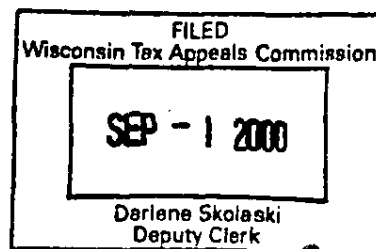


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STATE OF WISCONSIN  
TAX APPEALS COMMISSION



GEORGE F. REIF  
W13206 Hwy. D  
Bowler, WI 54416

Petitioner,

DOCKET NOS. 00-I-21  
and 00-I-22

vs.

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

Respondent. \*

RULING AND ORDER  
GRANTING MOTION  
TO DISMISS

**THOMAS M. BOYKOFF, COMMISSIONER:**

This matter is before the Commission on respondent's ("Department") Motion to Dismiss on any one of six grounds, including the failure of petitioner to state a claim upon which relief can be granted under Wis. Stat. § 802.06(2)(a)6.<sup>1</sup> The Department filed its brief in support of its motion. Petitioner filed a reply brief.

Petitioner appears on his own behalf, and the Department appears by Attorney Robert G. Pultz.

For purposes of this Motion to Dismiss, the submissions of

<sup>1</sup> The Commission grants the Department's Motion to Dismiss petitioner's petitions for review for failure of petitioner to state a claim upon which relief can be granted, which is the equivalent of a motion on the pleadings under Wis. Stat. § 802.06(3). For this reason, the Commission is not addressing the Department's other grounds for dismissal; i.e., refusal to pay the filing fees; the defective format of petitioner's petitions for review; that § 71.74(3) requires the Department to issue the subject assessments; petitioner's failure to show that he does not have an income tax filing requirement; and that there is no genuine issue as to any material fact and the Department is entitled to judgment as a matter of law.

petitioner are his Petitions for Review,<sup>2</sup> a document labeled "Motion to Proceed," and his brief, in the form of a sworn affidavit with attachments, opposing the Department's motion. The submissions of the Department are its Answers to the Petitions for Review, its Motion to Dismiss, and a brief.

Having considered the pleadings and briefs of the parties, the Commission hereby finds, rules, and orders as follows:

1. Under date of July 12, 1999, the Department issued two estimated assessments under Wis. Stat. § 71.74(3) because petitioner failed to file income tax returns for five calendar years. One assessment was for \$4,708.88 on the basis of petitioner's non-filing for 1993 and 1994; the other was for \$6,502.93 on the basis of petitioner's non-filing for 1995, 1996, and 1997.

2. Under date of July 26, 1999, petitioner filed timely petitions for redetermination with the Department which under date of January 17, 2000, the Department denied.

3. Under date of January 27, 2000, petitioner filed timely Petitions for Review with this commission.

4. Part of petitioner's Petitions for Review (third unnumbered page, item number 6) reads as follows:

The nature of the appeal is that under a government by the consent of the governed, I do not give my consent to be

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<sup>2</sup> Petitioner did not pay the required filing fees when he filed his petitions for review. This accounts for the portion of the Department's motion to dismiss on the basis of refusal to pay the fees. Petitioner paid the fees on July 20, 2000, in compliance with a Commission order.

governed by any tyranny nor any despotism. I am duty-bound not to submit. ... I simply do not owe any tax to any government that refuses to recognize me as its free and equal citizen. Equally oppressed is not what our forefathers had in mind when they said equality.

5. In an acknowledgement of receipt to petitioner by the Commission of the Petitions for Review, dated February 2, 2000, a "NOTE" in bold capital letters reads in part as follows:

If you have not done so, please provide us with an original and one copy of a clear and concise statement of the facts of your case and your specific objections to the Department of Revenue's action, including points of law upon which you are relying.

Petitioner did not respond to this notice.

6. Under date of February 9, 2000, the Department filed its Answer to the Petitions for Review, and denied that petitioner filed a legally sufficient appeal under Wis. Stat. § 73.01(5) and Ch. 1, Wis. Adm. Code. On April 17, 2000, the Department filed its motion to dismiss the Petitions for Review on any one of six bases, along with an accompanying brief.

7. In his reply brief (filed May 16, 2000) to the Department's motion and brief, petitioner requests that the Department's assessments be reversed for reasons which include: Article VI of the U.S. Constitution (the Supremacy Clause) overrides Wisconsin's income tax laws; petitioner refuses to pay income taxes because he is denied access to the goods and services he should receive by paying taxes; the Department's assessments constitute illegal "Attainder" under the U.S. and Wisconsin constitutions; he wants his "unabridgeable Right to Petition ... [his] Governments, State and Federal

secured to" him by the U.S. and Wisconsin constitutions; and that his birth certificate is his "certificate of entitlement ... It is the document between me and my U.S. Constitution. My contract with the United States of America and the State of Wisconsin."

### **APPLICABLE WISCONSIN STATUTES**

#### **71.74 Department audits, additional assessments and refunds.**

\* \* \*

(3) **DEFAULT ASSESSMENT.** Any person required to file an income or franchise tax return who fails, neglects or refuses to do so within the time prescribed by this chapter or files a return that does not disclose the person's entire net income, shall be assessed by the department according to its best judgment.

#### **802.06 Defenses and objection; when and how presented; by pleading or motion; motion for judgment on the pleadings.**

\* \* \*

##### **(2) HOW PRESENTED.**

(a) Every defense, in law or fact, except the defense of improper venue, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or 3rd party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

\* \* \*

6. Failure to state a claim upon which relief can be granted.

### **CONCLUSION OF LAW**

Reviewing the pleadings in the light most favorable to petitioner, the petitions for review fail to state a claim upon which relief can be granted.

## RULING

The Department issued two estimated assessments to petitioner under Wis. Stat. § 71.74(3) because petitioner did not file income tax returns for years 1993 through 1997. Under this statute, the Department may issue an assessment to a person who fails, neglects or refuses to file a tax return by its due date or to a person who files a return that does not disclose the person's entire income.

Petitioner did not file income tax returns for the five years under review. He has made no effort whatsoever to resolve this dispute by providing the Department with information on his amounts of income and deductions.

Instead, petitioner claims protection from paying income taxes by citing various provisions of the United States and Wisconsin constitutions. These arguments and ones like them have been given no credence when argued by "tax protesters" in prior cases before the Commission and the courts. They have not prevailed in the past, and they do not prevail now. 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); *Derick J. Norskog v. Dep't of Revenue*, 1999 Wis. 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).

Petitioner also argues that Wisconsin's income tax laws are "attainder — the extinction of the Civil Rights and the Capacities of a person." He argues that the laws violate Article 1, Sec. 12 of the Wisconsin Constitution

and Article III, Sec. 3 of the U.S. Constitution prohibiting bills of attainder.

The Wisconsin Constitution prohibits enactment of a "bill of attainder." This has been defined as:

Such special acts of the legislature as inflict capital punishments upon persons supposed to be guilty of high offenses, such as treason and felony, without any conviction in the ordinary course of judicial proceedings.

Black's Law Dictionary, 5th Edition, p. 116 (1979).

The U.S. Constitution (Art. III, Sec. 3) provides: "The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attained." In this context, "attainder" has two definitions: extinction of civil rights which took place when a person who committed treason or a felony receives a death sentence for the crime; and a person who committed treason or a felony and receives the death sentence has all of the person's estate forfeited. Black's Law Dictionary, 5th Ed., p. 116 (1979).

Neither a bill of attainder nor attainder is involved in this case. To so argue is ludicrous.

Petitioner also argues that the U.S. Constitution's Supremacy Clause (Article VI) precludes this state from enacting income tax laws. This assertion is ridiculous on its face. Petitioner might understand why by reading the U.S. Constitution's Article X which reads, in part, as follows: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States...." Wisconsin and other states have enacted many valid laws, including tax laws, pursuant to Article X.

Petitioner has offered nothing but groundless and frivolous arguments to disprove the accuracy of the Department's assessments. Therefore, an additional assessment of \$100 is imposed, as provided in Wis. Stat. § 73.01(4)(am).

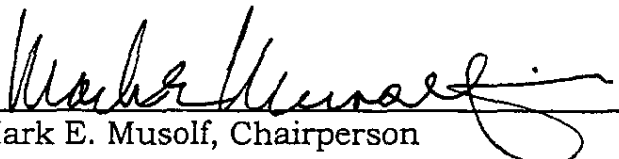
**ORDER**

1. The Department's Motion to Dismiss is granted, and the petitions for review are dismissed.

2. Petitioner is assessed an additional \$100 pursuant to Wis. Stat. § 73.01(4)(am).

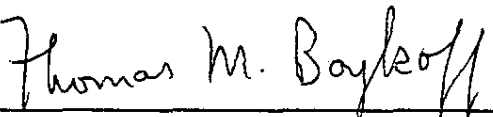
Dated at Madison, Wisconsin this 1<sup>st</sup> day of September, 2000.

WISCONSIN TAX APPEALS COMMISSION

  
Mark E. Musolf, Chairperson

(Dissents)

Don M. Millis, Commissioner

  
Thomas M. Boykoff, Commissioner

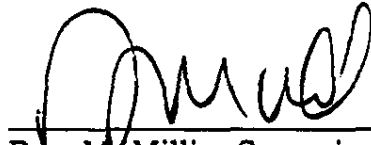
ATTACHMENT: "NOTICE OF APPEAL INFORMATION"



**DON M. MILLIS, COMMISSIONER, DISSENTING:**

The Commission has held that when a petition for review fails to state a claim upon which relief can be granted, the Commission need not dismiss the petition for review. Rather, the Commission may allow the petitioner to file an amended petition for review. *Mobile Transport Systems, Inc. v. Dep't of Revenue*, 1997 Wisc. Tax LEXIS 6 at 8 (WTAC 1997). In my time on the Commission, the general practice has been to grant petitioners the opportunity to file amended petitions for review. Because I see no reason to depart from this practice here, I dissent.

Respectfully submitted,



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Don M. Millis, Commissioner