

STATE OF WISCONSIN
TAX APPEALS COMMISSION

BRUCE PETERSON,

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

**DOCKET NOS. 07-I-26
AND 07-I-31**

RULING & ORDER

ROGER W. LEGRAND, COMMISSIONER:

These appeals come before the Commission on a motion to dismiss filed by respondent on December 3, 2007 based on petitioner's alleged failure to state a claim upon which relief can be granted.

STATEMENT OF JURISDICTIONAL AND MATERIAL FACTS

1. Petitioner, Bruce Peterson is an individual residing in Rice Lake, Wisconsin, and was a resident of Wisconsin during the periods at issue in these matters.
2. Petitioner did not file Wisconsin income tax returns for the years 1998, 1999, 2000, 2001, 2002, 2003 and 2004. Respondent, the Wisconsin Department of Revenue ("respondent"), issued to him a Notice of Amount Due dated June 26, 2006 in the amount of \$35,004.34 for the period beginning January 1, 1998 and ending December 31, 2001 (Exh. 1) and a Notice of Amount Due of \$26,946.60 for the period beginning January 1, 2002 and ending December 31, 2004 (Exh. 2), based on its estimates of petitioner's income during the years at issue.

3. On July 29, 2006, petitioner objected to both assessments and respondent treated the objections as petitions for redetermination. (Exh. 3)

4. In two letters dated December 11, 2006, respondent denied the petitions for redetermination. (Exh. 4 & 5.) Respondent issued two Notices of Amount Due updating the assessments at issue to \$36,271.23 and \$28,291.94, respectively. (Exh. 6 & 7.)

5. On February 5, 2007, petitioner filed a single petition for review with the Commission. (Exh. 8)

6. Respondent filed an answer to the petition for review on March 2, 2007. (See Gilmore Affidavit) Respondent filed an amended answer on May 8, 2007, to clarify the two assessments as Commission Docket Numbers 07-I-026 and 07-I-031.

RULING AND ORDER

In his appeals to the Commission, petitioner argues that respondent has not produced documentation or a statute to show that petitioner is liable to pay income tax. Section 71.02(1) of the Wisconsin Statutes provides in part that “there shall be assessed, levied, collected and paid a tax on all net incomes of individuals . . . residing within the state”

Petitioner is an individual who resided in the state during the period at issue. As such, under Wisconsin Statute Section 71.02(1), he was required to pay Wisconsin income tax. Section 71.03(1), Wis. Stats., defines gross income as “all income, from whatever source derived and in whatever form realized whether in money, property or services, which is not exempt from Wisconsin income taxes.”

Petitioner did not file income tax returns for 1998, 1999, 2000, 2001, 2002, 2003, and 2004. Because of this, respondent was authorized by Section 71.74(3), Wis. Stats., to estimate petitioner's income according to its best judgment. Respondent did so. (Exh. 1.) Petitioner has not challenged this assessment except to allege that the assessments sent out as Notices of Amount Due were not properly authenticated. There is no statutory requirement that assessments be authenticated in the manner the petitioner suggests. The Wisconsin Supreme Court has held that an assessment by respondent is presumed to be correct and that petitioner has the burden of proof to show that an assessment is incorrect. *Department of Taxation v. O. H. Kindt Manufacturing Co.*, 13 Wis. 2d 258, 268 (1961).

Petitioner has not met his burden in these cases. The petitions for review are dismissed and respondent is granted judgment affirming its actions on both petitions for redetermination.

The Commission further finds that petitioner's arguments are groundless, without merit, and frivolous. They are the same tired arguments brought forth by many others over the years who believe themselves to be above the law and seek to avoid any responsibility to pay taxes. (See for example: *Michael J. Kinzinger v. WI DOR*, Wis. Tax Rpt. [CCH] ¶ 202-233 (WTAC Aug. 23, 1983); *Daniel T. Betow v. WI DOR*, Wis. Tax Rpt. [CCH] ¶ 202-032 (WTAC June 10, 1982); and *John A. and Susan Steele v. WI DOR*, Docket No. 05-I-79 (WTAC Dec. 12, 2005).

The Commission finds these appeals to be frivolous, that is to say, they were made without any reasonable basis in law or equity and could not be supported

by any good faith argument for an extension, modification or reversal of existing law. Under Wis. Stat. § 73.01(4)(am), the Commission may impose damages of up to \$1,000 in cases where it has determined that the petitioner's position is frivolous. In these cases, the Commission imposes damages of \$300.00 on each petition.

IT IS ORDERED

1. Respondent's motion for dismissal is granted, and its actions on petitioner's petitions for redetermination are affirmed.

2. An additional total assessment of \$600.00 is imposed on petitioner pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 18th day of July, 2008.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger W. LeGrand, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"