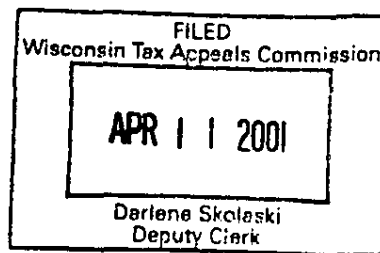


WILKE RONALD JEANETTE 001151 041101 TAC

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**STATE OF WISCONSIN  
TAX APPEALS COMMISSION**

**RONALD E. AND JEANETTE M. WILKE** \*

N9138 Sandy Lake Road  
Neshkoro, WI 54960

\* DOCKET NO. 00-I-151

Petitioners, \*

vs. \*

**RULING AND ORDER**

**WISCONSIN DEPARTMENT OF REVENUE** \*

P.O. Box 8907  
Madison, WI 53708

Respondent. \*



**MARK E. MUSOLF, CHAIRPERSON:**

This matter is before us on motions and cross-motions by the parties, as discussed in the ruling below. Both parties have filed briefs and documents in support of their motions and opposing each other's motions. The petitioners represent themselves. Attorney Donald J. Goldsworthy represents the respondent.

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

**RULING**

**Jurisdictional Background**

The respondent ("the Department") audited petitioners' ("the Wilkes") Wisconsin income tax returns for the years 1995 through 1998 and

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assessed additional taxes, together with interest and penalties. The Department's Notice of Amount Due dated February 7, 2000 was in the total amount of \$18,043.92. After petitioning the Department for redetermination, which was denied, the Wilkes timely appealed to this commission on August 8, 2000.

### **The Wilkes' Motion for a More Definite Statement**

On January 2, 2001, the Wilkes filed a "Motion for More Definite Statement" under Wis. Stat. § 802.06(5), claiming the Department's answer is "vague, ambiguous or not-understandable," and also claiming that the Department did not specifically answer "each of the petitioners issues set forth in their appeal." The Wilkes, however, did not specify any issues or facts in their appeal (petition for review) to this Commission.

We find no legal basis for granting the Wilkes' motion. Section 802.06(5) is available only to a party required to make a responsive pleading. No pleading is required in response to the Department's answer.

Moreover, the Wilkes' petition for review filed August 8, 2000 is a simple statement of their wish to appeal the Department's decision to assess them. Because the Wilkes gave no detail as to basis for their appeal, there was very little for the Department to "answer." We cannot find the Department's answer legally deficient in spite of its wordiness. It complies minimally with Wis. Stat. § 802.02(5).<sup>1</sup> The Commission must therefore deny this motion.

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<sup>1</sup> "Each averment of a pleading shall be simple, concise, and direct."

**The Department's Motion to Dismiss<sup>2</sup>**  
**And**  
**The Wilkes' Motions to Suppress, Quash, and Dismiss**

On January 12, 2001, the Department filed a Motion to Dismiss or, alternatively, for other appropriate relief under Wis. Stat. §§ 805.03 and 802.12(2)(a) for the Wilkes' failure to file an amended petition for review as ordered by the Commission.

On February 7, 2001, the Wilkes filed (1) a Motion to Suppress various Internal Revenue Service documents and correspondence; (2) a Motion to Quash the Department's January 12, 2001 motion; and (3) a Motion to Dismiss the Department from this case.

The Department's motion is based on the following language in a Commission order dated October 26, 2000, which was issued following an October 25 telephone scheduling conference in which petitioner Jeanette M. Wilke and the Department's attorney Donald J. Goldsworthy participated:

Not later than November 17 petitioners will file an amended petition detailing their legal position as to why they believe they were improperly assessed by respondent.

On February 15, 2001, the Commission issued a scheduling order noting the Wilkes' failure to file an amended petition for review as previously ordered, and indicating that the Commission would issue a written ruling disposing of all pending motions based on the parties' submissions as of

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<sup>2</sup> The Department also moved to strike the Wilkes' Motion for More Definite Statement. We regard this as no more than argument because, under § 802.06(6), a motion to strike applies only to a pleading, not to a motion.

March 7, 2001, which was the date set for the next telephone scheduling conference.

The Wilkes never filed an amended petition for review, claiming in a document filed February 19, 2001 that they "did not understand that it was REQUIRED to amend their ... Petition for Review ...," and that they understood "that this was optional and at their own discretion" and "saw no need to amend." In this document, the Wilkes stated that they understood "that they may submit and file motions up to March 7, 2001."

In a scheduling order dated March 8, 2001, following a March 7, 2001 telephone scheduling conference, the Commission again confirmed that it would issue a written ruling and order "disposing of all motions after considering the materials submitted by the parties."

The Wilkes' three motions, filed February 7, 2001 together with a "Bill Quia Timet" invoking the U. S. and Wisconsin Constitutions, are wholly without legal basis or merit, and we summarily deny them. This commission has no authority to suppress any Internal Revenue Service forms or filings, and no authority to dismiss the Department from this proceeding. Nor can we entertain the Wilkes' motion to "quash" the Department's motion, even if we treat it as a motion to strike under Wis. Stat. § 802.06(2).<sup>3</sup> As noted in Footnote 1, such a motion is applicable only to a pleading, not to another motion.

The Wilkes' motions are not only without legal merit, but they are

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<sup>3</sup> There is no permissible motion to "quash" a motion in Wisconsin civil procedure.

frivolous. They recite a litany of senseless and ridiculous grounds and allegations, including "Lack of State of Wisconsin-Department of Revenue jurisdiction over human beings ie. Petitioners," and "Department of Revenue exceeded their constitutional authority, by their internal procedures, policies, practices in the nature of a Bill of Attainder at the level of a Bill of Pains and Penalties." This shows that the Wilkes are not serious about addressing the substantive issues pertaining to the Department's assessment against them.<sup>4</sup>

Such constitutional and other objections have been repeatedly rejected by the courts and the Commission as a basis for relief from taxation. See, *Daniel T. Betow v. Wisconsin Department of Revenue*, ¶ 202-032 Wis. Tax Rep. (CCH) (WTAC 1982); *affirmed*, No. 82-CV-311 (Wis. Cir. Court Rock County 1983); *affirmed*, 116 Wis. 2d 695 (Ct. App. 1983) (unpublished); and *Lonsdale v. Commissioner of Internal Revenue*, 81-2 USTC ¶ 9772 (5<sup>th</sup> Cir. 1981).

A careful review of the Commission's file in this matter, including copies of documents the Wilkes filed with the Commission on December 28, 2000 concerning their dealings with the Department during the assessment review process, discloses no substantive basis for the Wilkes' claim that they are entitled to relief from the Department's assessment. As to the Wilkes' complaints about the conduct of the audit and the Department's employees, the Commission has no authority over such matters. See, *City of Kaukauna v.*

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<sup>4</sup> The assessment was the result of the Department's disallowance of "involuntary conversions" claimed by the Wilkes on their tax returns for each of the years at issue, and disallowance of the Wilkes claimed tax basis on a 1995 sale of rental property.

*Wis. Dept. of Taxation*, 250 Wis. 196, 200 (1947).

Under long-standing Wisconsin law, the burden of proof is on the taxpayer to show error in a disputed tax assessment because the assessment is presumed to be correct. *Woller v. Dept. of Taxation*, 35 Wis. 2d 227, 232 (1967). Accordingly, Wis. Stat. § 73.01 specifically provides that a petition for review to the Commission “shall set forth specifically the facts upon which the petitioner relies, together with a statement of the propositions of law involved.” The Wilkes have not complied with this statute, even though they were ordered and given a reasonable opportunity to do so. Without such specificity in the Wilkes’ petition for review, there is nothing for the Commission to adjudicate.

The Department has shown its entitlement to dismissal of the Wilkes’ petition for review, pursuant to Wis. Stat. §§ 802.10(7) and 805.03, for the Wilkes’ failure to comply with the Commission’s October 26, 2000 scheduling order and their attendant failure to prosecute their appeal before the Commission. The effect of this dismissal is that the Department’s action is affirmed.

Because it appears to the Commission that the Wilkes’ position in these proceedings is frivolous and groundless, they are assessed an additional \$500.00, pursuant to Wis. Stat. § 73.01(4)(am).<sup>5</sup>

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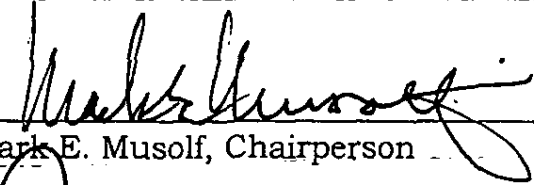
<sup>5</sup> “Whenever it appears to the commission ... that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer’s position is frivolous or groundless, the commission ... may assess the taxpayer an amount not to exceed \$1,000 at the same time that the deficiency is assessed. Those damages shall be paid upon notice from the department of revenue and collected as a part of the tax.”

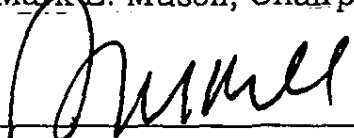
**ORDER**

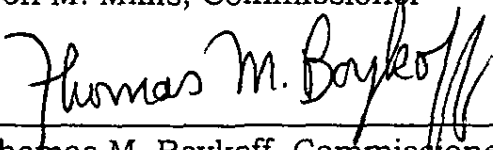
1. The Wilkes' motions are denied.
2. The Department's motion to dismiss the Wilkes' petition for review is granted, pursuant to Wis. Stat. §§ 802.10(7) and 805.03.
3. The Department's motion to strike and its request for costs and attorneys fees are denied.
4. The Wilkes are assessed an additional \$500.00, pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 11th day of April, 2001.

**WISCONSIN TAX APPEALS COMMISSION**

  
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Mark E. Musolf, Chairperson

  
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Don M. Millis, Commissioner

  
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Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"