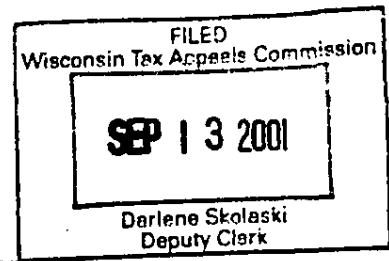


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**STATE OF WISCONSIN  
TAX APPEALS COMMISSION**



**JOSEPH D. MEYER**  
922 Starlite Dr.  
Holmen, WI 54636,

DOCKET NO. 00-I-197

Petitioner,

vs.

**RULING AND ORDER**

**WISCONSIN DEPARTMENT OF REVENUE**  
P.O. Box 8907  
Madison, WI 53708,

Respondent.



**THOMAS M. BOYKOFF, COMMISSIONER:**

This case comes before the Commission on the motion of the respondent, Wisconsin Department of Revenue ("Department"), to dismiss for untimely filing. The Department has filed an alternative motion to dismiss for the failure of petitioner to state a claim upon which relief can be granted, thereby leaving no genuine issue of material fact and entitling the Department to have its position affirmed. The Department has further moved for the imposition of an additional assessment against petitioner, under Wis. Stat. § 73.01(4)(am), relating to its alternative motion. The petitioner also moved for summary judgment under Wis. Stat. § 802.08.

Petitioner represents himself and has filed a motion for summary judgment, a motion to assess the Department \$1,000 as "damages on grounds

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of intent to delay and impede", and two documents opposing the Department's motions.

The Department was previously represented by Attorney Robert G. Pultz and is now represented by Attorney Michael J. Buchanan. The Department has filed its motions, an affidavit with exhibits, a brief, and a reply brief supporting its motions.

A hearing was held on June 29, 2001, in La Crosse, Wisconsin, wherein jurisdictional exhibits were received into the record and a briefing schedule was established.

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

**FINDINGS OF FACT**

1. Under date of March 16, 2000, the Department issued an assessment to petitioner for \$204.63, comprised of income tax and interest, regarding his 1999 income tax return.
2. Under date of March 27, 2000, petitioner wrote a letter to the Department which was deemed a petition for redetermination, objecting to the assessment.
3. Under date of May 15, 2000, the Department denied petitioner's petition for redetermination, which denial was personally served on petitioner on July 7, 2000.
4. Under date of July 12, 2000, petitioner wrote a letter to the

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Commission which requested the Commission to "review my 1999 WI Tax return and subsequent Department of Revenue (DoR) redetermination . . . ." The \$25 filing fee required by Wis. Stat. § 73.01(5)(a) for an appeal to the Commission was not included with this letter. In his letter, petitioner requested a copy of the Commission's rules, "Practice and Procedures Before the Tax Appeals Commission", and "Any forms required to submit [a] 'petition for review'".<sup>1</sup>

5. On October 5, 2000, petitioner filed with the Commission a letter, with exhibits, appealing the Department's denial of his petition for redetermination. No filing fee accompanied this letter.

6. The \$25 filing fee, requested by the Commission in a letter dated October 5, 2000, was received on October 20, 2000.

7. The 60-day period from the July 7, 2000 date of petitioner's receipt of the Department's denial of his petition for redetermination, within which he was required to file an appeal to the Commission, expired on September 5, 2000.

8. Under date of January 28, 2000, petitioner filed an incorrect and incomplete 1999 Wisconsin income tax form 1A, with zeroes written on each of the first 22 lines. On line 23, titled "Wisconsin income tax withheld",

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<sup>1</sup> This letter is not contained in the Commission's files. A copy was attached as an exhibit to petitioner's appeal document filed with the Commission on October 5, 2000.

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petitioner wrote "7911.30" and, on line 29, requested a full refund of that amount. No form W-2 was attached to the form 1A.

9. During 1999, petitioner resided in Holmen, Wisconsin.

10. A form W-2 covering income tax year 1999 was issued to petitioner by the Franciscan Skemp Medical Center, in La Crosse, Wisconsin, reflecting wages of \$122,557.04 and Wisconsin income tax withheld of \$7,911.30.

**RULING**

The Department filed a motion to dismiss petitioner's appeal because of untimely filing of the appeal under Wis. Stat. § 73.01(5)(a) and an alternative motion to dismiss the appeal under Wis. Stat. § 802.06(2)(a) for petitioner's failure to state a claim upon which relief can be granted. Accompanying each motion was a sworn affidavit stating undisputed facts and exhibits. Petitioner filed a motion for summary judgment.

As the party moving for summary judgment, petitioner must demonstrate both his entitlement to summary judgment as a matter of law and the absence of a genuine issue as to any material fact. Wis. Stat. § 802.08(2).

A party moving for summary judgment must submit affidavits and exhibits setting forth facts showing that there is no genuine issue for trial. Wis. Stat. § 802.08(3). Petitioner has not filed such an affidavit with exhibits.

There is no issue of material fact in this case. Petitioner filed an incomplete and incorrect 1999 Wisconsin income tax return. He did not state

any income or deductions, but merely requested the refund of all income taxes withheld by his Wisconsin employer. The Department denied this request and issued an assessment for additional 1999 income tax and interest due.

Wisconsin Statutes § 71.02(1) provides, in part, that "there shall be assessed, levied, collected and paid a tax on all net incomes of individuals . . . residing within the state. . . ." Wisconsin Statutes § 71.74(1) directs the Department to "office audit" each filed income tax return and authorizes it to issue assessments for additional tax due. That is what the Department has done here.

Petitioner has responded to the Department's assessment and its denial of his claim for refund with a series of statements that do not address the Department's actions. His assertions include that he objects to "the notion of 'guilty until proven innocent'"; that the Department has not provided specific legal authority supporting its positions; that the Department has no authority to make adjustments to his income tax return as filed by assessing additional taxes; and that the Department has not established that his \$122,557 should have been reported as wages or salary.

Petitioner is attempting, by verbal gymnastics and chicanery, to falsely argue that Wisconsin's income tax laws for 1999 do not apply to him. These arguments and ones like them have been given no credence in prior cases before the Commission and the courts. They are groundless and frivolous, and have not prevailed in the past. They also do not prevail now.

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See, *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); *Derick J. Norskog v. Dep't of Revenue*, 1999 Wisc. Tax LEXIS 19 (WTAC 1999); *Tracy v. Department of Revenue*, 133 Wis. 2d 151 (Ct. App. 1986); and *Lonsdale v. CIR*, 661 F. 2d 71 (5th Cir. 1981).

The conclusion of the Commission 19 years ago in *Betow v. Wisconsin Department of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-032 (WTAC 1982) (at p. 11, 608), is equally applicable to petitioner's case today:

. . . [P]etitioner's arguments are stale ones, long settled against their proponents. As such, they are meritless and frivolous. Even bending over backwards, in indulgence of petitioner's pro se status, . . . this Commission should not encourage this petitioner and future similar petitioners to continue advancing these hollow and long-defunct arguments. See *Lonsdale v. Commissioner of Internal Revenue* 81-2 USTC para. 9772 (November 12, 1981).

And paraphrasing from the often quoted forewarning in *McCoy v. Commissioner of Internal Revenue*, 76 T.C. 1027, 1029 (1981) . . .: It may be appropriate to note further that this Commission has . . . [received] a large number of so-called tax protester cases in which thoroughly meritless issues have been raised in, at best, misguided reliance upon lofty principles. Such cases tend to disrupt the orderly conduct of serious litigation in this Commission, and the issues raised therein are of the type that have been consistently decided against such petitioners and their contentions often characterized as frivolous. The time has arrived when the Commission should deal summarily and decisively with such cases without engaging in scholarly discussion of the issue or attempting to sooth the feelings of the petitioners by referring to the supposed "sincerity" of their wildly espoused positions. This is all the more impelling today in view of the . . . increasing complexity of the issues presented to this Commission.

The *McCoy* case was subsequently affirmed. *McCoy v. Commissioner of Internal Revenue*, 696 F. 2d 1234 (9th Cir. 1983).

Petitioner's documents contain only frivolous, irrelevant, and useless ramblings about the Department's authority and the Wisconsin income tax statutes. Because petitioner has offered nothing but groundless and frivolous arguments to disprove the Department's assessment, an additional assessment is imposed, as provided in Wis. Stat. § 73.01(4)(am).

**ORDER**

1. The Department's alternative motion to dismiss petitioner's petition for review because there is no genuine issue as to any material fact and it does not state a claim upon which relief can be granted is granted, and the petition for review is dismissed.

2. Petitioner's motion for summary judgment is denied.

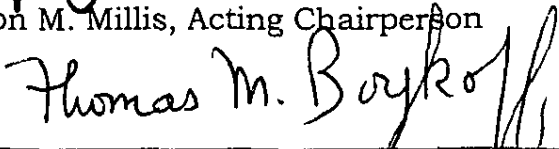
3. Petitioner is assessed an additional \$500 pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 13th day of September, 2001.

**WISCONSIN TAX APPEALS COMMISSION**



Don M. Millis, Acting Chairperson



Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"