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STATE OF WISCONSIN  
TAX APPEALS COMMISSION

STATE OF WISCONSIN  
DEPARTMENT OF REVENUE  
**RECEIVED**  
JUL 11 1985  
LEGAL DIVISION

\* \* \* \* \*

GREGORY H. HOCKERS  
34 West 14th Street  
Oshkosh, Wisconsin 54901

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE  
P.O. Box 8933  
Madison, Wisconsin 53708

Respondent.

\* \* \* \* \*

DOCKET NO. I-11306  
RULING AND ORDER ON  
MOTION TO DISMISS OR  
FOR JUDGMENT ON THE  
PLEADINGS OR FOR  
SUMMARY JUDGMENT

Pursuant to this Commission's notice, this Commission convened in Room 611A, 6th Floor, GEF-2 Building, 101 South Webster Street, Madison, Wisconsin, at 10:00 a.m., on June 18, 1985, 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:

That the petitioner failed to file a proper petition for review within 60 days after receipt of the respondent's notice of denial of the petition for redetermination as required by secs. 71.12 and 73.01(5)(a), Stats., and TA 1.15, Wis. Adm. Code, and therefore the State of Wisconsin Tax Appeals Commission lacks jurisdiction to review the alleged grievances of the petitioner.

For judgment on the pleadings, or, in the alternative, for summary judgment in that:

A. The petition for review fails to state a claim upon which relief can be granted by the Commission.

B. There is no genuine issue as to any material fact and the respondent is entitled to an order affirming its assessment as a matter of law pursuant to sec.802.06(3), Stats., or, in the alternative, pursuant to sec.802.08, Stats.

Without prejudice to the above motions, and conditioned upon the necessity to do so, the respondent answers the petition by denying any allegations of fact and contentions of law in the petition as are deemed pertinent to the issue, and with respect to any allegations of fact therein, puts the petitioner to his proof thereof.

The petitioner, Gregory H. Hockers, appeared in person and as his own representative. The respondent, Wisconsin Department of Revenue, appeared by its attorney, Robert C. Stellick, Jr., who introduced exhibits and then moved for judgment on the pleadings or for summary judgment on the grounds stated above. The petitioner objected to the granting of respondent's motion, and both parties offered oral arguments on the motion.

Having considered the record herein, the respondent's motion for judgment on the pleadings or for summary judgment, and the oral arguments of the parties thereon, this Commission hereby finds and decides as follows:

#### FINDINGS OF FACT

1. That the petitioner signed a Form 1 for the year 1983, Wisconsin income tax form, dated March 29, 1984 and filed said form with the department. The petitioner claimed the right to object on grounds of self-incrimination to the following:

a. Petitioner's social security number

- b. Petitioner's wife's name and social security number
- c. Line 6, Wages, salaries, tips, etc.
- d. Line 7, Interest income
- e. Line 10, Business income or loss
- f. Line 15, Other income
- g. Line 18, Employe business expenses
- h. Line 26, Federal adjusted gross income
- i. Line 36, Other
- j. Line 38, Wisconsin total income
- k. Line 39, Total itemized deductions
- l. Line 43, Taxes from federal Schedule A, Line 12
- m. Line 46, Wisconsin net taxable income
- n. Line 48b, (Spouse's personal exemption)

The remaining spaces were either left blank, or filled in with a dash or "none", except that the petitioner claimed the \$20 personal exemption on Line 48a, gave his name and address, city and county, indicated on Line 2 that he was a full-year resident of Wisconsin, and indicated that he was married filing a separate return. The petitioner also reported that he paid rent of \$3,600, heat and \$185 of Wisconsin estimated tax. The petitioner also claimed that an attached sixteen-page memorandum was to be considered a part of the filing; the federal 1040 form stated that the fifteen-page memorandum was to be considered a part of that filing.

2. That in response to this filing, the department sent a letter dated June 27, 1984, advising the petitioner that his form did not constitute a filing of the 1983 Wisconsin income tax return and that a complete return should be filed immediately as

required by Wisconsin Statutes. The petitioner's petition for review, at paragraph 6.b) indicates that he received this letter.

3. That the petitioner responded by letter dated July 22, 1984, although that letter refers to a 1982 filing, not to his 1983 return.

4. That the department responded by letter dated July 30, 1984, again requesting a complete and proper 1983 Wisconsin income tax return be filed.

5. That the petitioner responded by a letter dated August 2, 1984, indicating he did not intend to file another form and that the form he provided was sufficient for his purposes.

6. Pursuant to s.71.11(4), Wis. Stats., the respondent made an estimated assessment of income tax against the petitioner, dated September 3, 1984, in the total amount of \$1,450.00.

7. Under date of September 24, 1984, petitioner filed with respondent a letter protesting the notice of assessment against the petitioner and the respondent treated said letter as a petition for redetermination.

8. Under date of February 11, 1985, respondent issued to petitioner notice of denial of the petition for redetermination.

9. On April 17, 1985, petitioner filed a petition for review with this Commission.

10. The petitioner has not complied with the respondent's request that he file a properly completed 1983 Wisconsin income tax return.

11. Respondent properly assessed petitioner for the year 1983 by estimating his income for such year.

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

13. The arguments made by petitioner in his petition for redetermination and petition for review in this matter have been continuously rejected by the courts of this State and are totally frivolous.

14. Respondent has shown good and sufficient cause for the granting of its motion for summary judgment, in that there is no genuine issue as to any material fact; and the respondent is entitled to an order affirming its estimated assessment as a matter of law pursuant to sec.802.06(3), Wis. Stats., or in the alternative, pursuant to sec.802.08, Wis. Stats.

15. Petitioner has shown no cause for the granting of his motion for summary judgment.

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 Rock County Circuit Court, Branch 5, case No. 82-CV-311 (January 14, 1983), affirmed Court of Appeals, Case No. 83-264 (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).

Donald G. Tracy and Shirley Tracy v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission Docket Nos. I-10384 and I-10385, March 26, 1984, affirmed Rock County Circuit Court, Branch I, Case No. 84-CV-294, November 30, 1984.

Harold A. Nichols v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission Docket No. I-10199, Waukesha County Circuit Court, Branch VI, Case No. 84-CV-511 (June 14, 1985).

Therefore,

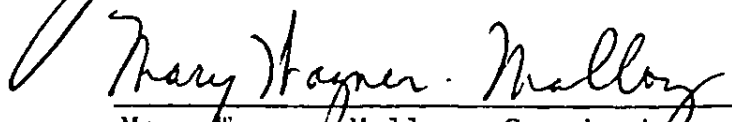
IT IS ORDERED

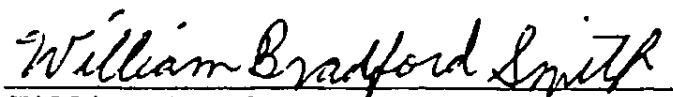
That respondent's alternative motion for summary judgment is hereby granted and summary judgment for the respondent is entered accordingly. The petitioner's petition for review is hereby dismissed and no costs are granted to any of the parties.

Dated at Madison, Wisconsin, this 10th day of July, 1985.

WISCONSIN TAX APPEALS COMMISSION

  
\_\_\_\_\_  
John P. Morris, Chairman

  
\_\_\_\_\_  
Mary Wagner Malloy, Commissioner

  
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William Bradford Smith, Commissioner

Attachment: "NOTICE OF APPEAL INFORMATION"