

TRACY DONALD G SHIRLEY I10384 I10385 032984 TAC

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STATE OF WISCONSIN  
DEPARTMENT OF REVENUE

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

RECEIVED  
MAR 27 1984

LEGAL DIVISION

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DONALD G. TRACY and  
SHIRLEY TRACY  
Post Office Box 1935  
Janesville, Wisconsin 53547

Petitioners,

vs.

WISCONSIN DEPARTMENT OF REVENUE  
Post Office Box 8933  
Madison, Wisconsin 53708

Respondent.

\* \* \* \* \*

DOCKET NOs. I-10,384  
and I-10,385

RULING AND ORDER ON  
MOTION FOR JUDGMENT  
ON THE PLEADINGS OR  
FOR SUMMARY JUDGMENT

(Drafted by  
Commissioner Boykoff)

Pursuant to this Commission's notice, this Commission convened at Room 611A of GEF-2, a State Office Building, 101 South Webster Street, Madison, Wisconsin on March 7, 1984 at 9:00 a.m., for the purpose of hearing arguments on the respondent's motions that this Commission issue an order dismissing petitioners' petitions for review on judgments on the pleadings or, in the alternative, grant respondent summary judgments in the above-entitled matters on the grounds that (a) petitioners have failed to state a claim in their petitions for review upon which relief can be granted by this Commission, and (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 under s.802.06(3) or s.802.08, Stats.

Petitioners, Donald G. Tracy and Shirley Tracy, husband and wife, appeared in person. Respondent, Wisconsin Department of Revenue, appeared by its attorney, Sheree K. Robertson. Exhibits were received into the record. The parties then offered oral arguments on the motions.

In addition, petitioners made a motion to postpone these proceedings to allow them to serve interrogatories on respondent. That motion is hereby denied.

1. Under date of August 1, 1983, respondent issued petitioner Donald G. Tracy an assessment for \$3,643.39 income tax. On the same date, respondent issued petitioner Shirley Tracy an assessment for \$1,494.57 income tax. Each assessment covered tax years 1980, 1981 and 1982. Each was accompanied by the explanation that because each person failed to file a Wisconsin income tax return for each of the 3 years as previously requested, respondent estimated their income and issued each an assessment under the authority of s.71.11(4), Stats.

2. Under date of August 24, 1983, petitioners filed a 3-page petition for redetermination with respondent. In the appeal document, petitioners' arguments included their assertion that they validly claimed, in good faith, their right against self-incrimination on their income tax forms for the years involved; that they cannot be compelled to waive their right against self-incrimination "without a grant of immunity" nor can they have sanctions imposed upon them for asserting this right; and that the estimates of their income and computation and assessments tax based on those estimates were unlawfully arbitrary and constituted a felony under federal law.

3. Under date of December 12, 1983, respondent denied each petition for redetermination.

4. Petitioners filed 1980, 1981 and 1982 individual tax forms with respondent. On practically every line, either the word "none" or "object" was typed. Each form contained a statement that the word "object" means on grounds of self-incrimination.

5. On December 21, 1983, each petitioner filed a one-page petition for review with this Commission. Each page was headed "Notice of 'Special' Continuing Appearance and Appeal" and appears to be a photocopy of a form, with blank spaces filled in for each petitioner. The form asserts that each petitioner was appearing specially and not generally; denies owing any tax to respondent; demands a hearing before this Commission to give respondent an opportunity to prove its jurisdiction over each petitioner; and contains other verbiage generally expressing indignant displeasure with respondent and the assessments here in question.

6. At the hearing before this Commission respondent's motions, petitioners objected to respondent's motions as not proper pleadings because, they asserted, the only proper response to their appeal was an "answer" under s.802.01, Stats. However, respondent's notices of motion contained a general answer to each petition, as required by s.73.01(5)(a), Stats.

7. Petitioners' other arguments are summarized as follows: they did not receive any "income" in each year under review, only federal reserve notes (sic!); the only compensation they received was in equal exchange for their labor and physical exertion and constituted an equal exchange, not generating any profit subject to the Wisconsin income tax; their receipt of federal reserve notes is not taxable; they are not exercising franchises, officers of corporations nor public employes, so the income tax laws do not apply to them under s.3401 of the Internal Revenue Code; and neither respondent nor this Commission is authorized to legally conclude that either of them owe Wisconsin income tax. In addition,

Mrs. Tracy objected to respondent's counsel's clear implication that she is a "tax protester"; she just knows the tax laws better than the respondent, the Internal Revenue Code and the courts, she asserted.

8. Neither in their pleadings nor in their oral argument before this Commission did either petitioner demonstrate any reasonable, rational attitude to resolve this tax dispute in a meaningful way.

9. Respondent has shown good and sufficient cause for the granting of its motions for summary judgment.

Therefore,

IT IS ORDERED

That respondent's motions for summary judgment in the above-captioned matters are granted.

Dated at Madison, Wisconsin, this 26th day of March, 1984.

WISCONSIN TAX APPEALS COMMISSION

*Thomas R. Timken*

Thomas R. Timken, Commissioner

*Thomas M. Boykoff*

Thomas M. Boykoff, Commissioner

*William Bradford Smith*

William Bradford Smith, Commissioner

Attachment: "NOTICE OF APPEAL INFORMATION"

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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DONALD G. TRACY and  
SHIRLEY TRACY,

Petitioners,

vs.

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\* \* \* \* \*

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O P I N I O N

In these cases, petitioners filed Wisconsin individual income tax forms for calendar years 1980, 1981 and 1982. The Department of Revenue reviewed these forms, determined that they were not properly completed, requested additional information about these tax years, and issued an assessment for each year when this additional information was not provided.

The Department has the statutory authority to assess income taxes under s.71.11(1), (4) and (16), Stats. Section 71.11(16) authorizes the Department to audit Wisconsin individual income tax returns as it deems advisable and to make assessments, corrections or adjustments to such returns to correct them. Section 71.11(4) provides that any person required to file an income tax return who fails or refuses to do so shall be "assessed by the department according to its best judgment". Because petitioners refused to file proper income tax returns for the years under review, the Department issued each an assessment under this statutory authority.

In petitioners' communications with the Department of Revenue and in their assertions before this Commission, petitioners

raised vague challenges to the Department's authority to issue these assessments. They also invoked constitutional and other arguments which have been considered and rejected by this Commission and by state and federal courts.

Petitioners invoked the jurisdiction of this Commission when they petitioned for review under ss.71.12(1)(c) and 73.01(5), Stats. However, the petitioners continued to deny the authority of the Department to assess petitioners. In addition, the record does not reflect any intent on behalf of petitioners to cooperate with the respondent in complying with the Wisconsin income tax laws for the period under review. Nor have petitioners demonstrated in a logical or rational way, how or why the statutes have been improperly applied to or may not apply to them.

Any wages paid to petitioners in federal reserve notes are clearly taxable as income by this state. Taxable income includes wages or compensation for services. Lonsdale v. Commissioner, 661 F.2d 71, 72 (5th Cir. 1980); United States v. Buras, 633 F.2d 1356, 1361 (9th Cir. 1980). Federal reserve notes are legal tender. Kauffman v. Citizens State Bank of Loyal, 102 Wis.2d 528, 533, 307 N.W.2d 325, 328 (Ct. App. 1981). Petitioners' contention that federal reserve notes are not valid is blatantly frivolous in light of the clear rationale in the Kauffman case. This state may tax federal reserve notes as money. 31 U.S.C.S. ss.5154 (1983).

As the balance of this opinion, I adopt, as if set forth here in full, the opinion in Daniel T. Betow v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-8737, CCH Wisconsin Tax Reporter, New Matters (Part 2), 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, District IV, Case No. 83-264 (unpublished,  
November 22, 1983).

Submitted by:

*Thomas M. Boykoff*

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Thomas M. Boykoff, Commissioner