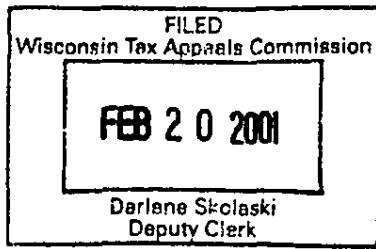


QUINNELL ROBERT RUTH 00157 022001 TAC

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**STATE OF WISCONSIN
TAX APPEALS COMMISSION**

ROBERT J. AND RUTH I. QUINNELL
5959 Schudy Road
Wisconsin Rapids, WI 54495

DOCKET NO. 00-I-57

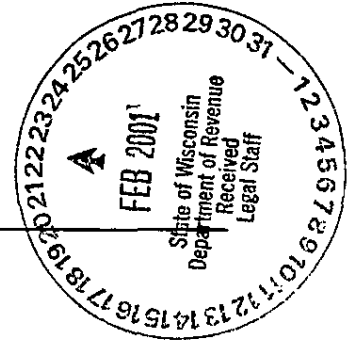
Petitioners,

vs.

RULING AND ORDER

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

Respondent.



THOMAS M. BOYKOFF, COMMISSIONER:

This matter is before this Commission on the motion for summary judgment under Wis. Stat. § 802.08 by respondent Wisconsin Department of Revenue ("Department"). Both parties have submitted affidavits and legal arguments¹ in support of their positions on the motion. The petitioners appear pro se, and Attorney Robert G. Pultz represented the Department.

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

UNDISPUTED MATERIAL FACTS

1. Petitioners were Wisconsin residents and filed Wisconsin resident income tax returns for the calendar years 1993 through 1997 ("period

¹ Petitioners' argument is contained in their May 11, 2000 "SUPPLEMENTAL REPLY to ANSWER with AFFIDAVIT supporting APPEAL from Determination of Petition for Redetermination Dated July 22, 1999 in response to income tax assessment Dated May 31, 1999."

under review").

2. On each tax return filed during the period under review, petitioners did not list as income \$10,207 of pension income received by Mr. Quinnell from a Wisconsin corporation.

3. Under date of January 27, 2000, the Department issued an assessment to petitioners covering tax years 1993 and 1994, and under date of May 31, 1999, the Department issued an assessment covering tax years 1995, 1996, and 1997. The assessments add Mr. Quinnell's \$10,207 of pension income to petitioners' income for each year.

4. Petitioners filed a timely petition for redetermination with the Department for each assessment, which the Department denied.

5. Petitioners then timely filed a timely petition for review with this commission.

CONCLUSIONS OF LAW

1. There is no genuine issue as to any material fact, and summary judgment under Wis. Stat. § 802.08 is, therefore, appropriate.

2. The Department correctly added to petitioners' income for each year under review \$10,207 of pension income received by Mr. Quinnell, as petitioners were Wisconsin residents when the income was received.

3. Petitioners' assertions that the pension income is not taxable are frivolous and groundless, thereby subjecting them to an additional assessment under Wis. Stat. § 73.01(4)(am).

this state or from business transacted within this state.² However, Wis. Stat. § 71.02(1) imposes the Wisconsin income tax on all income of Wisconsin residents, regardless of the income's source. In addition, Wis. Stat. § 71.04(1)(a) states, in part: "All income ... of resident individuals ... shall follow the residence of the individual..." Therefore, Mr. Quinnell's pension income is subject to Wisconsin's income tax because he was a Wisconsin resident when he received it.

Numerous decisions of the Commission and its predecessor, the Wisconsin Board of Tax Appeals, have held that unless there is a specific statutory exemption, pension income from whatever source is subject to Wisconsin income tax. These decisions include *Paker v. Dep't of Revenue*, 1999 Wisc. Tax LEXIS 33 (WTAC 1999) (pension income from private corporation earned before becoming a Wisconsin resident is subject to Wisconsin income tax); *Kuss v. Dep't of Revenue*, 2000 Wisc. Tax LEXIS 23 (WTAC 2000) (pension paid to Wisconsin resident from the State of Minnesota Teachers Retirement System is subject to Wisconsin income tax); *Van Aman v. Dep't of Revenue*, 1996 Wisc. Tax LEXIS 11 (WTAC 1996) (payments from an Illinois public employee pension system based on taxpayers' employment in Illinois prior to becoming Wisconsin residents were subject to Wisconsin income tax); and *Waterbury v. Dep't of Taxation*, Wis. Tax Rptr. (CCH) ¶ 200-265 (WBTA 1965)

² Even if these claims had a basis in law, petitioners have offered only legal conclusions, not evidentiary facts, to support these claims. Affidavits containing "allegations of ultimate facts, conclusions of law or anything other than evidentiary facts do not meet the statutory requirement that affidavits in [opposition to] summary judgment must be made on personal knowledge." *Krieg v. Dayton-Hudson Corp.*, 104 Wis. 2d 455, 465 (1981) (brackets in original).

(pension payments from a private corporation earned through employment in Puerto Rico prior to the taxpayer becoming a Wisconsin resident were subject to Wisconsin income tax). Petitioners have pointed to no specific legal or factual basis to justify their assertion that the pension income at issue is not subject to Wisconsin income tax.

Petitioners further assert that the pension income is available to them as federal reserve notes which are included in the definition of "obligation or other security of the United States" under 18 U.S.C. § 8. Therefore, they argue, obligations of the U. S. government are exempt from state taxation under 31 U.S.C. § 3124(a). From this logic, they conclude that the pension income is not taxable by Wisconsin's income tax.

The above assertion amounts to a claim that when income is available in the form of U. S. currency, this state may not tax it. We reject that "logic." Similar attempts to explain away the Wisconsin income tax or to explain that the tax does not apply have consistently been given no credence by this commission or the courts. *See, 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); *Norskog v. Dep't of Revenue*, 1999 Wisc. Tax LEXIS 19 (WTAC 1999); and *Tracy v. Dep't of Revenue*, 133 Wis. 2d 151 (Ct. App. 1986). Petitioners' assertion is likewise rejected.

Petitioners' written submissions do nothing to disprove the accuracy of the Department's assessments. Instead, petitioners offer frivolous arguments that have no chance of prevailing.

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

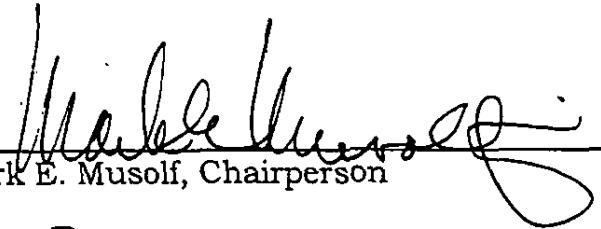
ORDER

1. The Department's motion for summary judgment is granted, and its actions on petitioners' petitions for redetermination are affirmed.

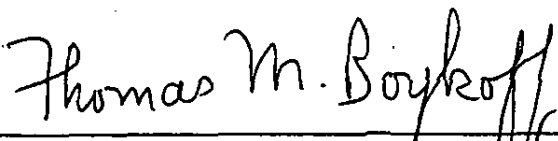
2. Petitioners are assessed an additional \$500 pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 20th day of February, 2001.

WISCONSIN TAX APPEALS COMMISSION


Mark E. Musolf, Chairperson


Don M. Millis, Commissioner


Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"