

FILED

STATE OF WISCONSIN
TAX APPEALS COMMISSION

JAN 13 2026

Wisconsin Tax Appeals Commission
Drew Fox - Clerk

JAMES GANNIGAN,

DOCKET NO. 25-I-077

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

KENNETH P. ADLER, COMMISSIONER:

This case comes before the Commission for decision on Respondent's Motion to Dismiss asserting the Petition for Review to the Commission failed to state a claim upon which relief can be granted. Petitioner's Representative submitted a Response to the Motion, and the Respondent submitted a Reply. Petitioner, James Gannigan (Petitioner), is represented by Jane Przychocki. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Kasey Reese.

ISSUES

The appeal involves a Notice of Estimated Tax Amount Due – Individual Income Tax in the amount of \$7,234.68 for the tax period ending December 31, 2022, issued by the Department on December 11, 2024. The issues for determination are whether (1) Petitioner was required to file a 2022 Wisconsin income tax return based

upon his residency and gross income and (2) the Department properly assessed an income tax liability when Petitioner failed to file a 2022 Wisconsin income tax return.

FACTS

1. During 2022, Petitioner resided in Stevens Point, Wisconsin. (Affidavit of Kristopher Margo ("Margo Aff.") ¶¶ 5-7.)
2. Petitioner failed to file a 2022 individual income tax return.¹
3. Petitioner is engaged in labor that results in the payment of money to him.²
4. During the year 2022, Petitioner operated Hawaiian Tanning studio located in Stevens Point, Wisconsin. (Margo Aff., ¶ 8.)
5. On December 11, 2024, the Department issued a Notice of Estimated Tax Amount Due - Individual Income Tax in the amount of \$7,234.68 for the 2022 tax year to Petitioner. The Notice explained it was being sent as the Department had not received Petitioner's 2022 individual income tax return and had therefore estimated his income and calculated the estimated tax amount owed. The Notice also gave Petitioner three options: (1) file his tax return which might change or cancel the amount owed, (2) file an appeal with the Department within 60 days, or (3) send a copy of his tax return if already filed. (Margo Aff., ¶ 10, Ex. E.)

¹ Petition for Review, page 4 ("I am not required to file and/or be subject to the Wisconsin Department of Revenue.").

² Petition for Review, page 2 (" . . . no government agency is entitled to the money God blesses me with for the use of my labor . . .").

6. The income the Department used for its estimation was based upon third-party documentation received by the Department demonstrating Petitioner earned Wisconsin income. Those sources included (1) 1099 reported by First Data Reporting Services LLC in the amount of \$43,362, (2) 1099 reported by First Data Reporting Services LLC in the amount of \$65,259, and (3) a Wage and Income Transcript obtained by the IRS showing partnership real estate income from LD Gannigan LLC in the amount of \$4,975. (Margo Aff., ¶ 3, Exs. A, B.)

7. On January 15, 2025, Petitioner returned the Department's Notice of Estimated Tax Amount Due - Individual Income Tax and included a two page letter, which stated in part, "I am not required to file a Federal Individual Income Tax Return . . . and because Wisconsin (Chapter 2 in the State Legislature) follows the Federal Income forms, I am not required to file an Individual Income Tax Return in Wisconsin." Specifically, Petitioner asserted that he is not subject to taxation because he is not a person and does not reside in the District of Columbia or on federal lands. The Department treated the letter as a timely Petition for Redetermination with the Department. (Margo Aff., ¶ 11, Ex. F.)

8. On March 4, 2025, Resolution Officer Christopher Margo acknowledged Petitioner's Petition for Redetermination of the Notice of Estimated Tax Amount Due - Individual Income Tax and requested that Petitioner respond within 20 days with a complete Wisconsin tax return for the period ending December 31, 2022. (Margo Aff., ¶ 12, Ex. G.)

9. On March 18, 2025, in a letter to the Department, Petitioner stated he would not file a tax return and reasserted "I am a man, a creation of God with unalienable

rights that were given by God that Government cannot touch his outlined and protected by the US Constitution which is the supreme law of the land." (Margo Aff., ¶ 13, Ex. H.)

10. On March 26, 2025, the Department issued a Notice of Action denying the Petition for Redetermination requesting Petitioner not be required to pay any 2022 state income tax and again explaining the 2022 income tax filing requirement. The letter provided instructions for filing an appeal (Petition for Review) with the Tax Appeals Commission if Petitioner disagreed with the Department's decision. (Margo Aff., ¶ 14, Ex. I.)

11. On May 15, 2025, Petitioner timely filed his Petition for Review with the Commission. (Commission file.)

STANDARD OF REVIEW

Motion to Dismiss

A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint.³ Upon a motion to dismiss, Wisconsin's courts accept as true all facts well-pleaded in the complaint and the reasonable inferences therefrom.⁴ Legal conclusions stated in the complaint are not accepted as true, and they are insufficient to enable a petition to withstand a motion to dismiss. The sufficiency of a complaint depends on substantive law that underlies the claim made because it is the substantive law that drives what facts must be pled.⁵

The Department argues that even if all alleged facts in the petition in this case are presumed true, Petitioner is not entitled to relief under the applicable law. And,

³ *Data Key Partners v. Permira Advisors LLC*, 2014 WI 86, ¶ 19, 356 Wis. 2d 665, 676, 849 N.W.2d 693, 698.

⁴ *Id.*

⁵ *Id.* at ¶ 31.

as there are no disputes of material fact as to whether Petitioner resided in or earned Wisconsin income in 2022, the statutory provisions detailed below required the Department to estimate Petitioner's 2022 Wisconsin income tax liability.⁶

Burden of Proof and Presumption of Correctness

Determinations the Department makes are presumed to be correct, and the burden is on the Petitioner to prove by clear and satisfactory evidence in what respects the Department erred.⁷

APPLICABLE LAW

In this case, Petitioner repeatedly declined to file a 2022 Wisconsin income tax return. As detailed in the statutory sections below, when an individual fails to file a return, the Department is required to assess the tax liability based upon its best judgment.

Wis. Stat. § 71.02(1): IMPOSITION OF TAX. (1) For the purpose of raising revenue . . . there shall be assessed, levied, collected and paid a tax on all net incomes of individuals and fiduciaries . . . by every natural person residing within the state . . . "

Wis. Stat. § 71.03(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; gross income derived from business; . . . interest; . . . dividends; . . . distributive shares of limited liability company gross income accept distributive shares of limited liability company gross income except distributive shares of the income of limited liability companies treated as corporations under s. 71.22(1k); . . .

⁶ Petitioner has provided no information to rebut the Department's Affidavits and Exhibits. Therefore, there are no disputes as to any material fact and only the law applicable to Petitioner is under review.

⁷ *Edwin J. Puiissant, Jr. v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984).

Wis. Stat. § 71.03(2)(a)1: (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

Wis. Stat. § 71.74(3): DEFAULT ASSESSMENT. Any person required to file an income or franchise 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(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 assessment of personal property and also the power to estimate incomes.

ANALYSIS

The Department asserts Petitioner, based upon his Wisconsin residency and gross income of \$113,596, was required by statute to file a 2022 Wisconsin income tax return and repeatedly declined to do so.⁸ Therefore, the Department made its determination as to Petitioner's estimated tax liability utilizing information reported by employers, payors, and the Internal Revenue Service.^{9 10} The Department's Motion to Dismiss, requesting the Commission dismiss Petitioner's Petition for Review and uphold

⁸ Facts 7 and 9, Wis. Stat. § 71.03(2)(a)1.

⁹ However, the Department does not know if Petitioner received income from any other source during 2022 because it relies upon taxpayers to report all income and realizable losses on income tax returns (Hans Aff., ¶¶ 4, 5).

¹⁰ Department's Brief in Support of its Motion to Dismiss, p. 5.

the Department's action on Petitioner's Petition for Redetermination as to Petitioner's tax liability, explains Petitioner's refusal to file an income tax return is based upon his assertion that he is not "subject to Wisconsin taxation under his legal interpretation of federal and state tax laws" and fails to state a claim upon which relief can be granted.¹¹

First, the Department explains its records show Petitioner resided in Stevens Point, Wisconsin in 2022. Second, the Department presents documentation to verify Petitioner had earned income in Wisconsin in 2022. Using that earned income information and based upon the fact Petitioner failed to file a 2022 Wisconsin income tax return, the Department explains it was statutorily required to assess the amount of tax owed by Petitioner. In addition, as assessments made by the Department are presumed to be correct, the burden falls upon the taxpayer to prove by clear and satisfactory evidence in what respect the Department erred in its determination. Finally, the Department notes that Petitioner's assertions he is not required to file his State of Wisconsin income tax return because (1) he is not a "person" by IRS definitions and (2) he does not reside in a "State," which he claims includes only the District of Columbia, are considered frivolous arguments as explained in IRS publication *The Truth About Frivolous Tax Arguments*.¹²

Petitioner presents several statements and arguments, none of which are found to rebut the presumption of correctness of the Department's determination. First, Petitioner has not presented any facts to rebut the Department's income information

¹¹ *Id.*

¹² Internal Revenue Service (IRS), *The Truth About Frivolous Tax Arguments*, IRS.GOV at 4 (March 2022).

which it utilized to establish his estimated tax liability. Second, Petitioner has failed to file a 2022 income tax return where he could affirm his income if he disagreed with the income the Department attributed to him for 2022. Third, Petitioner's assertions he is not a "person" required to file taxes and does not reside in this "state" have been previously addressed and found not persuasive.¹³ Finally, his blanket assertion he does not receive federal income or Wisconsin wages does not rebut the specific income information reported by his employers, nor overcome the statutory requirement such gross income must be utilized in determining his tax liability.

CONCLUSIONS OF LAW

1. Petitioner was required to submit a 2022 Wisconsin income tax return based upon his gross income and Wisconsin residency, pursuant to Wis. Stat. § 71.03(2)(a).
2. The Department properly assessed an income tax liability pursuant to Wis. Stat. § 71.74(3).

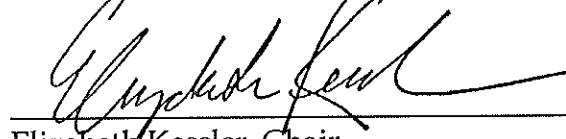
¹³*Lizalek v. Wisconsin Department of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-306 at n. 15 (WTAC 2010). *Gertrude A. McKenzie v. Wisconsin Department of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-415 (WTAC 1984).

ORDER

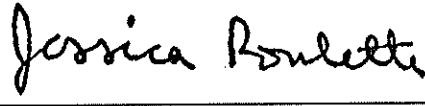
The Petitioner's Petition for Review is dismissed and the Department's Motion to Dismiss is granted and its action on Petitioner's Petition for Redetermination and 2022 tax assessment is upheld.

Dated at Madison, Wisconsin, this 13th day of January, 2026.

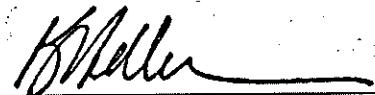
WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Chair



Jessica Roulette, Commissioner



Kenneth Adler, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION
101 E Wilson St, 5th Floor
Madison, Wisconsin 53703

NOTICE OF APPEAL INFORMATION

NOTICE OF RIGHTS FOR REHEARING, OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternately, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, within 30 days of this decision if there has been no petition for rehearing or, within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service, or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or, the Wisconsin Statutes. The website for the courts is <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.