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DONAHUE JR G B 86CV1505 110889 KENOSHA CTY CIR CT

*Final  
Subsidiary*

NOV 24 1989

STATE OF WISCONSIN:

CIRCUIT COURT:BR 2

KENOSHA COUNTY:

STATE OF WISCONSIN  
DEPARTMENT OF REVENUE

G. B. Donahue, Jr.,

Petitioner,

MAR 27 1990  
**RECEIVED**  
LEGAL DIVISION

-v-

CASE NO: 86-CV-1505

ORDER

Department of Revenue,  
State of Wisconsin,

NOV 8 1989

Respondent.

W. GENTZ  
ADMINISTRATOR

This is an action for judicial review under Chapter 227, Stats., of a Ruling and Order of the Wisconsin Tax Appeals Commission ("Commission"), dated the 29th day of July, 1986. The Commission's order grants the respondent Wisconsin Department of Revenue's ("Department") motion for summary judgment, thus affirming the Department's doomsage assessment against petitioner for 1983 personal income taxes in the amount of \$5,027.37.

Under Section 227.57. Stats., review by this Court is confined to the record. There are no alleged irregularities in the procedure before the Commission.

The Court has examined the complete record of the Commission in Docket No. I-11596, specifically the following items;

1. Petition for Review
2. Respondent's Notice of Motion
3. Notice of Hearing and Return Receipt
4. Respondent's Exhibits 1-4
5. Transcripts of Proceedings of May 6, 1986 and July 17, 1986
6. Ruling and Order on Motion to Dismiss or for Summary Judgment

In addition, the Court has considered the Brief of the Respondent. The Petitioner has not filed a brief or any other memorandum of law in support of his position.

The facts in this case are neither complicated nor controverted. Petitioner failed to file a Wisconsin income tax

return for the year 1983. After several communications, including instructions, from the Department, petitioner persisted in filing incomplete or improper returns for 1983. Pursuant to Section 71.11(4), Stats., the Department made an estimated assessment against petitioner on April 8, 1985, in the amount of \$5,027.37.

Petitioner requested review by the Commission. Hearings were conducted on May 6, 1986 and July 17, 1986. The first hearing was adjourned at petitioner's request to give him yet another opportunity to file a proper return. Petitioner did not appear at the second hearing, and again submitted an incomplete, unsigned form for 1983.

The Commission determined that no genuine issue of fact or law existed. Further, since petitioner presented no evidence to overcome the presumption of the correctness of the Department's assessment, the Commission granted the Department's motion for summary judgment.

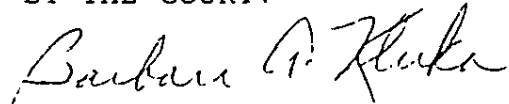
The Court finds that the Commission properly granted the Department's motion for summary judgment. Petitioner raised no factual issues before the Commission and failed to present any evidence as to why he failed to file a proper income tax return for 1983. The Commission made proper findings as set forth in items 1 through 10 in its Ruling and Order, and correctly applied the law to those findings.

The Court finds no grounds for setting aside, modifying, remanding or ordering action by the Commission or ordering ancillary relief under any specified provision of Section 227.57, Stats.

THEREFORE, IT IS THE ORDER OF THE COURT that the Ruling and Order of the Commission granting respondent's motion for summary judgment is affirmed.

Dated at Kenosha, Wisconsin this 8th day of November, 1989.

BY THE COURT:



BARBARA A. KLUKA  
CIRCUIT COURT, BR. 2