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STATE OF WISCONSIN  
DEPARTMENT OF REVENUE

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STATE OF WISCONSIN LEGAL DIVISION CIRCUIT COURT : ROCK COUNTY

GERTRUDE A. MCKENZIE,  
Petitioner,  
vs  
WISCONSIN DEPARTMENT OF REVENUE,  
Respondent.

MEMORANDUM DECISION  
Case No. CV 296 A

This case is before the Court on the Petition filed by Gertrude A. McKenzie asking judicial review of the decision of the Wisconsin Tax Appeals Commission. A hearing was held on October 15, 1981, and the issues taken under advisement for purposes of decision. Mrs. McKenzie was allowed 2 weeks thereafter to file a brief and the State directed to respond no later than November 16. The Petitioner filed her brief on or about November 2, 1981, and the Wisconsin Department of Revenue submitted a letter memorandum in lieu of a formal brief dated November 10, 1981.

Since the hearing, Petitioner has filed a second petition on November 2, 1981, requesting a temporary injunction, asking that this matter be held in abeyance pending a decision of the U.S. Tax Court for the tax years in question. The accuracy of income figures voluntarily submitted by the Petitioner to the Federal Government are not in issue in these proceedings. The question now presented is whether or not the Tax Appeals Commission erred in its findings of November 6, 1980, denying the Petition for Redetermination. These issues must be decided on the basis of the record established by the parties at the time they had an opportunity hearing on the original assessment and review thereof and not on new matters generated subsequent thereto or which were not presented by them when the opportunity presented itself. Consequently the request for a temporary injunction is denied.

Petitioner contends the Wisconsin Tax Appeals Commission infringed on her constitutional right to trial by a jury. Article I, Sec. 5 of the Wisconsin Constitution, on which Petitioner relies, guarantees the right to trial by jury as it existed when the Constitution was adopted. State vs Markham, (1915) 160 Wis. 431;

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Stockhausen vs Oehler (1925), 186 Wis. 277. Provisions of the tax laws are not unconstitutional on the ground that they deny the right of trial by jury in an action at law. Wakeley vs Mohr (1862) 15 Wis. 674. These proceedings are civil in nature and it was similarly pointed out in Cunningham vs Northwestern Improvement Company, 44 Mont. 180, 119 Pac. 554, that the Constitution of the United States does not guarantee a trial by a jury in a civil action in the State court, citing Walker vs Sauvinet, 92 U.S. 90, 23 Law. Ed. 678. In the Cunningham case, supra, it was likewise pointed out that although the State Constitution provided that the right of trial by jury shall be secure to all and remain inviolate, that provision had been construed by the Montana Court as applying only to those cases where a right of trial by jury existed as of the date of the adoption of the Constitution.

The Legislature, subject only to constitutional restrictions, and limitations, none of which are applicable in the case at hand, has plenary power over the entire subject of taxation. State, ex rel Thomson vs Giessel, (1953) 265 Wis. 207. The word "plenary" means full; complete; absolute. Webster's New World Dictionary of the American Language, College Edition, 1966, p. 1122. Thus the Legislature has the absolute right to prescribe the procedures for implementation of the Wisconsin Tax Code. Consistently it has been held that the power to tax income in this State is within the constitutional power of the legislature, and no contract obligation is thereby impaired. State, ex rel Wisconsin Trust Company, et al vs Widule, 164 Wis. 56.

The Petitioner contends the Findings of Fact do not support the conclusions of law; that the Commission erred on the law; that the Commission exceeded its power and erroneously interpreted a legal decision and that the action of the Commission depends upon a finding of fact that is not supported by substantial evidence. The Court has examined the transcript as well as the Findings of Fact made by the Commission. An examination of the transcript discloses that Mrs. McKenzie refused to testify in her own behalf and also stated she would refuse to testify regarding her income for the years 1971 and 1972 if the Department

*Farmum & S.A.*

called her as an adverse witness (T. 24, 30, 31). The Department proceeded to make its Findings of Fact all of which are supported in the record. They include a finding that the Petitioner did not meet her burden of proof in establishing that Respondent's assessment was incorrect. Assessments of taxable income made by the Department of Taxation when the taxpayer does not disclose his entire income are presumed to be correct and the taxpayer has the burden of proof to show that an error was made. Woller vs Wisconsin Department of Taxation (1967) 35 Wis.2d 227.

Other than specious contentions set forth in the Petitioner's brief filed November 2, 1981, nothing has been presented to show error on the part of the Commission, a lack of jurisdiction on the part of the Commission, an improper interpretation of the law by the Commission, or a lack of substantial evidence upon which to act. There was a complete and total failure on the part of the Petitioner by a failure to present any evidence showing error so that the case must be decided against her. Woller case, supra. The original assessment complained of was made consistent with statutory authority so that an assessment was authorized under Sec. 71:11(1)&(4) Stats., on an estimated basis. Having failed to provide specific information warranting a redetermination, the original determinations must stand and the action of the Tax Appeals Commission must be affirmed.

Counsel for the Respondent is directed to prepare an order for the signature of the Court denying the Petition herein and affirming the decision and order of March 10, 1981 by the Wisconsin Tax Appeals Commission.

Dated this 24 day of November, 1981.

BY THE COURT:

  
Mark J. Farmum