

STATE OF WISCONSIN
TAX APPEALS COMMISSION

WHISTLE B. CURRIER
1305 S. 102 Street
West Allis, WI 53214-3905,

DOCKET NO. 03-I-339

Petitioner,

vs.

RULING AND ORDER

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

Respondent.

JENNIFER E. NASHOLD, COMMISSIONER:

This case comes before the Commission on a motion filed by respondent, Wisconsin Department of Revenue, to dismiss the petition for review under Wis. Stat. §802.06(2)(a)6 for petitioner's failure to state a claim on which relief can be granted.

Petitioner, Whistle B. Currier, appears *pro se*. The Department appears by Chief Counsel Lili Best Crane. Both parties have submitted affidavits with exhibits and briefs.

Based upon the entire record in this case and the parties' submissions, the Commission hereby finds, rules, and orders as follows:

FACTS

1. During the years 1999, 2000, and 2001, petitioner resided in

Wisconsin.

2. During these same years, petitioner received retirement annuity payments from the Department of Employee Trust Funds of gross distributions in the following amounts:

1999: \$27,279.48

2000: \$30,250.68

2001: \$34,538.28

3. Petitioner filed no tax return for any of these years.

4. On May 12, 2003, the Department issued an income tax assessment to petitioner for \$9,588.57, including interest, penalties, and fees, for 1999 through 2001.

5. On July 14, 2003, petitioner filed a petition for redetermination of the assessment.

6. The Department denied petitioner's petition for redetermination of the assessment by notice dated October 20, 2003, mailed to petitioner by certified mail, return receipt requested, and received by petitioner on October 27, 2003.

7. On December 22, 2003, the Commission received petitioner's petition for review of the action on the petition for redetermination. In his petition for review, petitioner argued that the Department failed to provide an adequate basis for determining that petitioner owed taxes for 1999, 2000, and 2001, and that the Department therefore deprived petitioner of due process.

RULING

Petitioner does not argue that his retirement annuity payments are not subject to taxation under Wis. Stat. § 71.02(1),¹ 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 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.

Based on the foregoing, the Commission grants the Department's motion to dismiss.

IT IS ORDERED

That petitioner's petition for review is dismissed.

¹ Any such argument would be foreclosed by *William E. Currier v. Wis. 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.”)

Dated at Madison, Wisconsin, this 16th day of June, 2004.

WISCONSIN TAX APPEALS COMMISSION

Don M. Millis, Commission Chairperson

Jennifer E. Nashold, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"