

SCHULZ JERRY I10587 091184 TAC

February

STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
RECEIVED
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LEGAL DIVISION

JERRY R. SCHULZ	:	
2667 S. 75th Street	:	
West Allis, WI 53219	:	DOCKET NO. I-10,587
	:	
Petitioner,	:	RULING AND ORDER ON
	:	
vs.	:	MOTION FOR JUDGMENT
	:	
WISCONSIN DEPARTMENT OF REVENUE	:	ON THE PLEADINGS OR
P.O. Box 8933	:	
Madison, WI 53708	:	SUMMARY JUDGMENT
	:	
Respondent.	:	

Pursuant to this Commission's notice, this Commission convened in Room 611A, GEF-2, 101 S. Webster Street, Madison, Wisconsin, at 10:30 a.m., on August 28, 1984, for the purpose of hearing the respondent's motion for judgment on the pleadings or summary judgment for respondent in the above-entitled matter on the following grounds:

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

B. 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.

The petitioner, Jerry R. Schulz, appeared in person and as his own representative. The respondent, Wisconsin Department of Revenue, appeared by its attorney, Donald Goldsworthy, who introduced exhibits and then moved for dismissal on the grounds stated in paragraphs A. and B. above, pursuant to s. 803.06(3) and s. 802.08, Wis. Stats. The petitioner objected

to the respondent's motion and requested that the Commission grant him immunity.

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 December 12, 1982, petitioner submitted to respondent 1980 and 1981 Wisconsin Form 1 income tax forms, and on April 9, 1983, petitioner submitted to respondent a 1982 Wisconsin Form 1 income tax form. Each of the forms submitted by petitioner to respondent contained the designation '*' on the lines requiring disclosure of petitioner's income figures for the years 1980, 1981, and 1982. At the bottom of each form was the explanation, "*This means specific objection is made under the Fifth Amendment, U.S. Constitution. Similar objection is made to the question under the First, Fourth, Seventh, Eighth, Ninth and Fourteenth Amendments for civil issues."

2. By notice dated July 4, 1983, respondent issued to petitioner a dooamage assessment of income taxes for the years 1980, 1981, and 1982 in the total amount of \$11,139.50.

3. Under date of September 2, 1983, petitioner filed a petition for redetermination of the dooamage assessment with the respondent.

4. Under date of February 28, 1984, respondent issued to the petitioner notice of denial of the petition for redetermination.

5. On April 23, 1984, petitioner filed with this Commission a petition for review of the denial of his petition for redetermination.

6. At the hearing on the respondent's motion before this Commission, the petitioner refused to testify regarding his 1980, 1981, and 1982 income, relying once again on what he called his 5th amendment rights of testimonial privacy.

7. The petitioner was a person required to file 1980, 1981, and 1982 Wisconsin income tax returns.

8. The burden of proof is on the petitioner to show in what respects the respondent's dooamage assessment was in error. The petitioner failed to meet his burden.

9. The petitioner failed to meet the requirements of s. 71.12(3), Wis. Stats., to make full disclosure under oath of any and all income received by him in 1980, 1981, and 1982.

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

11. Respondent has shown good and sufficient cause for the granting of its motion for summary judgment, and respondent is entitled to an order affirming it assessment as a matter of law pursuant to s. 802.08, Wis. Stats.

AUTHORITY: Section 71.12(3), Wisconsin Statutes.

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 Rock County Circuit Court, Branch 5, Case No. 82-CV-311 (January 14, 1983), affirmed by 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).

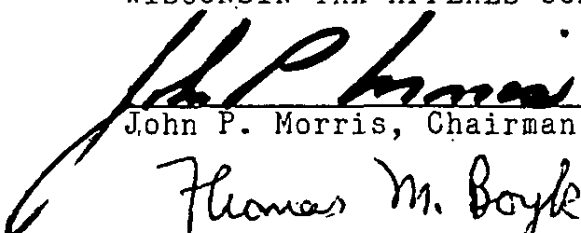
Therefore,

IT IS ORDERED

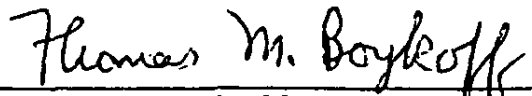
That respondent's motion for summary judgment is hereby granted and judgment is entered accordingly.

Dated at Madison, Wisconsin, this 11th day of September, 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"