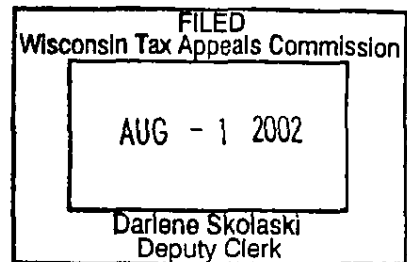


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STATE OF WISCONSIN  
TAX APPEALS COMMISSION

MARK KNICKEL  
107 E. 3rd Street  
Fond du Lac, WI 54935,

Petitioner,



DOCKET NOS. 01-I-210  
and 01-I-211

vs.

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

Respondent.

RULING AND ORDER

AWARDING

SUMMARY JUDGMENT

**THOMAS M. BOYKOFF, COMMISSIONER:**

These matters come before the Commission on the motions of the respondent ("Department") for judgment on the pleadings under Wis. Stat. § 802.06(3) and for summary judgment under Wis. Stat. § 802.08. The stated ground for the summary judgment motion is that there are no genuine issues as to material facts and that the Department is entitled to judgment as a matter of law.

Petitioner represents himself. Attorney Kenneth J. Artis represents the Department.

With its motions, the Department filed an affidavit, attachments, and a brief. Petitioner filed a response.

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

## UNDISPUTED MATERIAL FACTS

1. Under date of March 12, 2001, the Department issued two default assessments to petitioner under Wis. Stat. § 71.74(3). One, amounting to \$9,608.27, covers 1994 and 1995,<sup>1</sup> and the other, amounting to \$14,464.75, covers 1996 through 1999. These assessments were issued because petitioner refused to file income tax returns for those years.

2. Petitioner filed timely petitions for redetermination of the assessments, which the Department denied, whereupon petitioner filed timely petitions for review with the Commission.

3. Petitioner has failed and refused to file Wisconsin income tax returns for 1994 through 1999 with the Department.

## 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

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<sup>1</sup> Petitioner's November 29, 2001 letter, attached to the Department's affidavit.

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.

### CONCLUSIONS OF LAW

1. There are no genuine issues of material facts, and these cases are appropriate for summary judgment as a matter of law under § 802.08.

2. Petitioner failed to meet the requirements of § 71.03(2) to file Wisconsin income tax returns for years 1994 through 1999. The Department properly issued assessments to him for those years under statutory authority granted to it in § 71.74(3).

3. It appears to the Commission that petitioner has instituted and maintained these proceedings primarily for delay, and his position in these proceedings is frivolous and groundless under § 73.01(4)(am).

### RULING

The Department has moved for judgment on the pleadings by citing Wis. Stat. § 802.06(3)<sup>2</sup> and for summary judgment under § 802.08. These motions are authorized in practice before the Commission 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.

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<sup>2</sup> After citing § 802.06(3), the Department did not discuss this motion or the statute in its pleadings or in its brief. The Commission now rules on the motion, as it deems that citing the statute places the motion before us.

The Department's answer acknowledges the issuance of assessments, the petitioner's filing of petitions for redetermination, and the Department's action on these petitions, and "denies all other allegations of fact . . . and . . . each and every contention of law to the effect that the action of the [Department] . . . was in error." This blanket denial leaves in the record only the assessments, petitioner's appeals to the Department, the Department's denials, and petitioner's appeals to the Commission. These facts are not sufficient to form a basis to grant the motion for judgment on the pleadings. The motion for judgment on the pleadings, therefore, is denied.

Section 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 in these cases are straightforward. Petitioner did not file, and has refused to file, Wisconsin income tax returns for tax years 1994 through 1999. The Department, therefore, 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 income tax returns.

The Department's affidavit does not set forth facts regarding the assessment covering 1994 and 1995, nor is the assessment attached to the affidavit. However, petitioner's November 29, 2001 letter to the Department (a copy of which is attached to the Department's affidavit) acknowledges the assessment for 1994 and 1995. That letter also acknowledges petitioner filing a petition for redetermination objecting to the assessment and the denial of that petition. These undisputed material facts form a basis for this part of the motion for summary judgment.

Petitioner asserts that because the Department's assessment for 1994 and 1995 is not included with the Department's affidavit, that assessment is not covered by the motion. While the Commission does not condone this oversight, sufficient information about that assessment is provided in attachments to the Department's affidavit. Petitioner's assertion is, therefore, rejected.

Petitioner argues that the estimates of his income for the years at issue are excessive, and challenges the Department to prove those amounts.<sup>3</sup> However, assessments of the Department are presumed correct, and, despite petitioner's assertions, *he* has the burden of proving that these assessments are incorrect. *Department of Taxation v. O. H. Kindt Manufacturing Co.*, 13 Wis. 2d 258 (1960); *Woller v. Dep't. of Taxation*, 35 Wis. 2d 227 (1967); and *Margaret J. Dye v. Wisconsin Dept' of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-597 (WTAC 2002). He has made no attempt to

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<sup>3</sup> Petitioner's November 29, 2001 letter to the Department, p. 1.

meet that burden of proof and has not met it.

Petitioner objects to filing any income tax returns — state or federal — because he believes that, by doing so, he waives “certain Constitutional rights. . . .” His objections to filing are based on several provisions of the U. S. Constitution, including: the Fourth Amendment (believing that signing a tax return would put him “in conflict with a government position” and thereby “could be used as a probable cause to search” him and his possessions)<sup>4</sup>; the Fifth Amendment (believing that signing a tax return compels him to be a witness against himself); the Eighth Amendment (believing that signing a tax return could result in “excessive fines” prohibited by this Amendment); and Article 14, Sec. 1 (believing that Wisconsin’s income tax abridges the “privileges and immunities of citizens of the United States”).

Petitioner summarizes some of his assertions by stating:

. . . I believe several Wis. statutes when applied through force are unconstitutional, this force being the threat of criminal prosecution, financial ruin, or by a perpetual garnishment which amounts to “involuntary servitude”. (13th amendment)<sup>5</sup>

These assertions lack any merit.

Petitioner asserts that amounts were withheld from his wages all during the six years under review. He also states that his W-2 forms are on file with the Department and that is sufficient for his filing requirement. However, having taxes withheld from petitioner’s wages does not justify his failure to file income tax returns.

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<sup>4</sup> Petitioner’s November 29, 2001 letter to the Department, p. 2.

<sup>5</sup> Petitioner’s November 29, 2001 letter to the Department, p. 2.

The statutes clearly require petitioner to file a tax return for each year, regardless of having his wages subject to withholding. See Wis. Stat. § 71.03(2). He has not done so, and the Department has issued assessments under § 71.74(3).

Petitioner is attempting, by verbal gymnastics and chicanery, to ineffectively argue that Wisconsin's income tax laws applicable in 1994 through 1999 do not apply to him. His arguments and ones like them have been given no credence in prior cases before the Commission and the courts. They are groundless and frivolous, and have not prevailed in the past. They also 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, 1999); *Derick J. Norskog v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-424 (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).

The statement of the Commission 20 years ago in *Betow v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-032, p. 11,608 (WTAC 1982), applies equally to petitioner's present cases:

... [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. CIR*, 696 F. 2d 1234 (9th Cir. 1983).

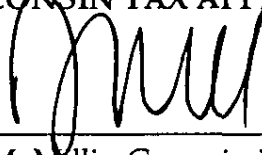
It appears to the Commission that petitioner's arguments constitute frivolous, irrelevant, and useless ramblings, questioning the Department's authority and practices and objecting to the Wisconsin and federal income tax statutes. It also appears that petitioner instituted and has maintained these proceedings primarily for delay. For these reasons, an additional assessment is imposed, as provided in Wis. Stat. § 73.01(4)(am).

#### ORDERS

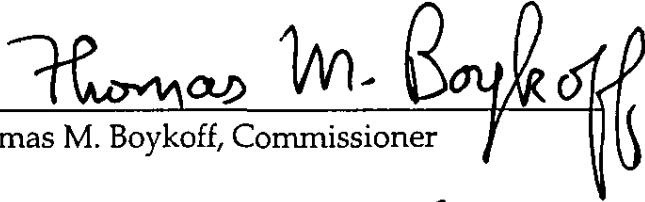
1. The Department's motion for judgment on the pleadings pursuant to § 802.06(3) is denied.
2. The Department's motion for summary judgment pursuant to § 802.08 is granted, and its actions on petitioner's petitions for redetermination are affirmed.
3. Petitioner is assessed an additional \$500 under § 73.01(4)(am).

Dated at Madison, Wisconsin, this 1st day of August, 2002.

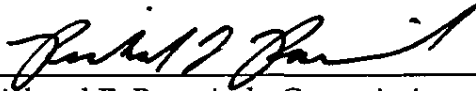
WISCONSIN TAX APPEALS COMMISSION



Don M. Millis, Commission Chairperson



Thomas M. Boykoff, Commissioner



Richard F. Raemisch, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"