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STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE

DEC 17 1987
LEGAL DIVISION

KENNETH WILLIAM KOCH	*	
N1303 Leske Road		
La Crosse, WI 54601	*	DOCKET NO. 87-I-260
	*	RULING AND ORDER ON
Petitioner,	*	
	*	MOTION TO DISMISS OR
vs.	*	
	*	FOR SUMMARY JUDGMENT
WISCONSIN DEPARTMENT OF REVENUE	*	
P.O. Box 8933		
Madison, WI 53708	*	
	*	
Respondent.	*	

Pursuant to its notice, this Commission convened in its Hearing Room in Suite 501, 217 South Hamilton Street, Madison, Wisconsin, at 1:30 p.m., on December 9, 1987, for the purpose of hearing the respondent's motion for an order dismissing the petition for review herein on the following grounds:

The petitioner failed to file a proper petition for review in accordance with secs. 71.12(1)(c) and 73.01(5)(b), Stats., and § TA 1.15 of the Wisconsin Administrative Code within 60 days after receipt of the respondent's notice of denial of the petition for redetermination as required by sec. 73.01(5)(a), Stats., and therefore the State of Wisconsin Tax Appeals Commission lacks jurisdiction to review the alleged grievances of the petitioner;

The respondent's action was proper, as a matter of law, in estimating the taxable income and income taxes of

the petitioner for the years 1981 through 1985, pursuant to sec. 71.11(4), Stats., due to the continued refusal of the petitioner to properly file and report his income for income tax purposes for those years; The petition for review fails to state a claim upon which relief can be granted by the Commission; There is no genuine issue as to any material fact, and the respondent is entitled to dismissal of petitioner's petition for review as a matter of law; There exists no legal basis on which to grant relief to the petitioner.

In the alternative, respondent moved for an order pursuant to Rules TA 1.15, 1.31 and 1.39 of the Wisconsin Administrative Code and sec. 802.08, Stats., for an order granting summary judgment to the respondent on the grounds set forth above.

Without prejudice to the above motion, and conditioned upon the necessity to do so, the respondent answered the petition for review by denying any allegations of fact and contentions of law in the petitioner's petition, and with respect to any allegations of fact therein, put petitioner to his proof thereof.

The petitioner, Kenneth William Koch, appeared in person and as his own representative. The respondent, Wisconsin Department of Revenue, appeared by its attorney, Sheree Robertson, who introduced exhibits and then moved for dismissal or for summary judgment on the grounds stated above.

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

1. The respondent made an income tax assessment for the years 1981 through 1985 against petitioner for which review is sought herein.

2. The petitioner was requested by the respondent to file 1981 through 1985 Wisconsin income tax returns.

3. Petitioner's wage statements for the years 1982 through 1985 show that he was a person required to file Wisconsin income tax returns.

4. The petitioner has failed and refused to file complete and proper 1981 through 1985 Wisconsin income tax returns.

5. The respondent mailed to petitioner correspondence dated August 28, 1986, and according to the correspondence, respondent requested information about whether petitioner filed 1981 through 1985 Wisconsin income tax returns.

6. Upon petitioner's failure to file complete and proper 1981 through 1985 Wisconsin income tax returns as requested by respondent, the respondent made the dooamage assessment which is the subject of this proceeding. Said assessment is dated October 27, 1986.

7. The petitioner filed his petition for redetermination with the respondent on December 29, 1986, and the petition is dated December 27, 1986. In the petition, the petitioner

objected to the dooamage assessment respondent assessed against him per the assessment notice dated October 27, 1986.

8. By notice dated May 11, 1987, the respondent denied the petitioner's petition for redetermination because petitioner failed to file 1981 through 1985 Wisconsin income tax returns as requested.

9. The petition for review the petitioner filed with the Wisconsin Tax Appeals Commission on July 13, 1987 alleges no fact or law on which relief may be granted to petitioner.

10. 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.

11. The respondent has shown good and sufficient cause for the granting of its alternative motion for summary judgment, pursuant to sec. 802.08, Wisconsin Statutes.

AUTHORITY: Daniel T. Betow v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission Docket No. I-8737, decided June 10, 1982, affirmed by Rock County Circuit Court January 14, 1983, affirmed by Court of Appeals November 22, 1983.

Michael J. Kinzinger v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission Docket No. I-9485, decided August 12, 1983.

Therefore,


IT IS ORDERED

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

Dated at Madison, Wisconsin, this 15th day of December,

1987.

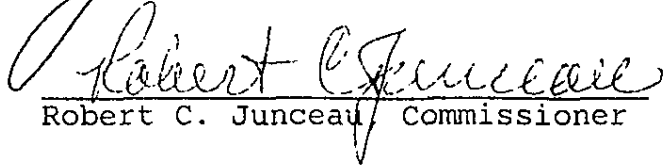
WISCONSIN TAX APPEALS COMMISSION



Kevin C. Potter, Chairperson



John P. Morris, Commissioner



Robert C. Junceau, Commissioner

pc: Petitioner
Respondent

ATTACHMENT: NOTICE OF APPEAL INFORMATION