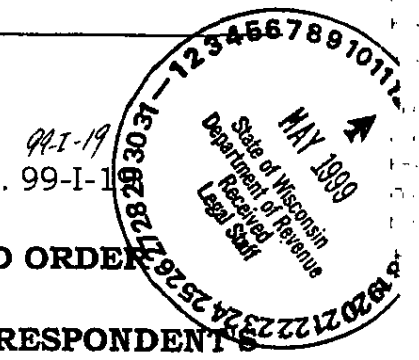
Petitioners,

vs.

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

Respondent.

- * DOCKET NO. 99-I-1
- * **RULING AND ORDER**
- * **GRANTING RESPONDENT'S**
- * **MOTION TO DISMISS**
- * **PETITION FOR REVIEW**



THOMAS M. BOYKOFF, COMMISSIONER:

This matter is before the Commission on respondent's motion to dismiss petitioners' petition for review on the ground that it fails to state a claim on which relief can be granted under Wis. Stat. § 802.06(2)(a)6. Respondent submitted its motion, and both parties have submitted their written arguments on the motion.¹

Petitioners appear *pro se*, and Attorney Michael J. Buchanan represents respondent, Wisconsin Department of Revenue.

Having considered the entire record, the Commission finds, rules,

¹ During an April 21, 1999 telephone status conference, the parties stipulated that the Commission may decide this case on materials already submitted, except that petitioners would send the Commission copies of their letters to respondent. The letters were received by the Commission on April 22, 1999.

and orders as follows:

PERTINENT FACTS

1. Petitioners filed amended Wisconsin income tax returns for tax years 1990, 1991, and 1992 more than four years after the returns' unextended due dates of April 15, 1991; April 15, 1992; and April 15, 1993, respectively. These were collectively considered a "claim for refund" by respondent.

2. In a notice dated July 16, 1998, respondent denied petitioners' claim for refund because the amended returns were not filed within the statute's permitted four years after their unextended due dates.

3. Petitioners filed a petition for redetermination with respondent, dated July 24, 1998, which respondent denied in a notice dated January 22, 1999.

4. Petitioners then filed a timely petition for review with this commission, appealing respondent's action, on January 28, 1999.

5. The basis of petitioners' refund claim is that petitioner Keith Bower now believes that his teacher retirement pension income was not subject to Wisconsin's income tax, but he did not know this when he filed the three tax returns under consideration here; therefore, he included that income in his total income and paid tax on it. The amount requested in the claim for refund is \$4,560.

6. In petitioners' petition for review and in their correspondence

with respondent, they advanced the following arguments on why Wis. Stat. § 71.75(2), the 4-year statute of limitations to file amended income tax returns requesting refunds, should not be applied here:

A. The 4-year period is "arbitrary", but it "could be interpreted as a guideline where there are mitigating circumstances...." (Petition for Review, page 1)

B. Mr. Bower "was never informed by any governmental agency or other entity that ... [his] teacher pension income was non-taxable in Wisc." (Petition for Review, page 2)

C. Mr. Bower states that "physical and mental impairment ... contributed to ... [his] filing incorrect Wisconsin tax returns for the years 1990, 1991, 1992.... [He] was attempting to make a recovery from years of prescription medication for acute anxiety and panic attacks and for severe depression." (Mr. Bower's Nov. 1998 letter to respondent)

D. Mr. Bower asserts that overlooking the teachers' retirement exemption in 1990 to 1992 resulted from "... uninformed and erroneous computations made by [him].... There is no public interest served or societal interests, in the application of this statute in these circumstances. Most statutes are enacted to serve and protect the public, ... but this pertinent statute merely imposes a time limit for certain procedures which hopefully could be construed as optional in some circumstances." (Mr. Bower's Nov. 1998 letter)

WISCONSIN STATUTE INVOLVED

71.75 Claims for refund.

* * *

(2) With respect to income taxes ... refunds may be made if the claim therefor is filed within 4 years of the unextended date under this section on which the tax return was due.

ISSUE

Does this commission have the authority to direct respondent to process petitioners' claim for refund, although it was clearly filed after expiration of the statutory time for filing, because of "mitigating" circumstances?

RULING

Wisconsin Statute § 71.75(1) states that "the provisions for refunds ... provided in this section [§ 71.75] shall be the *only method* for the filing and review of claims for refund of income [taxes]...." (Emphasis added)

The language of § 71.75(2) is clear and unambiguous. It provides that, except as otherwise provided in other specified statutes, a claim for refund may be made if it is filed within 4 years of the unextended date on which the tax return is due.

Petitioners' circumstances *do not* fall under the exceptions stated in § 71.75(2). The exceptions cover situations where a claim for refund is made within 4 years of an audit (§ 71.75(5)); when refunds are subject to attachment under delinquent child support laws or maintenance obligations or because they are owed to other state agencies, counties or municipalities (§ 71.75(9)); if a defense contract is renegotiated (§ 71.30(4)); under a written agreement with respondent entered into *before* the statutory 4-year period expires (§ 71.77(5)); and within 90 days of respondent's receipt from the IRS of information on an IRS adjustment of a taxpayer (§ 71.77(7)(b)).

Petitioners did not file their claim for refund within the time prescribed in the statute. The Legislature could have — but has not — passed a law giving this commission flexibility in applying the statute. Regardless of the merit or lack of merit of petitioners' arguments, this commission is required to follow the law.

In at least two prior cases, this commission has addressed situations in which claims for refund were filed later than 4 years after their unextended filing due dates. In both cases, the Commission held that when the filing is late (and no exemption applies), the Commission lacks subject matter jurisdiction and, therefore, is barred from considering the merits of petitioners' arguments. *Popp v. WDOR*, Wis. Tax Rptr. (CCH) ¶ 200-812 (WTAC 1972) and 9 WTAC 195 (1972), and *Evers v. WDOR*, Wis. Tax Rptr. (CCH) ¶ 202-433 (WTAC 1984). That conclusion also applies here.

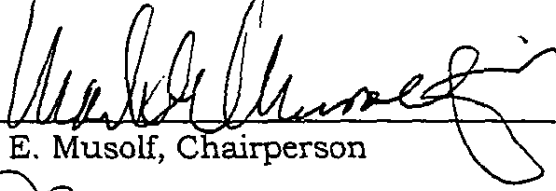
Therefore,

IT IS ORDERED

That respondent's motion is granted, and the petition for review is dismissed.

Dated at Madison, Wisconsin, this 11th day of May, 1999.

WISCONSIN TAX APPEALS COMMISSION



Mark E. Musolf, Chairperson



Don M. Millis, Commissioner



Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"