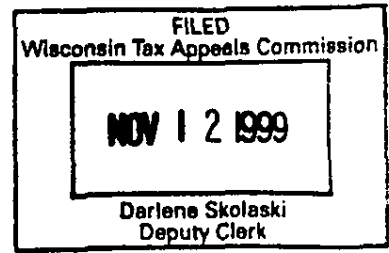
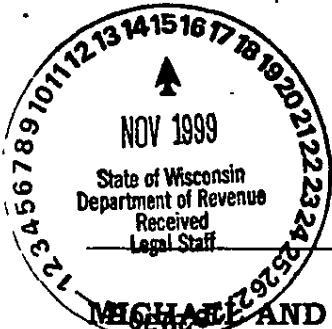


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**STATE OF WISCONSIN
TAX APPEALS COMMISSION**

MICHAEL AND BARBARA MARSHALL *

8832 Pheasant Run
Burlington, WI 53105

* DOCKET NO. 99-I-104

Petitioners, *

vs. *

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE *

P.O. Box 8933
Madison, WI 53708

AWARDING SUMMARY

* **JUDGMENT**

Respondent. *

THOMAS M. BOYKOFF, COMMISSIONER:

This matter is before the Commission on respondent, Wisconsin Department of Revenue's ("Department"), motion for summary judgment under Wis. Stat. § 802.08 and its motion for a judgment on the pleadings under Wis. Stat. § 802.06(3). Both parties have submitted documents and briefs supporting their position. Petitioners appear *pro se*, and Attorney Veronica Folstad represents respondent.

Having considered the entire record, the Commission hereby finds, rules, and orders as follows:

UNDISPUTED MATERIAL FACTS

1. Under date of September 6, 1998, the Department wrote to petitioners, stating that it has no record of receiving their 1996 and 1997

Wisconsin income tax returns and asking them to file these returns.

2. Under date of September 30, 1998, the Department sent its income tax assessment of \$10,667.80 for 1996 and 1997 to petitioners under its authority in Wis. Stat. § 71.74(3).

3. In an undated letter received by the Department on March 1, 1999, petitioner Michael Marshall ("Mr. Marshall") wrote that the attorney and accountant he was consulting had not completed their review of his situation and requested an additional 30 days to reply to the Department's assessment. The Department treated the letter as a petition for redetermination under Wis. Stat. § 71.88(1)(a).

4. By notice dated March 22, 1999, the Department denied petitioners' petition for redetermination.

5. Petitioners filed a timely petition for review to the Commission. With their cover letter (directed to the Department), petitioners included about 90 pages of material, mostly copies of letters to them from a Nebraska attorney (dated March 29, 1999), a California "public accountant" (dated March 27, 1999), and a Utah "Certified Legal Detective; Historical Law Researcher; Systems Law Educator; Expert Mediator/Arbitrator" (dated February 3, 1999). These three people's letters supported petitioners' assertion that filing federal income tax forms and paying tax is voluntary, not mandatory. Correspondence with the attorney also supported petitioners' assertion that, because of this belief, petitioners' non-filing is not a "wilful" failure to file and

pay federal income taxes. Additional materials in this packet include three pages from what purports to be a federal government report captioned "Hearings Before A Subcommittee of the Committee on Ways and Means, House of Representatives; Eighty-Third Congress" (1953). The three pages are the report's cover, table of contents, and a page of testimony from the Nebraska attorney to the effect that paying the income tax is voluntary, not mandatory.

6. On June 16, 1999, the Department filed its motion for summary judgment under Wis. Stat. § 802.08 and for a judgment on the pleadings under Wis. Stat. § 802.06(3) on the grounds that (1) petitioners failed to state a claim on which relief can be granted, as they did not allege any justiciable error by the Department in issuing its assessment, and (2) petitioners failed to state a justiciable controversy in their objections to the Department's actions.

7. On July 9, 1999, this commission issued an order directing petitioners to file their response to the Department's motion by August 27, 1999. Mr. Marshall's single-page response was dated August 25, 1999, was sent in an envelope with a meter postage-paid sticker dated August 30, 1999, and was received by the Department on September 1, 1999, which forwarded it to the Commission. This reply recites that it encloses some of the same materials included with the petition for review; requests the Department's interpretation of a statement in the 1953 Congressional document to the effect

that tax filing and payment are voluntary; asks what law mandates the filing of an income tax return and payment of taxes; and states that despite the Department's assessment, their tax filing and payment is voluntary, not mandatory.

8. In a letter dated September 7, 1999, the Department moved that petitioners' response be disregarded in full because it was filed late.

9. In an additional undated letter which the Commission received on September 14, 1999, Mr. Marshall objected to the statement of Department's counsel in her September 7, 1999 letter that the 1953 Congressional testimony and the Nebraska attorney's letter are not relevant to the current proceeding because they relate to federal, not state, income tax laws. Mr. Marshall also stated "I want to abide by the law", "Why is it impossible to get the truth?", and asks what his "requirements and liabilities" are under the state income tax law.

CONCLUSIONS OF LAW

1. There is no genuine issue of material fact, and this case is appropriate for summary judgment.

2. Wisconsin's statutes clearly impose Wisconsin's income tax on the income of state residents (among others), and tax payment is mandatory, not voluntary.

3. Because petitioners did not file any Wisconsin income tax returns for 1996 and 1997, the Department issued a proper assessment under

Wis. Stat. § 71.74(3).

4. Petitioners have not met their burden of overcoming the presumptive correctness of the Department's assessment.

5. Petitioners' semantic gymnastics and assertions that payment of income tax is voluntary are frivolous and groundless, thereby subjecting them to an additional assessment under Wis. Stat. § 73.01(4)(am).

RULING

Petitioners' Arguments

Petitioners have two primary assertions. First, no one has informed them of the statutes imposing the income tax on them; therefore, the tax laws don't apply to them. Second, payment of income taxes is voluntary, not mandatory. Short shrift will be made of both outrageous assertions.

In the attachments to petitioners' petition for review, these arguments are addressed to the federal income tax laws. However, since the documents accompany petitioners' appeal of the Department's assessment to this commission, those arguments are treated as similarly made on Wisconsin's income tax statutes.

Petitioners' statements in letters included with their petition for review to this commission are paraphrased as follows: tell us what tax laws apply to us; we want to follow the law if we know what it is; we have done extensive research, as have our experts, and have not discovered any laws imposing the income tax on us.

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Petitioners are disingenuous. The Wisconsin income tax law is clear, unambiguous, and readily available. Wisconsin Statute § 71.02 is titled "Imposition of Tax" and reads in part: "... there shall be assessed, levied, collected and paid a tax on all net incomes of individuals...."

Natural persons domiciled in Wisconsin with gross incomes in a taxable year exceeding minimum amounts specified in the statute "**shall** report" (i.e., file) their income tax returns with the Department. Wis. Stat. § 71.03(2)(intro.) and (a). Nowhere do the statutes provide that compliance is voluntary. To the contrary, filing and payment are mandatory. Otherwise, the State would unlikely have sufficient funds to operate and to perform such functions as receiving and evaluating petitioners' assertions.

The Department's Assessment

When people (like petitioners) do not file income tax returns, the Department may issue an assessment to the people according to its best judgment. Wis. Stat. § 71.74(3). The Department did this here.

The Wisconsin Supreme Court has often held "that the burden of showing error in an assessment is on the taxpayer. Failure to present any evidence showing error means that the case must be decided against the taxpayer." *Woller v. Department of Taxation*, 35 Wis. 2d 227, 233 (1966).

In the present case, petitioners have failed to present *any* evidence showing any error in the Department's assessment. With only minimal effort, petitioners might have presented factual evidence to the Department or to the

Commission on several occasions.

Petitioners' assertions are gobbledygook. Similar attempts to explain away the income tax have consistently been given no credence by this commission. See, for example, *Susan Boon v. Dep't of Revenue*, 1999 Wisc. Tax LEXIS 7 (WTAC 1999), *aff'd on other grounds* (Milwaukee County Cir. Ct. Aug. 23, 1999); and *Derick J. Norskog v. Dep't of Revenue*, 1999 Wisc. Tax LEXIS 19 (WTAC 1999).

Frivolous or Groundless Position

Petitioners' arguments and position are both frivolous and groundless. Petitioners' written submissions did nothing to disprove the accuracy of the Department's assessment. Instead, petitioners offered frivolous arguments (e.g., that payment of income tax is voluntary) that did not have even a minimal chance of prevailing.

We conclude that petitioners' position in these proceedings is frivolous and groundless, and that an appropriate punitive assessment under Wis. Stat. § 73.01(4)(am) is \$500.

ORDER

1. The Department's motion in its September 7, 1999 letter, that petitioners' response to the Department's motion for summary judgment be disregarded in full because it was filed late, is denied.
2. The Department's motion for summary judgment is granted, and its action on petitioners' petition for redetermination is affirmed.


3. Petitioners are assessed an additional \$500, as it appears to the Commission that their position in this proceeding is frivolous and groundless, pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 12th day of November, 1999.

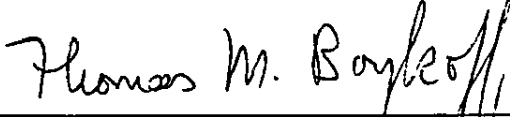
WISCONSIN TAX APPEALS COMMISSION



Mark E. Musolf, Chairperson



Don M. Millis, Commissioner



Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"