

**STATE OF WISCONSIN**  
**TAX APPEALS COMMISSION**

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**WHISTLE B. CURRIER**  
1305 S. 102nd Street  
West Allis, WI 53214,

**DOCKET NO. 05-I-28**

Petitioner,

vs.

**RULING AND ORDER**

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

**GRANTING SUMMARY**

**JUDGMENT**

Respondent.

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**JENNIFER E. NASHOLD, CHAIRPERSON:**

This matter comes before the Commission on a motion filed by respondent, Wisconsin Department of Revenue (Department), to dismiss the petition for review for failure to state a claim upon which relief can be granted, Wis. Stat. § 802.06(2), and issue preclusion. The Department also requests that petitioner be assessed an additional amount of \$1,000, Wis. Stat. § 73.01(4)(am), on the basis that his position in this matter is frivolous or groundless.

Petitioner, Whistle B. Currier (formerly known as William E. Currier), appears *pro se* and has filed a brief and an affidavit in opposition to the motion. The Department appears by Acting Chief Counsel Lili Best Crane, who has submitted an affidavit with exhibits and a brief in support of the motion.

Having considered the entire record herein, the Commission finds, rules, and orders as follows.

## UNDISPUTED MATERIAL FACTS

1. Petitioner was a Wisconsin resident during 2002.
2. During 2002, petitioner received retirement annuity payments from the Wisconsin Retirement System for an annual gross distribution of \$32,823.92.
3. By notice dated July 19, 2004, the Department issued a default assessment of income tax against petitioner in the total amount of \$3,172.07, including interest, penalty, and fees, for failing to file his 2002 Wisconsin income tax return.
4. By letter dated July 28, 2004, petitioner filed a petition for redetermination with the Department.
5. By notice dated December 27, 2004, mailed to petitioner by certified mail and received by him on December 29, 2004, the Department denied petitioner's petition for redetermination.
6. Petitioner filed a timely petition for review with the Commission on February 23, 2005.

## RULING

Because both parties have submitted briefs and affidavits, and the Department filed exhibits with its affidavit, the Commission treats the Department's motion as a motion for summary judgment. *See* Wis. Stat. §§ 802.06(3) and 802.06(2)(b). *See also Mrotek, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-315 (WTAC 1997) (where the Department submitted matters outside of the pleadings, motion for judgment on the pleadings treated as motion for summary judgment); *City of Milwaukee v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-405 (WTAC 1999) (where parties submitted affidavits and briefs, motion to dismiss for failure to state a claim treated as

motion for summary judgment).

Summary judgment is warranted where "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." Wis. Stat. § 802.08(2). Assessments made by the Department are presumed to be correct, and the burden is upon petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984); Wis. Stat. § 77.59(1). Petitioner has failed to meet his burden, there is no genuine issue of material fact in this case, and the Department is entitled to judgment as a matter of law.

Petitioner's failure to pay Wisconsin income taxes makes him a frequent visitor to the Commission and courts. See *William E. Currier v. Dep't of Revenue*, Docket No. 92-I-514 (WTAC 1994), *aff'd*, *Currier v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-120 (Milwaukee Co. Cir. Ct. 1995), *aff'd*, *Currier v. Dep't of Revenue*, No. 95-1406, unpublished slip op. (Ct. App. 1996) (affirming Department's action on default assessment levied against petitioner for failure to file his 1982-1990 Wisconsin income tax returns); *Whistle B. Currier v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-764 (WTAC 2004), *aff'd*, *Currier v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-799 (Milw. Co. Cir. Ct. 2004), *appeal pending*, Ct. App., Dist. 1, No. 05-0292 (affirming Department's action on default assessment levied against petitioner for failure to file his 1999-2001 Wisconsin tax returns).

Indeed, petitioner's attempts at avoiding taxes were aptly characterized by

the Commission over a decade ago:

Each year, the respondent, Wisconsin Department of Revenue, endures untold numbers of appeals filed by pro se taxpayers who, in the tortured logic of their discourse, imagine that they have scoured the statutes, cut the Gordian knot, and magically freed themselves from state income tax liability. This is such a case.

*Currier*, Docket No. 92-I-514 (WTAC 1994), at p. 4. See also *Currier*, No. 95-1406, unpublished slip op. (Ct. App. 1996), at p. 5 (regarding the excerpt quoted above: "This quotation does not display evidence of bias. Rather, it is a conclusion regarding the position of the parties based on the evidence in the record.").

In this case, petitioner does not claim to have filed his 2002 income tax return or argue that he was not required to do so. Nor does he specifically dispute the amount of the Department's default assessment. Instead, he asserts that he was denied "the right to know the relevant facts with respect to every element" of the Department's allegations against him, thereby violating his due process rights and his "right to examine and cross-examine the evidence." (Petitioner's response to the Department's motion to dismiss at pp. 2, 8, 12; capitalizations omitted). Petitioner's claims have no more basis this time around than just over a year ago, when petitioner last raised them before the Commission. Because he raises the same substantive issues with respect to his 2002 taxes as those raised in his most recent appeal regarding his 1999-2001 taxes, the Commission repeats the conclusions set forth in its June 16, 2004 Ruling and Order:

Petitioner does not argue that his retirement annuity payments are not subject to taxation under Wis. Stat. § 71.02(1),<sup>1</sup> nor does he argue that he was not required to file under Wis. Stat. § 71.03(2). Likewise, he does not challenge the Department's authority to

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<sup>1</sup> Any such argument would be foreclosed by *William E. Currier v. Dep't of Revenue*, Milwaukee County Circuit Court Case No. 94-CV-012289 (April 6, 1995), p. 4 ("[t]he term 'income' includes retirement annuities.")

make a default assessment against him under Wis. Stat. § 71.74(3) or the accuracy of the amount assessed. Rather, the crux of his argument is that the Department has not adequately justified its tax assessment against him. However, the basis for the assessment is found in the statutes referenced above and cited by the Department. Because petitioner does not challenge the Department's application of these provisions to him, he presents no grounds for challenging the assessment imposed by the Department.

*Currier*, Wis. Tax Rptr. (CCH) ¶ 400-764 (WTAC 2004).

Based on the foregoing, the Commission grants the Department's motion for summary judgment. Moreover, in view of the frivolous nature of petitioner's appeal, the Commission imposes an additional assessment against petitioner in the amount of \$300, pursuant to Wis. Stat. § 73.01(4)(am).

#### **ORDER**

1. The Department's motion for summary judgment is granted, and its action on petitioner's petition for redetermination is affirmed.

2. An additional assessment of \$300 is imposed on petitioner pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 23rd day of September, 2005.

#### **WISCONSIN TAX APPEALS COMMISSION**

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Jennifer E. Nashold, Chairperson

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Diane E. Norman, Commissioner

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David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"