

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

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**DAVID KROEGER**  
N3049 Immel Road  
Hortonville, WI 54944,

**DOCKET NO. 04-I-228**

Petitioner,

vs.

**RULING AND ORDER**

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

Respondent.

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**DIANE E. NORMAN, COMMISSIONER:**

This matter comes before the Commission on a motion for summary judgment filed by respondent, Wisconsin Department of Revenue (“the Department”), for petitioner's failure to state a claim on which relief can be granted.

Petitioner, David Kroeger, appears *pro se* and has submitted a petition, described in more detail below, and a letter brief. The Department is represented by Attorney Donald J. Goldsworthy, who has submitted an affidavit with exhibits and a brief.

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

**UNDISPUTED MATERIAL FACTS**

1. Petitioner was a Wisconsin resident during 1999.

2. By notice dated January 19, 2004, the Department issued to petitioner an estimated assessment of income tax for the year 1999 for failing to file a 1999 Wisconsin income tax return. The assessment was in the total amount of \$3,994.00, including \$2,024.00 in tax, \$1,434.00 in interest, \$506.00 in penalties, and \$30.00 in late filing fees.

3. Under date of March 16, 2004, petitioner filed a petition for redetermination with the Department. The petition stated:

The Reason I didn't file a Return is that if I did I would be giving up my 5<sup>th</sup> Amendment Rights. If you can show me how to file without giving up my 5<sup>th</sup> Amendment Rights, I do so. If not I would like you to send me a letter canceling this one for my 1999 Returns.

4. By letter dated June 9, 2004, John C. Teasdale, the Department's Resolution Officer responsible for reviewing petitioner's petition for redetermination, requested petitioner to file his 1999 income tax return, and warned petitioner that claims similar to his have been deemed groundless and frivolous by the Commission.

5. Under date of July 19, 2004, the Department issued its Notice of Action denying the petition for redetermination, stating in pertinent part:

Your 1999 Wisconsin income tax return has not been filed as requested by this department.

6. Petitioner filed a petition for review with the Commission on September 17, 2004. The petition stated that his reason for appealing the assessment was:

This letter is in Regards to the one that the Wisconsin Department of Revenue sent me on 7-19-04. I wish to file an appeal to their assessment due to they Nevered answered my Questioned concerning where my Wisconsin income tax Reporting fell under. Indirect or direct taxation. However they did say that the fifth Amendment didn't protect me from fileing a Return. I told the Wisconsin Department of Revenue if they could tell me where my incoming Reporting duties fell under I would gladly file one with them, but if they Couldn't I Requested them to send me a letter back cancelling the notice.

7. The Department filed a Notice of Motion and Motion for Summary Judgment on October 14, 2004, which included an affidavit by Attorney Goldsworthy in support of the motion, as well as exhibits in support of the affidavit and motion.

### **RULING**

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). There is no genuine issue of material fact in this case, and the Department is entitled to a judgment as a matter of law.

Wisconsin Statutes § 71.02(1) provides that "there shall be assessed, levied, collected and paid a tax on all net incomes of individuals . . . residing within the state . . ." Wisconsin Statutes § 71.74(3) provides that "[a]ny person required to file an income . . . tax return, who fails, neglects or refuses to do so . . . shall be assessed by the department according to its best judgment."

Petitioner fails to establish that he was not subject to the Department's income tax assessment under these statutory provisions. Indeed, he never even addressed this governing statutory authority, despite being directed to it by the Department (see June 9, 2004 letter from John C. Teasdale to petitioner, Finding No. 4). Instead, petitioner has made assertions that he is not required to file a tax return or pay income tax unless the Department can answer his questions that do not even rise to the level of arguments.

In his petition for redetermination to the Department, petitioner only expresses his erroneous belief that the Department was required to provide him with some type of proof that he would not be giving up his “5<sup>th</sup> amendment rights” if he filed his 1999 state income tax return.

In his petition to the Commission, the only issue petitioner states is that the Department failed to answer his question of whether state income taxes are direct or indirect taxes. This is not an argument that would justify his failure to file his 1999 state income tax return.

Petitioner appears to be attempting to delay or avoid paying his 1999 state income taxes by asking frivolous questions and arguing that the State of Wisconsin has no authority to impose taxes on him if the Department fails to answer his questions. These arguments and ones like them have been consistently rejected in prior cases before the Commission and the courts. They are groundless and frivolous, and have never prevailed in Wisconsin, nor, as far as the Commission is aware, in any court in the

country. See *Bierman v. C.I.R.*, 769 F. 2d 707, 708 (11th Cir. 1985) (finding similar arguments "patently frivolous" and noting that they "have been rejected by courts at all levels of the judiciary."). See also, *Tracy v. Dep't of Revenue*, 133 Wis. 2d 151 (Ct. App. 1986); *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); *Norskog v. Dep't of Revenue*, 1999 Wisc. Tax LEXIS 19 (WTAC 1999); *Lonsdale v. C.I.R.*, 661 F. 2d 71 (5th Cir. 1981).

Thus, the conclusion of the Commission over twenty years ago in *Betow v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶202-032 at p. 11,608 (WTAC 1982), is equally applicable to petitioner's case today:

. . . [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 . . . . 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 ever increasing complexity of the issues presented to this Commission.

The Department provided petitioner with authority informing him that arguments such as his have been deemed frivolous and groundless by the Commission and the courts, and that making them could subject him to further assessments under Wis. Stat. § 73.01(4)(am). Petitioner nonetheless proceeded to waste this state's

resources by pursuing his groundless and frivolous claims, thereby subjecting him to an additional assessment pursuant to § 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 21st day of March, 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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Gerald D. Kleczka, Commissioner

**ATTACHMENT: "NOTICE OF APPEAL INFORMATION"**