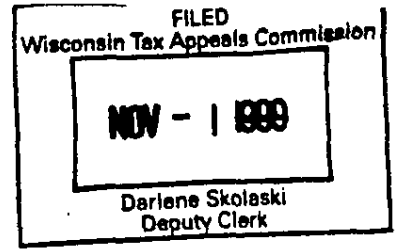


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STATE OF WISCONSIN
TAX APPEALS COMMISSION

CYRIL AND CAROLE KOHLBECK *

951 La Croix Avenue
Green Bay, WI 54304

Petitioners, *

vs. *

WISCONSIN DEPARTMENT OF REVENUE *

P.O. Box 8933
Madison, WI 53708

Respondent. *

DOCKET NO. 99-I-152

RULING AND ORDER



THOMAS M. BOYKOFF, COMMISSIONER:

This matter comes before the Commission on respondent Department of Revenue's ("Department") motion to dismiss the petition for review because the Commission has no jurisdiction over the matters in the petition. Dismissal is moved for the following reasons: (1) petitioners failed to file a claim for refund for the year 1993 within the 4-year statutory time period provided by Wis. Stats. § 71.75(2), and (2) the Commission has no jurisdiction over the petitioners' requested reduction of the tax liability on their 1994 through 1997 income tax returns. Petitioners represent themselves, and the Department is represented by Attorney Sheree Robertson.

Based upon the Department's motion and the submissions of the parties, the Commission finds, concludes, and orders as follows:

MATERIAL FACTS

1. On April 21, 1997, petitioners were issued an assessment covering tax years 1993, 1994, and 1995. Adjustments to petitioners' 1993 tax return involved disallowance of a bad debt loss and the conversion of net operating losses to capital losses. Petitioners appealed the assessment, and the Department modified it from \$2,108.33 to \$960.26, which petitioners paid in November 1997.

2. Under date of November 11, 1998, petitioners submitted a letter to the Department requesting a refund of a portion (\$446.40) of their 1993 income taxes. The letter constituted a "claim for refund" under Wis. Stat. § 71.75(2). The claim pertains to the tax treatment of an Individual Retirement Account ("IRA") on their 1993 income tax return.

3. Under date of December 11, 1998, the Department denied petitioners' claim for refund because it was filed later than the statutory period of four years from the unextended due date of the 1993 income tax return. Wis. Stat. § 71.75(2). The basis of denial was that the final date for filing the claim within the 4-year period was April 15, 1998, and the November 11, 1998 claim for refund was filed approximately seven months late.

4. Under date of December 14, 1998, petitioners wrote the Department requesting "forms and conditions" needed to appeal the denial of their claim for refund. The Department considered this request as a "petition for redetermination" under Wis. Stat. § 71.88(1)(a).

5. By notice dated June 11, 1999, the Department denied petitioners' petition for redetermination.

6. In their petition for review filed with this commission on August 10, 1999, petitioners appealed the Department's denial of their refund claim for income tax year 1993 and, further, requested that the Commission order a reduction of their income taxes for 1994 through 1997.

7. Petitioners have filed a claim for refund with the Department covering their income tax years 1994 through 1997, and action on it is pending in the Department's Resolution Unit.

APPLICABLE WISCONSIN STATUTES

71.75 Claims for refund.

* * *

(2) With respect to income taxes ... except as otherwise provided in subs. (5) and (9) and ss. 71.30(4) and 71.77(5) and (7)(b), 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.

* * *

(5) A claim for refund may be made within 4 years after the assessment of a tax ... under this chapter, assessed by office audit or field audit and paid *if* the assessment was not protested by the filing of a petition for redetermination. ... No claim for refund may be made in respect to items that were not adjusted in the notice of assessment or of refund. A person whose returns for more than one year have been adjusted may make a claim under this subsection whether or not the net result of the adjustments for those years is an assessment. *This subsection does not extend the time to file under s. 71.53(2) or 71.59(2), and it does not extend the time period during which the department of revenue may assess, or the taxpayer may claim a refund, in respect to any item of income or deduction that was not a subject of the prior*

assessment. [Emphasis supplied.]

71.88 Time for filing an appeal.

(1) APPEAL TO THE DEPARTMENT OF REVENUE.

(a) *Contested assessments and claims for refund.* ... any person feeling aggrieved by a ... notice of denial of refund may, within 60 days after receipt of the notice, petition the department of revenue for redetermination. A petition or an appeal by one spouse is a petition or an appeal by both spouses. The department shall make a redetermination on the petition within 6 months after it is filed.

(2) APPEAL TO THE WISCONSIN TAX APPEALS COMMISSION.

(a) *Appeal of the department's redetermination of assessments and claims for refund.* A person feeling aggrieved by the department's redetermination may appeal to the tax appeals commission by filing a petition with the clerk of the commission

RULING

By statute, a claim for refund of income taxes must be filed within four years after the unextended due date of the income tax return. Wis. Stat. § 71.75(2). Exceptions are provided by the statute, but none applies here. Petitioners' 1993 Wisconsin income tax return was due on April 15, 1994. The subsequent 4-year period ended on April 15, 1998. Petitioners' November 11, 1998 claim for refund was filed about seven months late. Therefore, the Commission has no jurisdiction over this matter.

Petitioners assert that Wis. Stat. § 71.75(5) authorizes their claim for refund because it was filed within four years after the assessment of a tax assessed by office audit. The Department assessed petitioners on April 21, 1997 for three tax years, including 1993. Petitioners appealed the assessment,

and the Department modified the 1993 assessment.

The statute petitioners cite provides that the assessment must not have been "protested by the filing of a petition for redetermination". After receiving the 1997 assessment, petitioners appealed it by filing a petition for redetermination. That alone precludes their reliance on the statute for a timely claim for refund in this case.

Petitioners' appeal to this commission also asked for a reduction in their 1994 through 1997 income taxes. Again, the statutes are clear that such request—constituting a claim for refund—must be first filed with the Department, not with this commission. The petitioners have, in fact, filed such claim for refund. The Department must act on that claim, and if petitioners are aggrieved by that action, they may ask the Department to reconsider its decision (i.e., file a "petition for redetermination"). Only then may petitioners appeal that decision to this commission. Wis. Stats. §§ 71.88(1)(a) and (2)(a).

The petitioners' request that this commission reduce their income taxes for tax years 1994 through 1997 is premature. The Commission does not have the authority to consider their request at this time.

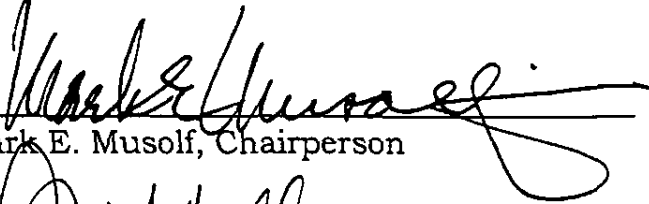
Therefore,

IT IS ORDERED

That the Department's motion to dismiss is granted, and petitioners' petition for review is dismissed.

Dated at Madison, Wisconsin, this 1st day of November, 1999.

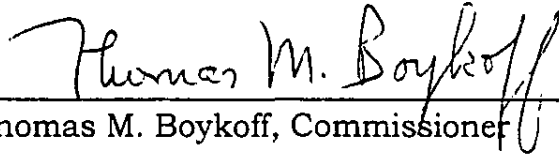
WISCONSIN TAX APPEALS COMMISSION



Mark E. Musolf, Chairperson



Don M. Millis, Commissioner



Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"