

STATE OF WISCONSIN
TAX APPEALS COMMISSION

RONALD H. LUENEBURG
2311 Forest Drive
Tomahawk, WI 54487,

DOCKET NO. 94-I-1471

Petitioner,

vs.

RULING AND ORDER

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

Respondent.

DON M. MILLIS, COMMISSION CHAIRPERSON:

This matter comes before the Commission on cross-motions for summary judgment. Both parties have submitted briefs and supporting papers with respect to the motions. Petitioner represents himself. Respondent is represented by Attorney Robert C. Stellick, Jr.

Based on the submissions of the parties and the entire record in this matter, the Commission hereby finds, concludes, rules, and orders as follows:

UNDISPUTED MATERIAL FACTS

1. When petitioner filed his Wisconsin income tax returns for 1984 through 1987, he included payments from his military pension based on service in the U.S. Air Force.

2. On February 10, 1994, respondent received from petitioner a set of unsigned income tax returns dated February 7, 1994, for the years 1985 through 1987. These returns were substantially the same as petitioner's original income tax returns for 1985 through 1987, except that petitioner did not report income from his military pension.

3. Respondent construed petitioner's filing dated February 7, 1994, as claims for refund for the years 1984¹ through 1987. Petitioner argued that his military pension is exempt from Wisconsin's income tax.

4. In a notice dated May 5, 1994, respondent denied the claims for refund for 1984² through 1987 as untimely. Petitioner filed a petition for redetermination with respondent objecting to the denial of his claims for refund.

5. Under the date of October 14, 1994, respondent issued a notice of action letter denying petitioner's petition for redetermination. Petitioner filed a timely petition for review with the Commission.

6. Pursuant to a settlement between respondent and the Wisconsin Military Retirees' Alliance, petitioner received a payment from respondent equal to the amount of income taxes he paid on his military pension he received in 1988.

¹ While petitioner did not include a second income tax return for 1984 with his refund claims, his handwritten cover letter included his assertion that he was not liable for income tax on pension income from 1984.

² Respondent asserts that due to a typographical error, the May 5, 1994 notice denying petitioner's claims for refund referred only to 1985 through 1987. However, respondent contends that this notice actually denied the 1984 claim for refund, as well. Petitioner does not dispute this contention.

7. In order to receive payment from respondent for income tax paid on petitioner's 1988 military pension income, petitioner signed a release that provided, in part:

In order to receive such payments, I agree to release the State of Wisconsin, its agencies and its present and former officials or employees from any other legal claims I may have relating to the past taxation of my federal pension income by the State of Wisconsin.

Stellick Aff., Ex. 10.

CONCLUSIONS OF LAW

1. There is no genuine issue of material fact, and this matter is appropriate for summary judgment as a matter of law.

2. The Commission lacks subject matter jurisdiction over the petition for review because the claims for refund were not filed within the statute of limitations. Wis. Stat. § 71.75(2).

RULING

For each year that petitioner claimed a refund, the statutes mandate that the claim be filed with respondent within 4 years of the due date for the income tax return for that year. Wis. Stat. § 71.75(2). The latest of the years at issue is 1987. The due date for petitioner's 1987 refund claim was April 15, 1992. Petitioner actually filed his refund claims nearly 22 months after this deadline. The refund claims for the prior years were, of course, due earlier than the 1987 claim. Therefore, the Commission lacks subject matter jurisdiction over the petition for review. *Kohlbeck v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-445 (WTAC 1999).

Petitioner does not dispute that his refund claims were untimely. Rather, petitioner argues that once the U.S. Supreme Court issued its decision in *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803 (1989), respondent had an obligation to inform persons in petitioner's position that this decision might afford them a refund claim. However, petitioner points to no statute, court decision, or legal theory that imposes such a duty on respondent, and we know of no such legal authority.

Petitioner's assertion assumes that the Supreme Court's holding in *Davis* would necessarily apply to Wisconsin's limited exemption for retirees drawing on certain state and local retirement systems. The only decision on this point was reversed by the Court of Appeals. *Department of Revenue v. Hogan*, 198 Wis. 2d 792 (Ct. App. 1995). Therefore, even if there existed an obligation of respondent to inform taxpayers of events or changes in the law that would afford them a refund, it is not clear that the *Davis* decision would be such an event or change in the law.

Moreover, if there were such a duty, petitioner waived the right to claim refunds for prior years when he signed the release so that he could receive a settlement payment for 1988.

ORDER

1. Petitioner's motion for summary judgment is denied;
2. Respondent's motion for summary judgment is granted, and the petition for review is dismissed.

Dated at Madison, Wisconsin, this 8th day of April, 2004.

WISCONSIN TAX APPEALS COMMISSION

Don M. Millis, Commission Chairperson

Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"