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STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
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LEGAL DIVISION

EDWARD J. BEUTH	:	
4918 S. 27th Street	:	
Milwaukee, WI 53221	:	DOCKET NO. I-10,545
	:	
Petitioner,	:	RULING AND ORDER ON
	:	
vs.	:	MOTION TO DISMISS OR
	:	
WISCONSIN DEPARTMENT OF REVENUE	:	GRANT SUMMARY JUDGMENT
P.O. Box 8933	:	
Madison, WI 53708	:	
	:	
Respondent.	:	

Pursuant to this Commission's notice, this Commission convened in Room 214, State Office Building, 141 N.W. Barstow Street, Waukesha, Wisconsin, at 3:00 p.m., on June 25, 1984, for the purpose of hearing respondent's motion for an order dismissing the petition for review in the above-entitled matter on the following grounds:

- A. The petitioner failed to file a proper petition for review with this Commission;
- B. The respondent's action in estimating the petitioner's taxable income for the year 1982 was proper, since the petitioner refused to file a proper income tax return for 1982;
- C. The petition for review fails to state a claim upon which relief can be granted by this Commission;
- D. There is no genuine issue as to any material fact involved, and the respondent is entitled to dismissal of the petition for review as a matter of law;

E. There exists no legal basis on which to grant relief to the petitioner.

In the alternative, respondent moves for an order granting summary judgment to the respondent on the grounds set forth in paragraphs B. through E. above.

The petitioner, Gregory J. Bennett, did not appear at the time set forth in this Commission's notice but did appear in person after the Commission had called the matter for hearing on the motion, heard the respondent's motion and alternative motion, taken the motion and alternative motion under advisement, and closed the hearing. The petitioner requested that the Commission reopen the hearing and said motion was granted.

The respondent, Wisconsin Department of Revenue, appeared by its attorney, Robert M. Finley, who introduced exhibits and then moved for dismissal on the grounds stated in paragraphs A. through E. above, and in the alternative, moved for summary judgment for respondent pursuant to s. 802.08, Wis. Stats., and TA 1.15, 1.31, and 1.39, Wis. Adm. Code.

Having considered the record herein, the respondent's motion, and the oral arguments of the parties, this Commission hereby finds and orders as follows:

1. On February 7, 1983, petitioner submitted to respondent an unsigned 1982 Wisconsin Form 1 income tax form, together with a purported claim for refund for 1982. The Form 1 indicated '0' income for petitioner for 1982 and asserted that the form was "For Information Only".

2. By notice dated August 29, 1983, respondent issued to petitioner an estimated assessment of income tax for the year 1982 in the total amount of \$1,773.00.

3. Under date of October 24, 1983, petitioner filed a petition for redetermination of the estimated assessment with respondent.

4. Under date of January 5, 1984, respondent issued to petitioner, by certified mail, notice of denial of the petition for redetermination.

5. On March 8, 1984, petitioner filed a petition for review with this Commission, with the heading "'SPECIAL' APPEARANCE TO CHALLENGE JURISDICTION". Said form asserts that petitioner was appearing specially and not generally, and demands a hearing before this Commission to give respondent an opportunity to prove its jurisdiction over petitioner by production and pleading of jurisdictional facts.

6. At the hearing on respondent's motion, petitioner objected to such motion and reiterated his demand that respondent prove its jurisdiction over him.

7. Respondent properly assessed petitioner for the year 1982 by estimating his income for such year.

8. Petitioner failed to present any evidence to overcome the presumption of correctness inherent in respondent's assessment.

9. The arguments made by petitioner in this matter have been continuously rejected by the courts of this State and are totally frivolous.

10. Respondent has shown good and sufficient cause for

the granting of its motion for summary judgment on the basis of paragraphs B. through E. above, and respondent is entitled to an order affirming its assessment as a matter of law pursuant to s. 802.08, Wis. Stats., and TA 1.15, 1.31, and 1.39, Wis. Adm. Code.

AUTHORITY: Daniel T. Betow v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-8737, CCH Wisconsin State Tax Reporter, New Matters (Part II), 1979-82, para. 202-032 (June 10, 1982), affirmed by the Rock County Circuit Court, Branch 5, Case No. 82-CV-311 (January 14, 1983), affirmed by Court of Appeals, Case No. 83-CV-264 (unpublished, November 22, 1983).

Paul W. and Yvonne D. Christian v. Wisconsin Department of Revenue, Circuit Court for Marathon County, Branch IV, Case No. 82-CV-1208 (May 4, 1984).

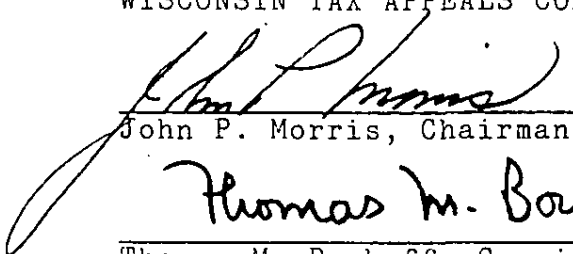
Therefore,


IT IS ORDERED

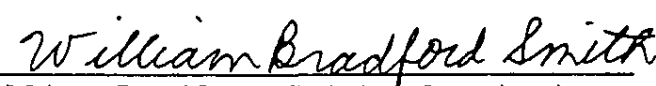
That respondent's motion, in accordance with paragraphs B. through E. above, is hereby granted, and summary judgment for respondent is entered accordingly.

Dated at Madison, Wisconsin, this 5th day of July, 1984.

WISCONSIN TAX APPEALS COMMISSION


John P. Morris, Chairman


Thomas M. Boykoff, Commissioner


William Bradford Smith, Commissioner

cc: Petitioner
Respondent

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"