

**FILED**

MAR 04 2025

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

Wisconsin Tax Appeals Commission  
Nicole Allee - Legal Assistant

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GEORGE WATTS,

Petitioner,

DOCKET NO. 23-I-134

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**RULING AND ORDER**

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**JESSICA ROULETTE, COMMISSIONER:**

This matter is before the Commission for resolution of multiple motions, few of which have been filed in accordance with the Commission's directives. Petitioner, George Watts, represented himself. Respondent, the Wisconsin Department of Revenue, was represented by Attorney Dominic Weisse. Both parties filed pleadings and other related documents in support of their arguments.

The issue presented is whether or not this appeal should be dismissed, based on the pleadings and on each party's adherence to the requirements applicable to proceedings at the Commission. The Commission determines that this appeal should be dismissed.

**FACTS**

1. On March 7, 2023, the Department issued to Petitioner a Notice of Action regarding the 2020 tax year denying the Petitioner's request for redetermination

regarding the 2020 tax year because Petitioner had failed to file his 2020 Wisconsin income tax return. (Commission file, Ex. A to Petition.)

2. On May 5, 2023, Petitioner filed with the Commission a Petition for Review of the Department's Notice of Action. (Commission file.)

3. On August 8, 2023, the Commission issued orders setting deadlines for the issuance and completion of discovery, with all discovery, including the taking of depositions, to be completed on or before January 26, 2024. (Commission file.)

4. On October 23, 2023, Petitioner filed with the Commission a document styled as Affidavit of Mailing with attached Interrogatories addressed to the Department. (Commission file.)

5. On February 7, 2024, the Commission received a letter from Petitioner requesting that the telephone status conference scheduled for February 22, 2024, be rescheduled to a date in April of 2024. (Commission file.)

6. On February 9, 2024, the Commission issued a Rescheduling Notice rescheduling the February 22, 2024, telephone status conference to April 5, 2024. (Commission file.)

7. On March 12, 2024, to accommodate the Commission's calendar, the Commission issued a Rescheduling Notice rescheduling the April 5, 2024, telephone status conference to April 15, 2024. (Commission file.)

8. On April 15, 2024, the Commission issued a Status Conference Memorandum and Order directing that any party wishing to be heard on a Motion to Compel Discovery must file such Motion and supporting Affidavit no later than June 17,

2024, and scheduling the matter for a further status conference on July 9, 2024. (Commission file.)

9. On June 14, 2024, the Department filed a Motion to Compel Discovery with supporting Affidavit with attached Exhibits 1 through 7, along with a Brief in Support of its Motion. (Commission file.)

10. On July 8, 2024, Petitioner filed a Motion to Dismiss with supporting Affidavit with attached Exhibits 1 through 7, and a Brief in Support of the Motion. (Commission file.)

11. At the July 9, 2024, status conference, the Commission ordered Petitioner to provide substantive responses to the Department's discovery requests. The Department was directed to file an affidavit with the Commission if the Petitioner failed to comply with the Commission's order compelling discovery. Both parties were notified, verbally and in writing, that the matter would be dismissed if Petitioner failed to comply with the discovery requests and the Department filed an affidavit with the Commission indicating that Petitioner failed to comply with the discovery requests. (Commission file.)

12. On July 10, 2024, Petitioner filed a document styled "Notice of Invocation of Rights and Request for Proof of Claim." (Commission file.)

13. On August 9, 2024, the Department's attorney, Dominic Weisse, filed with this Commission a Motion to Dismiss with supporting Affidavit with attached Exhibit A. (Commission file.)

14. On August 27, 2024, Petitioner filed a Motion of Opposition to [the Department's] Motion to Dismiss with supporting Affidavit with attached Exhibit 1. (Commission file.)

15. On August 29, 2024, the Commission issued a Briefing and Scheduling Order directing the parties to file as follows: 1) by October 4, 2024, Department to file a Brief in Response to Petitioner's July 8, 2024 Motion to Dismiss, 2) by November 1, 2024, Petitioner to file a Brief in Reply to Department's Response Brief, and 3) by November 1, 2024, Department to file a Brief in Reply to Petitioner's August 27, 2024, Response Brief/pleadings. (Commission file.)

16. On September 25, 2024, the Department filed its Brief in Response to Petitioner's July 8, 2024, Motion to Dismiss. (Commission file.)

17. On October 29, 2024, Petitioner filed a Brief in Response to Department's [August 9, 2024,] Motion to Dismiss. (Commission file.)

18. On October 30, 2024, the Department filed a Brief in Response to Petitioner's August 27, 2024, Motion of Opposition. (Commission file.)

APPLICABLE LAW

WISCONSIN STATUTES

CHAPTER 71 INCOME AND FRANCHISE TAXES FOR  
STATE AND LOCAL REVENUES

SUBCHAPTER I TAXATION OF INDIVIDUALS AND  
FIDUCIARIES

**Wis. Stat. § 71.01 Definitions.** In this chapter in regard to natural persons . . . :

(9) "Person" includes natural persons and fiduciaries, unless the context requires otherwise.

**Wis. Stat. § 71.03 Filing returns; certain claims.**

(1) DEFINITION. In this section, "gross income" means 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. "Gross income" includes, but is not limited to, the following items: compensation for services, including salaries, wages and fees, commissions and similar items. . . .

(2) PERSONS REQUIRED TO FILE; OTHER REQUIREMENTS. The following shall report in accordance with this section:

(a) Natural persons. Except as provided in sub. (6)(b):

1. Every individual domiciled in this state during the entire taxable year who has a gross income at or above a threshold amount which shall be determined annually by the department of revenue. . . .

(6) TIME RETURN REQUIRED.

(a) Reports required under this section shall be made to the department of revenue on or before the date require to file the corresponding federal income tax return, not including any extension, to the internal revenue service, in the manner and form prescribed by the department of revenue, whether notified to do so or not. Such persons shall be subject to the same penalties for failure to report as those who receive notice. If the taxpayer is unable to make his or her own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(b) Nothing in this section precludes the department of revenue from requiring any person other than a corporation to file an income tax return when in the judgment of the department a return should be filed.

## SUBCHAPTER XII ADMINISTRATIVE PROVISIONS APPLICABLE TO ALL ENTITIES

### Wis. Stat. § 71.74 Department audits, additional assessments and refunds.

...

- (3) **DEFAULT ASSESSMENT.** Any person required to file an income . . . tax return, who fails, neglects or refuses to do so within the time prescribed by this chapter or files a return that does not disclose the person's entire net income, shall be assessed by the department according to its best judgment.

...

### Wis. Stat. § 71.80 General administrative provisions.

- (1) **DEPARTMENT DUTIES AND POWERS.**

(a) The department shall assess incomes as provided in this chapter and in performance of such duty the department shall possess all powers now or hereafter granted by law to the department in . . . the power to estimate incomes.

- (2) **NOTICE TO TAXPAYER BY DEPARTMENT.** The department shall notify each taxpayer of the amount of income . . . taxes assessed against the taxpayer and of the date when the taxes become delinquent.

...

- (4) **PENALTIES.** Unless specifically provided in this subchapter, the penalties under subch. XIII apply for failure to comply with this subchapter unless the context requires otherwise.

## SUBCHAPTER XIII INTEREST AND PENALTIES

### Wis. Stat. § 71.82 Interest.

...

- (2) **DELINQUENT.**

(a) *Income and franchise taxes.* Income . . . taxes shall become delinquent if not paid when due under ss. 71.03(8),

71.24(9) and 71.44(4), and when delinquent shall be subject to interest at the rate of 1.5 percent per month until paid.

**Wis. Stat. § 71.83 Penalties.**

(1) CIVIL.

(a) *Negligence.*

1. 'Failure to file.' In case of failure to file any return required under s. 71.03, 71.24, 71.44, or 71.775 on the due date prescribed therefor, including any applicable extension of time for filing, and upon a showing by the department under s. 73.16(4), there shall be added to the amount required to be shown as tax on the return 5 percent of the amount of the tax if the failure is for not more than one month, with an additional 5 percent for each additional month or fraction thereof during which the failure continues, not exceeding 25 percent in the aggregate. For purposes of this subdivision, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the due date prescribed for payment and by the amount of any credit against the tax which may be claimed upon the return.

...

(3) LATE FILING FEES.

(a) If any person required under this chapter to file an income . . . tax return fails to file a return within the time prescribed by law, or as extended under s. 71.03(7), 71.24(7), or 71.44(3), unless the return is filed under such an extension but the person fails to file a copy of the extension that is granted by or requested of the internal revenue service, the department shall add \$50 to the person's tax if the return is filed under subch. I or \$150 to the person's tax if the return is filed under subch. IV or VII. If no tax is assessed against any such person the amount of this fee shall be collected as income . . . taxes are collected. If any person who is required under s. 71.65(3) to file a withholding report and deposit withheld taxes fails to timely do so and upon a showing by the department under s. 73.16(4); unless the person so required dies; the department of revenue shall add \$50 to the amount due except that if

the person is subject to taxation under subch. IV or VII  
the department shall add \$150 to the amount due.

## CHAPTER 73 TAX APPEALS COMMISSION AND DEPARTMENT OF REVENUE

### Wis. Stat. § 73.01 Tax appeals commission.

...

#### (4) POWERS AND DUTIES DEFINED.

...

(am) Whenever it appears to the commission . . . that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in those proceedings is frivolous or groundless, the commission . . . may assess the taxpayer an amount not to exceed \$1,000 at the same time that the deficiency is assessed. Those damages shall be paid upon notice from the department of revenue and shall be collected as part of the tax.

## CHAPTER 804 CIVIL PROCEDURE - DEPOSITIONS AND DISCOVERY

### Wis. Stat. § 804.12 Failure to make discovery; sanctions.

#### (4) Failure to comply with order.

(a) If a party . . . fails to obey an order to provide or permit discovery, including an order made under sub. (1) or s. 804.10, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

...

3. An order striking out pleadings or parts thereof, or staying further proceeding until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party. . . .

## WISCONSIN ADMINISTRATIVE CODE

### TA 1.35 Discovery.

(3) Parties may obtain discovery before the commission in the same manner and by the same methods as provided under ch. 804, Stats., unless inconsistent with or prohibited by statute, or as otherwise determined by the



commission. When resort would normally be had to a circuit court under ch. 804, Stats., resort shall be had to the commission.

## ANALYSIS

### Procedural History

On June 14, 2024, the Department filed a Motion to Compel Discovery, with supporting affidavit, which the Commission heard at the status conference previously scheduled for July 9, 2024.

On July 8, 2024, Petitioner filed a Motion to Dismiss. At the July 9, 2024, hearing, the Commission determined that Petitioner was not truly asking to dismiss his own appeal but was actually requesting the Commission to decide the case through summary judgment procedures. Due to the late filing of the Motion as well as the pending discovery dispute, the Commission determined that Petitioner's Motion to Dismiss was not ripe, placed the motion in abeyance, and addressed the discovery dispute as scheduled.

Pursuant to the July 9, 2024, hearing on the Department's motion to compel discovery, this Commission issued a telephone status memorandum and discovery compliance order dated July 9, 2024. In its order, the Commission ordered Petitioner to make substantive written responses to the Department's First Set of Interrogatories and to provide documents responsive to the Department's First Request for Production of Documents within 30 days from the date of the order. The Commission further ordered that the Petition for Review herein would be dismissed upon filing of an affidavit by Counsel for the Department that there has been no compliance with the discovery requests.

Neither party complied with the Commission's July 9, 2024, written orders.

Petitioner failed to make substantive written responses to the Department's First Set of Interrogatories and failed to provide documents responsive to the Department's First Request for Production of Documents by August 8, 2024. The Department did not comply with the Commission's order for Counsel to file an affidavit stating that there had been no compliance with the discovery requests. Both parties had been warned that if the Department filed such an affidavit, the Commission would dismiss the petition. Inexplicably, the Department chose instead to extend this process and make it unnecessarily burdensome for both parties and the Commission. Counsel for the Department, in lieu of an affidavit of noncompliance, filed a Motion to Dismiss with supporting affidavit on August 9, 2024. Petitioner subsequently filed a Motion of Opposition to Respondent's Motion to Dismiss on August 27, 2024.

On August 29, 2024, it appearing that both parties wished to resolve this appeal through motion practice, the Commission issued a Briefing and Scheduling Order, giving both parties time to file briefs responding to the other party's Motion to Dismiss.

**Standard of Review**

Under Wisconsin law, assessments made by the Department are presumed to be correct, and the burden is upon the Petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶202-401 (WTAC 1984).

In determining the appropriate resolution of a discovery dispute, the Commission finds instructive the Wisconsin Court of Appeal's decision in *Ranft et al. v.*

*Lyons et al.*, 163 Wis.2d 282, 290 (Ct. App. 1991), quoting *State ex rel. Dudek v. Cir. Ct. for Milwaukee Cnty.*, 34 Wis.2d 559, 576 (1967):

Our analysis of the trial court's discovery orders must, as with all discovery disputes, begin with Rule 804.01(2)(a), Stats., which establishes the scope of permissible discovery:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

This is a broad charter, consistent with the underlying purpose of pretrial discovery, which, among other things, is "designed to formulate, define and narrow the issues to be tried."

The Commission is no stranger to the arguments made by Petitioner in his appeal. A long line of decisions regarding arguments such as those advanced by Petitioner has made clear that individuals attempting, through semantic gymnastics, to claim that the State of Wisconsin lacks authority to assess and collect income tax from residents of the state have no legal ground on which to stand.<sup>1</sup> The Commission granted Petitioner an opportunity to abandon meritless arguments and provide the factual information properly requested by the Department. Given Petitioner's pro se appearance,

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<sup>1</sup> *Neumann v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 201-720 (WTAC 1980); *Lonsdale v. C.I.R.*, 661 F.2d 71 (5<sup>th</sup> Cir. 1981); *Betow v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-032 (WTAC 1982); *McCoy v. Commissioner of Internal Revenue*, 76 T.C. 1027 (1981), *aff'd* 696 F.2d 1234 (9<sup>th</sup> Cir. 1983); *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 1989), *aff'd on other grounds* (Milwaukee Co. Cir. Ct. 1999); *Norskog v. Dep't of Revenue*, 1999 Wisc. Tax LEXIS 19 (WTAC 1999); *Gutsch v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-564 (WTAC 2001); *Kroeger v. Dep't of Revenue*, WTAC Docket No. 04-I-228 (March 21, 2005); *Steele v. Dep't of Revenue*, WTAC Docket No. 05-I-079 (December 12, 2005); *Callahan v. Dep't of Revenue*, WTAC Docket No. 05-I-107 (January 9, 2006); *King v. Dep't of Revenue*, WTAC Docket No. 06-I-32 (September 18, 2006); *Krueger v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-021 (WTAC 2007); *Kazynski v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-683 (WTAC 2014).

the Commission explained, during the July 9, 2024, status conference, that discovery may properly be made, if the discovery request appears reasonably calculated to lead to the discovery of admissible evidence. The Commission found and continues to find that the discovery requests put forth by the Department were well within the bounds of permissible discovery. The Commission further finds that Petitioner's demand for payment of \$50,000.00 to respond to the Department's reasonable discovery requests is meritless and was properly disregarded by the Department.

Petitioner has failed to establish that he was not subject to the Department's income tax assessment under Wis. Stat. § 71.02(1) and Wis. Stat. § 71.74(3). Petitioner has persisted with incoherent and irrelevant assertions despite having been given the opportunity to follow the rules governing appearances at the Commission. As the Commission has continuously held, arguments by individual residents of the State of Wisconsin that the state lacks authority to tax their income are groundless and frivolous, and such arguments have never prevailed in Wisconsin, nor, as far as the Commission is aware, in any court in the country. *See, Rieth v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-783 (WTAC 2004).

The conclusion reached by the Commission in *Betow v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-032 at page 11 (WTAC 1982) and cited again in *Rieth*, is equally applicable to petitioner's appeal here:

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

In this appeal, the Commission held a colloquy with Petitioner at the July 9, 2024, telephone status conference and provided Petitioner with an explanation of the procedures available to him during appeal proceedings at the Commission. The Commission further provided Petitioner with an opportunity to respond substantively to the Department's reasonable discovery requests. The Commission explained the role of discovery in the orderly presentation of evidence and argument at the Commission, and the Petitioner indicated he understood the explanation. During the colloquy, the Commission determined that the Petitioner was adequately sophisticated and knowledgeable to be capable of responding to the discovery requests. The Commission disabused Petitioner of his notion that he could refuse to provide information in response to reasonable discovery requests while continuing to use the Commission's processes to litigate his legal claims.

The Commission does not offer a two-tiered system of justice: one with clear rules and consequences for parties represented by counsel, and another with shifting standards and requirements for parties choosing to proceed pro se. The Commission also

does not apply overly officious readings to the best attempts of pro se litigants. In this appeal, Petitioner filed pleadings styled as a "Motion to Dismiss" on July 8, 2024, and "Motion of Opposition" on August 27, 2024. As noted above, for the July 8, 2024, Motion to Dismiss, the Commission held a colloquy during the July 9, 2024, status conference. During that colloquy, the Commission determined that Petitioner was not asking to dismiss the appeal but was instead moving for summary judgment based on his legal theory that the State of Wisconsin lacked authority to impose a tax on him. Before deciding the Motion for Summary Judgment, indeed, before scheduling briefing on Petitioner's July 8, 2024, motion, the Commission determined that the Department's timely filed Motion to Compel Discovery needed to be resolved first. The Commission ordered Petitioner to make substantive responses to the Department's reasonable discovery requests and explained that the appeal would be subject to dismissal if Petitioner failed to provide substantive responses to the Department's discovery requests.

These proceedings were unfortunately needlessly complicated by the Department's decision to file its own Motion to Dismiss with supporting Affidavit. Had the Department simply filed an Affidavit outlining the Petitioner's noncompliance with the Commission's July 9, 2024, order regarding discovery, the Commission could have dismissed this matter, as both parties were warned would happen if Petitioner persisted in his refusal to comply with the procedures regarding discovery at the Commission. Upon receipt of the Department's Motion to Dismiss, the Commission determined that a pro se litigant could well perceive unfairness in the Commission setting aside Petitioner's

July 8, 2024, Motion to Dismiss as untimely while addressing the Department's August 9, 2024, Motion to Dismiss. In order to ensure the appearance of fairness, the Commission then issued a Scheduling Order allowing both parties the opportunity to fully brief the issues raised by each party in their respective Motions to Dismiss.

Petitioner has chosen to pursue ill-advised and nonsensical legal theories and has failed to provide any evidence of an intent to comply with the discovery order of this Commission. However, it is the Department's pleadings which necessitated the Commission's examination of Petitioner's meritless legal claims. Because this appeal would have been simply dismissed upon the filing of an affidavit of non-compliance by the Department, the Commission finds it inappropriate to impose any additional assessment at this time. The Commission hopes that it will not be faced with further groundless or frivolous claims from this Petitioner in the future. And, if it is, the Commission's enabling statute and administrative rules allow the imposition of up to \$1,000 in damages for appeals it considers to be frivolous or groundless. *See Wis. Stat. § 73.01(4)(am) and Wis. Admin. Code TA § 1.63, Frivolous appeals.*

### CONCLUSIONS OF LAW

1. Petitioner failed to comply with the Commission's July 9, 2024, order to make substantive responses to the Department's discovery requests, which were made pursuant to Wis. Stat. §§ 804.08 and 804.09.

2. Petitioner advanced legal theories which are meritless and have been rejected by this Commission for many years, in a multitude of written decisions.

IT IS ORDERED

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

Dated at Madison, Wisconsin, this 4<sup>th</sup> day of March, 2025.

WISCONSIN TAX APPEALS COMMISSION

  
Elizabeth Kessler, Chair

  
Jessica Roulette, Commissioner

Concurs  
Kenneth P. Adler, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

KENNETH P. ADLER, COMMISSIONER, *CONCURRING*:

I concur with the conclusion Petitioner does not prevail. However, I would decide the case differently.

This taxpayer failed to file a tax return for the year 2020, in violation of Wis. Stat. § 71.03(2). When presented with those situations, the Department has the authority to make its own assessment pursuant to Wis. Stat. § 71.74(3). Upon appeal to the Commission, the taxpayer then presented arguments for his failure to file a return which are not based in relevant law or persuasive to the Commission. In addition, he continued



to refuse to provide information regarding his 2020 income as appropriately requested by the Department. Unfortunately, the subsequent discovery problems and complicated motion exchange between the taxpayer and the Department did not provide any information which would allow the Commission to conclude the taxpayer had overcome the presumption of correctness that Wisconsin law applies to Department assessments - including those made pursuant to Wis. Stat. § 71.74(3). Therefore, I agree with the granting of the Department's request that its action on the taxpayer's Petition for Redetermination be affirmed but would do so by Conclusions of Law stating: (1) Petitioner failed to file a tax return for the year ending 2020, in violation of Wis. Stat. § 71.03(2) and (2) Petitioner failed to overcome the presumption of correctness of the Department's best judgment assessment pursuant to Wis. Stat. § 71.74(3).

Dated at Madison, Wisconsin, this 4<sup>th</sup> day of March, 2025.

**WISCONSIN TAX APPEALS COMMISSION**



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Kenneth P. Adler, Commissioner  
*Concurring*