

STATE OF WISCONSIN
TAX APPEALS COMMISSION

JON A. AND SUSAN STEELE
W12351 Long Lane
Stockholm, WI 54769-5912,

DOCKET NO. 05-I-79

Petitioners,

vs.

RULING AND ORDER

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

Respondent.

This matter comes before the Commission on a motion for summary judgment filed by respondent, Wisconsin Department of Revenue (“Department”), on the grounds that there is no genuine issue as to any material fact and that the Department is entitled to judgment affirming its action on the petition for redetermination as a matter of law pursuant to Wis. Stat. § 802.08 and Wis. Admin. Code § TA 1.31.

Petitioners, Jon A. and Susan Steele, appear *pro se* and have submitted a petition and brief, described in more detail in the findings below. In their filings, petitioners generally dispute the legality of the Wisconsin income tax and the Department’s actions, but do not dispute the facts submitted by the Department in this case and do not provide any relevant alternative facts.

The Department is represented by Attorney Michael J. Buchanan, who has

submitted a brief, an affidavit with exhibits, and a reply brief in support of the motion.

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

JURISDICTIONAL AND MATERIAL FACTS

1. During the years 2000, 2001, 2002, and 2003 ("years at issue"), petitioners resided in Wisconsin.

2. Petitioners did not file Wisconsin income tax returns for the years at issue.

3. Petitioners were residents of Wisconsin for the year 1999 and filed a joint Wisconsin Form 1 income tax return as a married couple for that year.

4. On their 1999 Wisconsin income tax return, petitioners indicated that they were operating three businesses as sole proprietorships and that their total gross receipts from those businesses exceeded \$500,000 for that year.

5. By correspondence dated October 14, 2004, the Department sent a request to petitioner Jon A. Steele to file a Wisconsin income tax return for the year 2000, which petitioners returned to the Department without comment on or about October 18, 2004.

6. By correspondence dated November 30, 2004, the Department sent petitioners a letter requesting that they file Wisconsin income tax returns for the years at issue.

7. Petitioners returned the Department's November 30, 2004 letter to the Department with the notation "Returned for cause, without dishonor without

recourse to me,” signed by petitioner Jon A. Steele.

8. The Department sent a Wisconsin Income Tax Form 1 and Instructions Booklet to petitioners for each of the years at issue.

9. Petitioners returned the Wisconsin Income Tax Form 1 and Instructions Booklet for each of the years at issue to the Department with each Booklet marked “Returned for cause without dishonor, without recourse to me,” signed by petitioner Jon A. Steele.

10. By notice dated December 20, 2004, the Department issued to petitioners an assessment of income tax for the years at issue in the total amount of \$29,504.51, including tax, delinquent interest, 25% negligence penalty, and fees. The Department estimated the amount of tax due for the years at issue based on petitioners’ 1999 income tax return. The Department issued the assessment due to the failure of petitioners to file income tax returns for the years at issue.

11. By correspondence dated December 24, 2004, petitioners objected to the Department’s tax assessment and returned the December 20, 2004 assessment to the Department with the notation “Returned for cause without dishonor to me,” signed by petitioner Jon A. Steele.

12. By Notice of Action dated April 11, 2005, the Department denied petitioners’ petition for redetermination due to their failure to file Wisconsin income tax returns for the years at issue.

13. On May 16, 2005, petitioners timely filed a petition for review with the Commission.

14. On June 14, 2005, the Department filed a motion for summary judgment.

15. On June 20, 2005, the Commission issued a Briefing Order scheduling briefs on the Department's motion.

16. On July 18, 2005, petitioners filed a brief in opposition to the motion. Petitioners' brief generally requests answers to a series of questions regarding the characteristics of the Wisconsin income tax, asserts that petitioners are not required to file income tax returns or pay income tax, objects to the Commission's jurisdiction, and requests the appointment of counsel for assistance in this matter.

17. On September 2, 2005, the Department filed a reply brief, objecting to petitioners' request for an appointment of counsel and noting that petitioners had failed to dispute the facts submitted by the Department.

RULING

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). In this case, the Department has provided all relevant facts, and the petitioners have disputed only the law applicable to those facts. Thus, there are no genuine issues as to any material fact, and, moreover, this matter is appropriate for summary judgment as a matter of law.

Opinion

Right to Counsel

As a preliminary matter, petitioners request that the Commission appoint counsel to assist them in this matter pursuant to the 6th Amendment to the United States Constitution. Neither the Commission nor the Department has ever contested petitioners' right to be represented by counsel in this matter. However, petitioners apparently desire to be represented only by counsel provided at taxpayer expense. As required by the 6th Amendment, the State of Wisconsin makes such publicly-funded counsel available to indigent persons who have been detained or arrested in connection with any offense which is punishable by incarceration or in connection with any civil commitment proceeding. *See, generally*, Wis. Stat. § 967.06; *State v. Dagnell*, 236 Wis. 2d 339, 357 (2000). In contrast, this matter is an administrative proceeding that cannot result in petitioners' incarceration or civil commitment, and thus petitioners' 6th Amendment right to counsel is not implicated.

Wisconsin Income Tax

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."

Petitioners have failed to establish that they were not subject to the Department's income tax assessment under the above statutory provisions. Indeed, they have never even addressed the governing statutory authority. In their communications with the Department and filings with the Commission, petitioners attempt to construct a legal argument by simply posing a series of questions, and then arguing that the State of Wisconsin has no authority to impose income taxes on them if these questions are not answered to their satisfaction.

These and similar arguments 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 Co. Cir. Ct. 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); *Kroeger v. Dep't of Revenue*, WTAC Docket No. 04-I-228 (March 21, 2005).

Thus, the conclusion reached by the Commission more than 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 petitioners' 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 need to dispose of such cases summarily has only increased with time. As proved by the Department, there is no genuine issue of material fact in this case, and the Department is entitled to summary judgment as a matter of law.

ORDER

1. The Department's motion is granted, and its action on petitioners' petition for redetermination is affirmed.
2. An additional assessment of \$300.00 is imposed on petitioners pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 12th day of December, 2005.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"