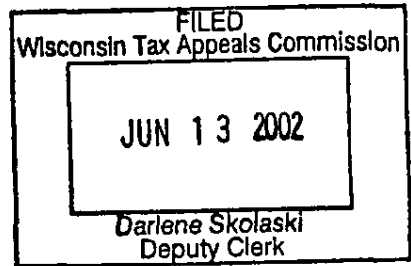


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STATE OF WISCONSIN
TAX APPEALS COMMISSION

CHARLES L. CLAYBROOKS
1767 N. Cambridge Ave., #5
Milwaukee, WI 53202,

DOCKET NOS. 01-I-104,
01-I-105, and 01-I-106

Petitioner,

vs.

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

ORDER



Respondent.

On May 14, 2002, petitioner Charles L. Claybrooks filed with the Commission a communication which was deemed to be a petition for rehearing of the May 10, 2002 Ruling and Order issued by the Commission.

The Commission finds that petitioner has shown no material error of law or fact nor the discovery of new evidence sufficiently strong to reverse or modify its ruling and which could not have been previously discovered by due diligence. Wis. Stat. § 227.49(3).

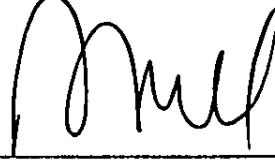
Therefore,

IT IS ORDERED

That petitioner's petition for rehearing in the above-entitled matters is hereby denied.

Dated at Madison, Wisconsin, this 13th day of June, 2002.

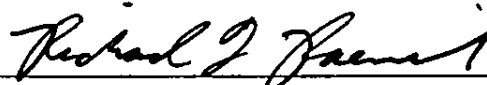
WISCONSIN TAX APPEALS COMMISSION



Don M. Millis, Commission Chairperson



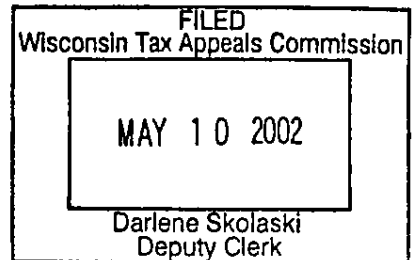
Thomas M. Boykoff, Commissioner



Richard F. Raemisch, Commissioner

pc: Charles L. Claybrooks
Attorney Veronica Folstad

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"



STATE OF WISCONSIN
TAX APPEALS COMMISSION

CHARLES L. CLAYBROOKS
1767 N. Cambridge Ave., #5
Milwaukee, WI 53202,

DOCKET NOS. 01-I-104,
01-I-105, and 01-I-106

Petitioner,

vs.

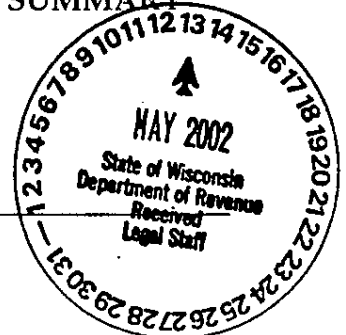
RULING AND ORDER

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

AWARDING SUMMARY

JUDGMENT

Respondent.



THOMAS M. BOYKOFF, COMMISSIONER:

These matters come before the Commission on the motion of the respondent Wisconsin Department of Revenue ("Department") for judgment on the pleadings or for summary judgment. Asserted grounds for the motion are that petitioner has failed to state a claim upon which relief can be granted in that he has failed to allege any justiciable error of law by the Department in issuing default assessments to petitioner, and that he has failed to state a claim upon which relief can be granted or any justiciable controversy in his objections to the actions of the Department on his petitions for redetermination.

Petitioner represents himself, and Attorney Veronica Folstad represents the Department.

With its motion, the Department filed an affidavit, attachments, and a

brief. Petitioner has filed two letters opposing the motion.

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

UNDISPUTED MATERIAL FACTS

1. Under date of July 10, 2000, the Department issued default assessments, under Wis. Stat. § 71.74(3), of \$18,048.06 covering 1988 through 1991, \$20,537.03 covering 1992 through 1995, and \$14,211.31 covering 1996 through 1998 because petitioner has not filed income tax returns or provided the Department with income tax information it has requested for those years. The assessments consisted of income tax, interest, late filing fees, and negligence penalties.

2. On July 14, 2000, petitioner filed a letter with the Department which the Department considered a petition for redetermination, objecting to the three assessments. Petitioner stated that he works in construction, works only 5 or 6 months each year because of weather and other factors, and earned far less than the income amounts stated in the assessments for any of the years. Petitioner did not file income tax returns or provide the information about each year which the Department had requested.

3. Under date of July 12, 2001, the Department denied petitioner's three petitions for redetermination.

4. Petitioner timely filed petitions for review with the Commission.

5. Petitioner has failed and refused to file Wisconsin income tax returns for 1988 through 1998.

WISCONSIN STATUTES INVOLVED

71.03 Filing returns;

(2) PERSONS REQUIRED TO FILE; OTHER REQUIREMENTS. The following shall report in accordance with this section:

(a) *Natural persons*. Except as provided in sub. (6)(b):

1. Every individual domiciled in this state during the entire taxable year who has a gross income at or above a threshold amount which shall be determined annually by the department of revenue. . . .

71.74 Department audits, additional assessments and refunds.

(3) DEFAULT ASSESSMENT. Any person required to file an income . . . tax return, who fails, neglects or refuses to do so within the time prescribed by this chapter or files a return that does not disclose the person's entire net income, shall be assessed by the department according to its best judgment.

CONCLUSION OF LAW

Petitioner has offered no justification for failing to file income tax returns for the years at issue.

RULING

The Department has moved for a judgment on the pleadings under Wis. Stat. § 802.06(3) or, in the alternative, for summary judgment under § 802.08. These motions are authorized pursuant to Wis. Admin. Code §§ TA 1.31 and 1.39.

Under § 802.06(3), a motion for judgment on the pleadings requires an examination of the pleadings, i.e., the petition for review and the Department's answer. The Department's answer acknowledges issuance of an assessment, the petitioner's filing of a petition for redetermination, and the Department's action on that petition, and denies "all other allegations of fact . . . and . . . each and every contention of law to

the effect that the [Department] . . . was in error." The denial eliminates any allegations that may form the basis of granting the motion for a judgment on the pleadings. The motion to dismiss on that basis is, therefore, denied.

In addition, § 802.06(3) provides that if "matters outside the pleadings are presented to and not excluded" by the Commission, "the motion shall be treated as one for summary judgment and disposed of as provided in s. 802.08" The Department's affidavit and attached exhibits present such matters outside the pleadings. The motion is, therefore, treated as one for summary judgment.

Section 802.08(2) provides that summary judgment "shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is *no genuine issue as to any material fact* and that the moving party is entitled to a judgment as a matter of law." [Emphasis supplied.]

The undisputed material facts are straightforward. Petitioner has not filed, and has refused to file, Wisconsin income tax returns for the tax years 1988 through 1998. Therefore, the Department has issued default assessments for those years under its statutory authority in § 71.74(3). Petitioner appeals to the Commission but continues his refusal to file tax returns.

Petitioner argues that the assessments were issued to him because he is an African American, and that the Department is biased against him.¹ Nothing in the

¹ Petitioner's letter to the Commission dated April 4, 2002.

record, or in the entire file of these cases, offers a scintilla of substance to that assertion. All Wisconsin residents at certain levels of income are required by statute to file income tax returns. See § 71.03(2). If they do not file, the Department is authorized to issue default assessments, as it has done here. See § 71.74(3).

Petitioner asserts that “[i]n the twenty-year period that I paid state and federal taxes, but did not file, I never received a notification from the . . . Department regarding the delinquency of my filing status.”² He asserts that he is now “burdened with attempting to gather information from previous employers.”³ However, the Department provided petitioner with copies of each W-2 form in its records to reduce the need for petitioner to gather that information. His argument that, because he did not file income tax returns each year for 11 years, it is now a burden to gather income tax information is meritless and not persuasive.

Petitioner argues that he had amounts withheld from his wages all during the 11 years in dispute. He also states that these amounts withheld may exceed his tax liability. However, having taxes withheld from his wages does not justify his failure to file income tax returns. The statutes require petitioner to file a tax return for each year, regardless of having his wages subject to withholding. See § 71.03(2). He has not done so, and the Department has issued assessments under § 71.74(3).

In an undated letter from petitioner to the Department, which the Department date stamped as received on November 5, 2001, petitioner states that he

²*Id.*

³*Id.*

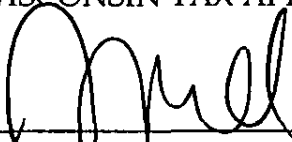
calculated his annual income asserted in the Department's assessments, and the average amounts are excessive. This statement, however, highlights the need for petitioner to file proper income tax returns. If the Department's default assessments are too high, petitioner's statement to that effect is no substitute for filing income tax returns, as required by law. He simply must file. In addition, he has provided no evidence to support his assertion that the assessments are too high.

ORDER

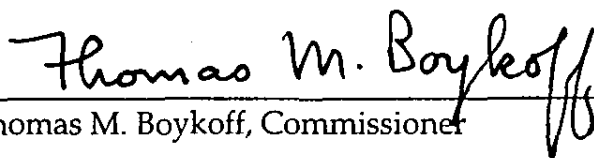
The Department's motion for summary judgment is granted, and its actions on petitioner's petitions for redetermination are affirmed.

Dated at Madison, Wisconsin, this 10th day of May, 2002.

WISCONSIN TAX APPEALS COMMISSION



Don M. Millis, Commission Chairperson



Thomas M. Boykoff, Commissioner



Richard F. Raemisch, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"