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STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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WILLIAM E. CURRIER \*  
1305 South 102nd Street \*  
West Allis, Wisconsin 53214 \* Docket No. 92-I-514

Petitioner, \* RULING AND ORDER

vs. \*

WISCONSIN DEPARTMENT OF REVENUE \*  
P.O. Box 8933 \*  
Madison, WI 53708 \*

Respondent. \*



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JOSEPH P. METTNER, COMMISSIONER:

The above-entitled matter was submitted to the Commission for decision based upon cross motions for summary judgment made by the parties. The petitioner has also filed a document purporting to be a motion to strike evidence.

As a procedural matter, this case had been held in abeyance pending resolution of related bankruptcy proceedings concerning the petitioner. By order dated May 3, 1994, the automatic stay of proceedings which had been in effect was vacated by the United States Bankruptcy Court for the Eastern District of Wisconsin, in part for purposes of ascertaining liabilities, if any, owed by the petitioner to the respondent.

The petitioner represented himself in this case, and the respondent was represented by Attorney Lili Best Crane.

Having reviewed the motions, affidavits, and written arguments of the parties, this commission make the following findings:

1. The petitioner was a Wisconsin domiciliary during the years 1982 through and including 1990 ("the period under review"), and resided during this period at 1305 South 102nd Street, West Allis, Wisconsin, 53214. The petitioner was employed by the City of West Allis Police Department from 1961 through 1984.

2. It is uncontroverted by any credible claim that the petitioner received wages or salary payments as an employee of the City of West Allis in the amounts of \$26,652.74 for 1982, \$28,124.68 for 1983, and \$21,405 for 1984. The petitioner resigned from his position with the City of West Allis on September 10, 1984.

3. It is uncontroverted by any credible claim that the petitioner received benefit distributions from the Wisconsin Retirement System ("WRS") in the amounts of \$1,274.63 for 1984, \$15,430.30 for 1985, \$17,880.36 for 1986, \$19,488.24 for 1987, \$20,382 for 1988, \$21,502 for 1989, and \$23,798.52 for 1990. The distributions constituted benefits from the West Allis police pension fund to which the petitioner contributed during the period of his employment.

4. The petitioner did not file personal income tax returns in good form with the respondent for any of the tax years during the period under review.

5. By a notice of amount due dated February 24, 1992, the respondent issued a default assessment against the petitioner in the amount of \$20,171.00 pursuant to § 71.74(3), Stats. The assessment was issued for what the respondent deemed to be the

petitioner's failure to file income tax returns for each year during the period under review. A worksheet and explanation accompanied the assessment notice, setting forth the factual basis and statutory authority under which the assessment was issued.

6. The petitioner filed a document captioned as a "notice of appeal," dated April 22, 1992, which the respondent deemed to be a petition for redetermination. In this document, the petitioner requested an informal conference with the respondent.

7. In a letter dated September 4, 1992, a representative of the respondent's Appellate Bureau explained in greater detail the basis for its assessment, noted the comparative impasse of the parties on the issue of filing requirements, and denied the petitioner's request for a conference. Because the petitioner failed to either file returns for the years at issue or demonstrate the exempt character of income received during the period under review, the respondent issued an action letter denying the petition for redetermination on October 19, 1992.

8. The petitioner filed a petition for review with this commission on December 21, 1992.

9. There is no genuine issue of material fact in this case.

10. Pursuant to § 802.08(2), Stats., the respondent is entitled to judgment in its favor as a matter of law, because the petitioner received income during each of the years under review in excess of the levels indicated in the applicable filing requirement statutes. The petitioner has failed to allege credible facts or

make valid legal arguments to support the alternative propositions that his income is statutorily exempt from Wisconsin adjusted gross income or that the respondent's taxation of his pension benefits is violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

11. The petitioner has failed to provide any intelligible facts or arguments to support his curious "motion to strike evidence" on the alleged basis that certain affidavit submissions of the respondent were immaterial to this case.

12. The petitioner has failed to provide any relevant factual foundation for his allegations of "malicious prosecution" on the part of the respondent.

#### OPINION

Each year, the respondent, Wisconsin Department of Revenue, endures untold numbers of appeals filed by pro se taxpayers who, in the tortured logic of their discourse, imagine that they have scoured the statutes, cut the Gordian knot, and magically freed themselves from state income tax liability. This is such a case.

This matter is appropriately disposed of through summary judgment because the relevant, material facts are not in dispute.

The issue is simple. Was the petitioner required to file Wisconsin individual income tax returns for the years 1982 through 1990? The petitioner's Wisconsin residency is uncontested. The respondent has sworn by affidavit that the petitioner received Wisconsin source income in amounts noted in the findings above as

either a police officer or pensioner of the City of West Allis during the years under review. The respondent's factual assertions have been supplemented with exhibits, including W-2 Forms and correspondence from the petitioner's former employer and pension administrators. The petitioner has replied with an unsupported, general denial of the annual income levels asserted by the respondent, essentially gainsaying the respondent's facts while providing no credible counter to the information presented.

The asserted income levels of the petitioner for each of the years under review are well above the minimum income levels which trigger an income tax filing requirement under the applicable statutes. See, § 71.10(2)(a), Stats. (1981-82, 1983-84); § 71.10(2)(a)5.a., Stats. (1985-86); § 71.03(2)(a), Stats. (1987-88, 1989-90).

The petitioner failed to file his 1982-1990 returns within the time required and failed to provide relevant information to the respondent supporting his assertion that he was not required to file returns.

The petitioner has asserted on brief several alternative statutory and constitutional arguments which we briefly address. According to the petitioner, the pension payments which he received from the City of West Allis Police Pension Fund from 1984 through 1990 were exempt from state income taxation under § 71.05(1)(a), Stats. (1991-92). Even the engrafted excerpts of the statute presented by the petitioner do not support this claim, however. Nowhere among the list of tax exempt pension systems enumerated in

the statute may one find a designation applying to the payor of the petitioner's pension benefits, either generally or specifically.

The petitioner has also cited § 62.13(9)(d), Stats. (1961-62), for the proposition that his pension benefits are exempt from state income taxation. This statute does not address any exemption from taxation, however, but instead confines its language to protection against the impairment of pension benefits by certain judicial processes.<sup>1</sup>

Similarly, the petitioner cites § 62.135, Stats. (1961-62), as support for his argument that the pension benefit payments which he was to receive upon retirement were somehow contractually assured non-taxable status. The petitioner contends that this feature was an enticement to his joining public service, and that the purported non-taxable status of benefit payments could not be subsequently impaired. Nothing in this statute, however, may be construed as an assurance of an income tax exemption for those pension systems which the statute addresses. Nor may the statute be interpreted to provide any continuing guaranty against taxation of benefits.

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<sup>1</sup> Cf., § 66.81, Stats. (1961-62), which explicitly exempts payments of pension benefits from retirement systems of cities of the first class from state and municipal taxation. By way of contrast, this particular statute includes specific tax exemption language in addition to language addressing the exemption from judicial process alluded to by the petitioner, and which is contained in § 62.13(9)(d), Stats. (1961-62), without reference to any taxation exemption. The petitioner cannot allege that his pension benefits were paid by a retirement system of a city of the first class, because the City of West Allis was a city of the second class during the early 1960s. See, The Wisconsin Blue Book, at 667 (Wisconsin Legislative Reference Library, 1962), and § 62.05(1)(b), Stats. (1961-62).

In short, there is no association between the statutes cited by the petitioner and a guarantee of tax exempt status for the pension benefit payments at issue in this case. Any resolution of this incongruity exists in the petitioner's imagination alone.

The petitioner's final, alternative argument for tax exempt status of his pension benefits involves what he deems to be an equal protection violation in the state's taxation of the pension benefits of otherwise similarly situated Wisconsin taxpayers. This argument is advanced in the event that this commission should find, as it has, that no statutory exemption applies to the petitioner's pension receipts.

The petitioner's equal protection argument is sparse and poorly developed, in part because the petitioner misplaces reliance upon this commission's decision in John D. Hennick v. Wisconsin Department of Revenue, WTAC Dkt. No. 88-I-433, October 12, 1989, reported in, CCH Wisconsin Tax Reporter ¶203-095, a decision breaking clearly against the petitioner's arguments. In Hennick, a much more clearly articulated equal protection challenge to Wisconsin's scheme of taxing pension benefits was denied in favor of the presumption of constitutionality.

The petitioner also curiously cites Art. I, sec. 10 of the United States Constitution in support of his equal protection argument, urging that the state's taxation scheme has violated "that equal protection of the law clause." No clause of Art. I,



sec. 10, U.S. Const., addresses equal protection, however.<sup>2</sup>

Under Wisconsin case law, one challenging the constitutional validity of a duly enacted statute bears a heavy burden in overcoming the legislative presumption of constitutionality. This presumption is particularly strong in the context of state taxation statutes. In the area of state taxation, courts have acknowledged that absolute equality and congruity of treatment among tax classifications are impossible results to achieve while also assuring the integrity of the revenue base available to fund state government operations. See, Simanco v. Wisconsin Department of Revenue, 57 Wis. 2d 47, at 54 et. seq. (1973).

In the present case, the petitioner has merely invoked the concept of an equal protection violation and has not developed any factual basis or legal theory supporting his claim. As such, the petitioner's argument on this score falls far short of the mark required to carry the burden of demonstrating that the respondent's taxation scheme is unconstitutional.

Therefore,

IT IS ORDERED

That the respondent's motion for summary judgment is hereby granted; that the petitioner's motion for summary judgement

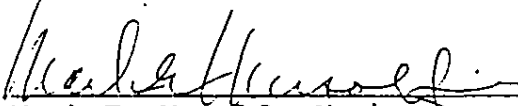
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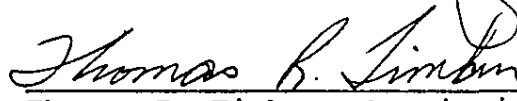
<sup>2</sup> By citing Art. I, sec. 10, U.S. Const., the petitioner may be arguing that Wisconsin's taxation scheme has effected some unconstitutional impairment of a contractual obligation. This argument is touched upon in the petitioner's purported "reliance" upon § 62.13(9)(d), Stats. (1961-62), in choosing public service as his career. See, note 1, supra. As observed above, however, the petitioner has pointed to no provision, statutory or otherwise, which established a contractual claim to tax exempt pension benefit payments.

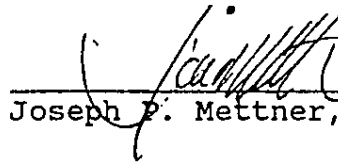
and motion to strike evidence are hereby denied; and that the respondent's action on the petitioner's petition for redetermination is hereby affirmed.

Dated at Madison, Wisconsin, this 31st day of August, 1994.

WISCONSIN TAX APPEALS COMMISSION

  
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Mark E. Musolf, Chairperson

  
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Thomas R. Timken, Commissioner

  
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Joseph P. Mettner, Commissioner

ATTACHMENT:  
"Notice of Appeal Information"