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STATE OF WISCONSIN
TAX APPEALS COMMISSION

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LEGAL DIVISION

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JAMES F. NEWMAN
501 West Mitchell Street - #212
Milwaukee, Wisconsin 53204

Petitioner,

vs.

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

Respondent.

* * * * *

DOCKET NO. I-11287

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 its offices on the 6th Floor, GEF-2 Building, 101 South Webster Street, Madison, Wisconsin, at 9:30 a.m. on June 10, 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 has failed to file a timely petition for redetermination with the Wisconsin Department of Revenue objecting to the assessment in issue and therefore the Tax Appeals Commission lacks jurisdiction under sec.73.01(5), Stats., to review the alleged grievances of the petitioner, or,

In the alternative, the respondent moves the Wisconsin Tax Appeals Commission for an order of summary judgment for the respondent on the grounds that there is no genuine issue as to any material fact, that petitioner has failed to state a claim upon which relief can be granted, and that respondent is entitled to summary judgment as a matter of law pursuant to Rule TA 1.15, 1.31, 1.39, Wis. Adm. Code, and secs. 802.06(3), 802.08, Stats.

The petitioner, James F. Newman, failed to appear in person and was not represented. The respondent, Wisconsin Department of Revenue, appeared by its attorney, Veronica Folstad, who introduced an exhibit and then moved for dismissal and for judgment on the pleadings or summary judgment on the grounds stated above. The petitioner, James F. Newman, filed on June 5, 1985 his objections to granting of the motions.

Having considered the record herein, the respondent's motion and alternative motion, the oral argument of the respondent and petitioner's objection thereon, this Commission hereby finds and decides as follows:

1. That under date of November 15, 1984, the respondent, by auditor E.N. Munson, requested petitioner to file his Wisconsin income tax returns for 1981 through 1983.
2. That under date of January 5, 1985, petitioner replied to the aforementioned letter and refused to file the income tax returns requested.
3. That under date of February 11, 1985, the respondent issued a notice of assessment estimating petitioner's 1981 through 1983 income pursuant to sec.71.11(4), Stats.
4. That the petitioner failed to file a petition for redetermination of the aforementioned notice of assessment with the Wisconsin Department of Revenue.
5. That under date of April 6, 1985, the petitioner filed a petition for review with the Wisconsin Tax Appeals Commission.
6. That the petition for review on file with the Wisconsin Tax Appeals Commission in this matter, alleges no genuine

issue of fact or law and fails to state any claim upon which relief can be granted but instead raises a series of "objections" which have been repeatedly held frivolous by Federal and State courts and the Tax Appeals Commission.

7. That there is no genuine issue as to any material fact and the respondent is entitled to a judgment as a matter of law.

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

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.

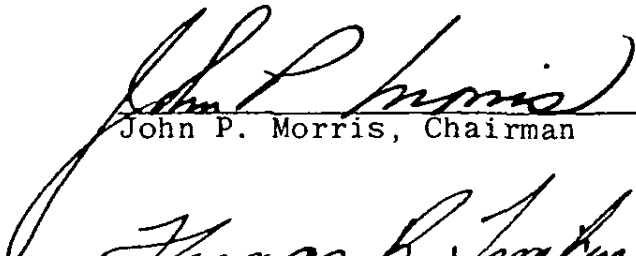
Therefore,


IT IS ORDERED

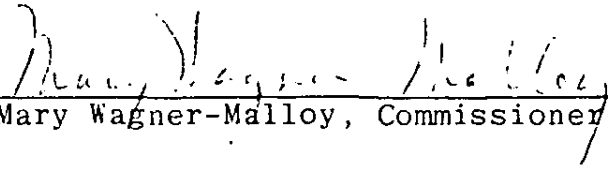
That respondent's motion for summary judgment is hereby
granted and entered accordingly.

Dated at Madison, Wisconsin, this 18th day of June,
1985.

WISCONSIN TAX APPEALS COMMISSION


John P. Morris, Chairman


Thomas R. Timken, Commissioner


Mary Wagner-Malloy, Commissioner

cc: Petitioner
Respondent

Attachment: "NOTICE OF APPEAL INFORMATION"