
KOCH KENNETH WILLIAM 88CV25 011789 LA CROSSE CTY CIR CT

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STATE OF WISCONSIN CIRCUIT COURT - BRANCH 2 LA CROSSE COUNTY

KENNETH WILLIAM KOCH,

Plaintiff,

File No. 88-CV-25

vs

WISCONSIN DEPARTMENT OF REVENUE,

Defendant.

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
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DECISION
AND
ORDER

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The Court has reviewed the record and the position of the parties as set forth in their briefs. Based upon that review, the Court finds that the Commission's decision was not based on any erroneous interpretation or application of §71.10 or §71.11(4) of the Wisconsin Statutes, that the Commission's decision was not erroneous in that wages are taxable as income under Wisconsin Income Tax law, and that the Commission's decision was not erroneous in that Federal Reserve notes are not exempt obligations of the United States and are taxable.

The Court further finds that the Petitioner's challenge is frivolous as a matter of law in that he knew, or should have known, that the action was without reasonable basis in law and could not be supported by a good faith argument for extension, modification or reversal of existing law.

The Court therefore affirms the decision of the Commission and further orders that the Petitioner pay the costs of this action and reasonable attorneys' fees incurred by the State of Wisconsin under the provisions of §814.025 and §814.04 of the Wisconsin Statutes.

DISCUSSION

Clearly, Wisconsin Statute 71.10(2)(c) allows the Department of Revenue to require any person to file an income tax return when, in their judgment,

a return should be filed. In this case the Department had evidence that the Petitioner had received income during the years in question and that the Petitioner had incurred withholdings for tax purposes. On that basis the Department could reasonably conclude that the Petitioner was required to file tax returns for those years. The Department then requested that the Petitioner file tax returns for those years. That request was authorized by law and was reasonable under the circumstances.

The Petitioner failed to file returns as requested. Section 71.11(4) of the Wisconsin Statutes requires that the Department make an assessment against a person failing to make proper returns. That assessment was "according to its best judgment" and the Department therefore sent the Petitioner a deficiency assessment dated October 27, 1986.

Section 71.12(3) of the Wisconsin Statutes and related caselaw require the taxpayer to first disclose all financial information and then places the burden of proof on the taxpayer to show that the Department's actions were improper. The Petitioner did not disclose and therefore is precluded from arguing error of the Department. The assessment is presumed correct since the Petitioner failed to present any evidence to the Commission to support his position.

Since §71.02(2) of the Wisconsin Statutes adopts a definition of "gross income" as including "all income from whatever source derived," that definition without question includes wages. The cases cited by the Respondent clearly cover that argument and the Court adopts the position of the Department and the reasoning of the decision set forth in their brief.

The same may be said regarding the Petitioner's position that Federal Reserve notes are tax exempt Federal obligations. The case law on that claim is too extensive and too long standing in nature to warrant comment other than to say that the Petitioner's position is without merit. (See Respondent's case citations in its brief).

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Minimal research by the Petitioner would have easily disclosed the well-worn and fruitless nature of his arguments. The Court finds on that basis that they and the Petitioner's claim are frivolous as defined in §814.025(3)(b) of the Wisconsin Statutes.

ORDER

For the above stated reasons, it is therefore ordered that the decision of the Commission is affirmed and that the Petitioner pay the costs and reasonable attorneys' fees incurred by the State of Wisconsin.

Dated this 17th day of January, 1989.

BY THE COURT:


MICHAEL J. MULROY, CIRCUIT JUDGE
CIRCUIT COURT BRANCH 2

MJM/dj

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