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Wisconsin Tax Appeals Commission
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**STATE OF WISCONSIN
TAX APPEALS COMMISSION**

JOHN GUTSCH
N6000 370th Street
Menomonie, WI 54751

Petitioner,

MAR 2001
State of Wisconsin
Department of Revenue
Received
Legal Staff

DOCKET NO. 00-I-167

vs.

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

Respondent.

RULING AND ORDER

AWARDING SUMMARY

JUDGMENT

THOMAS M. BOYKOFF, COMMISSIONER:

This matter is before this commission on respondent Department of Revenue's ("Department") motion for summary judgment, pursuant to Wis. Stat. § 802.08. Both parties have submitted sworn affidavits and legal arguments. Petitioner appears pro se, and Attorney Sheree Robertson represents the Department.

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

UNDISPUTED MATERIAL FACTS

Jurisdictional Facts

1. Under date of May 22, 2000, the Department sent petitioner an estimated assessment, pursuant to Wis. Stat. § 71.74(3), for \$11,522.95 of tax (\$7,297.00), interest (\$2,341.70), penalties (\$1,824.25), and fees (\$60.00) covering tax years 1997 and 1998.

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2. Under date of June 2, 2000, petitioner filed a petition for redetermination with the Department. The document was captioned "Verified Affidavit of Default", with attachments. Among petitioner's assertions in the attachments were that: he was not required to file returns; he demanded the Department to show that it has jurisdiction over him; he was a Minnesota resident; he was a nonresident alien; he was a "Citizen of Wisconsin and domiciled in Dunn County, Wisconsin;" he was a "Sovereign Citizen of the Wisconsin Republic"; and the income tax assessment for 1997 and 1998 was unlawful.

3. Under date of July 3, 2000, the Department denied his petition for redetermination.

4. On August 31, 2000, petitioner's timely filed appeal was received by the Commission.

Other Material Facts

5. Under dates of March 20 and April 13, 2000, a Department employee wrote to petitioner requesting that he file Wisconsin income tax returns for 1997 and 1998. Petitioner did not file the requested income tax returns.

6. Under date of April 14, 1997, petitioner filed a 1996 Wisconsin income tax return. The address on the return was in Menomonie, Wisconsin. He reported Wisconsin residence from February 1 to December 31, 1996. He also reported \$47,860.50 of federally taxable wage income and

States and the Wisconsin Statutes and chooses to not acquiesce or volunteer into the jurisdiction of the United States or the State of Wisconsin...."²

Wisconsin Statutes § 71.02(1) provides, in part, that "there shall be assessed, levied, collected and paid a tax on all net incomes of individuals ... residing within the state...." Wisconsin Statutes § 71.74(3) provides "Any person required to file an income ... tax return, who fails, neglects or refuses to do so ... shall be assessed by the department according to its best judgment."

Petitioner did not file Wisconsin income tax returns for 1997 and 1998. Therefore, as authorized by § 71.74(3), the Department issued an assessment to petitioner for these years according to its best judgment.

Petitioner claims protection from paying income tax by citing various provisions of the U. S. Constitution and by citing quotations from cases from the federal courts and the courts of various states. He asserts that he "is engaged in a private occupation of common right in Dunn County, Wisconsin;" that he is "a Sovereign Citizen of [and "natural born in"] the Wisconsin Republic;" and that he is not subject to the federal or state income tax laws.³

These arguments and ones like them have been given no credence when argued by others in prior cases before the Commission and the courts. Groundless and frivolous, they have not prevailed in the past and they do not prevail now. *See, 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,

² Petitioner's Brief, p. 1.

³ Petitioner's Brief, p. 1.

1999); *Derick J. Norskog v. Dep't of Revenue*, 1999 Wisc. Tax LEXIS 19 (WTAC 1999); *Tracy v. Department of Revenue*, 133 Wis. 2d 151 (Ct. App. 1986); and *Lonsdale v. CIR*, 661 F. 2d 71 (5th Cir. 1981).

On March 12, 2001, this commission received an additional filing from petitioner, measuring about one-quarter of an inch thick, comprised of a 5-page affidavit plus copies of many documents previously filed. The Department responded on March 14, 2001 with a single paged letter.

Petitioner's submission was filed almost seven weeks after expiration of his time for filing a brief. It contains only frivolous, irrelevant, and useless ramblings about statutes and cases.

The conclusion of this commission 19 years ago in *Betow v. Wisconsin Department of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-032 (WTAC 1982) (at.p. 11,608) is equally applicable to petitioner's case today:

... [P]etitioner's arguments are stale ones, long settled against their proponents. As such, they are meritless and frivolous. Even bending over backwards, in indulgence of petitioner's pro se status, ... this Commission should not encourage this petitioner and future similar petitioners to continue advancing these hollow and long-defunct arguments. See *Lonsdale v. Commissioner of Internal Revenue*, 81-2 USTC para. 9772 (November 12, 1981).

And paraphrasing from the often quoted forewarning in *McCoy v. Commissioner of Internal Revenue*, 76 T.C. 1027, 1029 (1981) ...: It may be appropriate to note further that this Commission has ... [received] a large number of so-called tax protester cases in which thoroughly meritless issues have been raised in, at best, misguided reliance upon lofty principles. Such cases tend to disrupt the orderly conduct of serious litigation in this Commission, and the issues raised therein are of the type that have been consistently decided against such petitioners and their contentions often characterized as frivolous. The time has

arrived when the Commission should deal summarily and decisively with such cases without engaging in scholarly discussion of the issue or attempting to sooth the feelings of the petitioners by referring to the supposed "sincerity" of their wildly espoused positions. This is all the more impelling today in view of the ... increasing complexity of the issues presented to this Commission.

The *McCoy* case was subsequently affirmed. *McCoy v. Commissioner of Internal Revenue*, 696 F. 2d 1234 (9th Cir. 1983).

Because petitioner has offered nothing but groundless and frivolous arguments to disprove the Department's assessment, an additional assessment of \$500 is imposed, as provided in Wis. Stat. § 73.01(4)(am).

ORDER

1. The Department's motion for summary judgment is granted, and the petition for review is dismissed.
2. Petitioner is assessed an additional \$500 pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 23rd day of March, 2001.

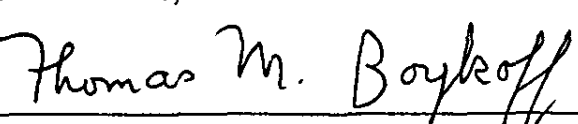
WISCONSIN TAX APPEALS COMMISSION



Mark E. Musolf, Chairperson



Don M. Millis, Commissioner



Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"

WISCONSIN TAX APPEALS COMMISSION

NOTICE OF APPEAL INFORMATION

NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW,
THE TIMES ALLOWED FOR EACH AND THE IDENTIFICATION
OF THE PARTY TO BE NAMED AS RESPONDENT

The following notice is served on you as part of the Commission's decision rendered:

Any party has a right to petition for a rehearing of this decision within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences the day after personal service or mailing of this decision. (Decisions of the Tax Appeals Commission are mailed the day they are dated. In the case of an oral decision, personal service is the oral pronouncement of the decision at the hearing.) The petition for rehearing should be filed with the Wisconsin Tax Appeals Commission. Nevertheless, an appeal can be taken directly to circuit court through a petition for judicial review. It is not necessary to petition for a rehearing.

Any party has a right to petition for a judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes. **The petition must be filed in circuit court and served upon the Wisconsin Tax Appeals Commission and the Department of Revenue** within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of law of any petition for rehearing. (Decisions of the Tax Appeals Commission are mailed the day they are dated. In the case of an oral decision, personal service is the oral pronouncement of the decision at the hearing.) **The petition for judicial review should name the Department of Revenue as respondent.**

This notice is part of the decision and incorporated therein.

TA-22(R-5/93)