

STATE OF WISCONSIN

TAX APPEALS COMMISSION

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**JOHN SUNDBERG**  
P.O. Box 47  
Suring, WI 54174-0047,

**DOCKET NO. 04-I-241**

Petitioner,

vs.

**RULING AND ORDER**

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

Respondent.

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

Petitioner, John Sundberg, appears *pro se* and has submitted a petition, described in more detail below, and an unauthenticated affidavit with exhibits in opposition to the motion. The Department is represented by Chief Counsel Lili Best Crane, who has submitted an affidavit with exhibits and a brief with exhibits in support of the motion.

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

**MATERIAL FACTS**

1. During the years 1999, 2000, 2001, and 2002 ("years at issue"),

petitioner resided in Wisconsin.

2. By notice dated February 16, 2004, the Department issued to petitioner an estimated assessment of income tax for the years at issue in the amount of \$34,840.22, including tax, delinquent interest, 25% negligence penalty, and fees. The assessment was issued due to failure of petitioner to file income tax returns for the years at issue.

3. Under the date of April 14, 2004, petitioner filed a petition for redetermination with the Department, stating in part:

I firmly believe that I have no tax liability for those years. Therefore, I request any and all information you have to support your claims of how you came up with the numbers that you have listed. I also request to know what specific State Law requires me to file, pay, or withhold taxes.

\* \* \*

I submit to you that the burden of proof lies on the State for any alleged income tax liability. Any hearsay, inflated, or bogus figures used by the State Department of Revenue in an attempt to coerce me into something that is not in my best interest will be challenged on any and all levels.

\* \* \*

I fully stand by the rights and protections granted to me under (but not limited to) the 4th, 5th and 14th Amendments to the Constitution of the United States.

4. On August 9, 2004, the Department issued its Notice of Action denying the petition for redetermination.

5. Petitioner filed a timely petition for review with the Commission on October 12, 2004, stating in part:

I have enclosed a list of questions and protections granted to me under (but not limited to) the 4<sup>th</sup>, 5<sup>th</sup>, and 14<sup>th</sup>

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Amendments to the Constitution of the United States.

6. On December 17, 2004, the Department filed a Notice of Motion to Dismiss petitioner's petition for the reason that petitioner failed to state a claim upon which relief can be granted, pursuant to Wis. Stat. § 802.06(2).

7. Pursuant to a December 21, 2004 Order of the Commission, on January 19, 2005, petitioner filed a response to the Department's motion in which he continues to lament the Department not answering his questions relating to the legality of the Wisconsin income tax.

8. On January 21, 2005, the Department filed its brief and exhibits in support of its motion.

### RULING

Wisconsin Stat. § 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 Stat. § 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 has failed 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. 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 which do not even rise to the level of arguments.

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Petitioner appears to be attempting to delay or avoid paying his 1999, 2000, 2001, and 2002 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

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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).

Dismissal of petitioner's petition is warranted since petitioner has failed to state a claim upon which relief can be granted. Wis. Stat. § 802.06(2). There is no genuine issue of material fact in this case, and the Department is entitled to have its Motion to Dismiss granted as a matter of law.

#### **ORDER**

1. The Department's motion is granted, and its action on petitioner's petition for redetermination is affirmed.

2. An additional assessment of \$300.00 is imposed on petitioner pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 4th day of April, 2005

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**WISCONSIN TAX APPEALS COMMISSION**

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Jennifer E. Nashold, Chairperson

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Diane E. Norman, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"

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