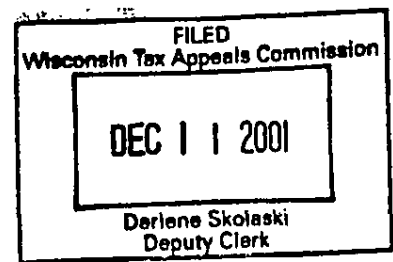


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STATE OF WISCONSIN
TAX APPEALS COMMISSION



MARK JOSEPH RELL
AND
MARIE ANNE RELL
10453 Schoettler Road
Tomahawk, WI 54487,



DOCKET NO. 01-I-92

Petitioners,

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 motions for summary judgment by both parties, pursuant to Wis. Stat. § 802.08(2). The respondent Wisconsin Department of Revenue ("Department") has also moved for the imposition of an additional assessment against petitioners under Wis. Stat. § 73.01(4)(am) on the grounds that petitioners' position in this proceeding which they initiated is frivolous or groundless.

Petitioners represent themselves and have filed a sworn brief in support of their motion and in opposition to the Department's motion.

Attorney Mark S. Zimmer represents the Department. With its motions, the Department has filed a sworn affidavit with exhibits and a brief. It has also filed a

reply brief in support of its motions and in opposition to petitioners' motion.

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

UNDISPUTED MATERIAL FACTS

Jurisdictional Facts

1. Under date of August 28, 2000, the Department issued an assessment to petitioners for \$4,446.33 for income tax, interest, and a negligence penalty for tax years 1998 and 1999.
2. Under date of October 29, 2000, petitioners filed a document with the Department which was deemed a petition for redetermination.
3. Under date of April 9, 2001, the Department denied petitioners' petition for redetermination, whereupon, under date of June 8, 2001, petitioners filed a timely appeal with this commission.

Other Facts

4. Under date of March 18, 1999, petitioners filed with the Department a 1998 Wisconsin income tax form, with a copy of their 1998 federal Form 1040, two W-2 wage statements, and a two-page document titled "Attachment to 1998 Tax Return." The tax form lists a Michigan address. On each of the first 33 lines of the Wisconsin tax form, petitioners wrote zeros. On line 34, titled "Wisconsin income tax withheld," petitioners wrote "1018.24", and on line 43 they requested a refund of that amount, which the Department did refund to petitioners. The two W-2 forms reflected combined wages of \$36,463.81 and Wisconsin income tax withheld from Mr. Rell's

wages of \$1,018.24.

5. Under date of March 25, 2000, petitioners filed with the Department a 1999 Wisconsin income tax form, attaching a single-page document titled "Attachment to 1999 Wisconsin Tax Form 1", a copy of their 1999 federal Form 1040 with a two-page document captioned "Attachment to 1999 1040", and a copy of Mr. Rell's W-2 wage statement. The tax form lists a Tomahawk, Wisconsin, address. On each of the first 31 lines of the Wisconsin tax form, petitioners wrote zeros. On line 32, titled "Wisconsin tax withheld," petitioners wrote "724.06," and, on line 41, they requested a refund of that amount. Mr. Rell's W-2 form reflected \$24,536.44 of wages and \$724.06 of Wisconsin income tax withheld.

RULING

Section 802.08(2) of the Wisconsin Statutes provides that summary judgment "shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

There is no genuine issue of material fact in this case. Petitioners did not file complete and correct Wisconsin income tax returns with the Department. The wages and Wisconsin tax withheld which were reflected on their W-2 forms should have been stated on the returns. In addition, other income, if any, should have been reported.

The Department issued an estimated assessment to petitioners under Wis.

Stat. § 71.74(3) because they did not file complete and correct 1998 and 1999 Wisconsin income tax returns and did not disclose their entire net income. The issuance of an estimated assessment generally encourages recipients to file correct tax returns. This result has not been achieved here.

Petitioners assert that since the communication from the Department requesting tax payment is captioned "Notice of Amount Due," it is not an "assessment," and, therefore, they never received an assessment. This is foolishness. The purpose of the document which petitioners received is clear: it requested taxes due and unpaid. The document is not so flawed as to void the assessment, and it reasonably informs petitioners that they are requested to pay income taxes due.

Petitioners' principal argument is that wages are not income which is taxable by Wisconsin. This argument also lacks merit.

Wisconsin Statutes § 71.02(1) imposes an income tax on all net incomes of individuals. Sections 71.01(6)(m) and (n) adopt provisions of the federal Internal Revenue Code for purposes of Wisconsin's income tax. Internal Revenue Code §§ 61(a)(intro.) and (1) provide that income includes "Compensation for services". That is precisely what wages reported on W-2 forms are. Petitioners' argument has been consistently rejected by this commission, state courts, and federal courts. 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. Norškog v. Dep't of Revenue*, 1999 Wisc. Tax LEXIS 19 (WTAC 1999); *Tracy v. Dep't of Revenue*, 133 Wis. 2d 151, 159-160 (Ct. App. 1986); and *Lonsdale v. C.I.R.*, 661 F.2d 71, 72 (5th Cir. 1981).

Petitioners try to distinguish *Tracy* from their case. They do so primarily by stating that arguments made by the Tracys are not now made by them. These are not valid distinctions. Both the Tracys and petitioners assert that wages are not taxable. That argument was rejected in *Tracy*, and it is again rejected here.

Petitioners' other assertions include: their being denied due process (but they do not explain this other than by asserting it); the denial of their "right" to cross-examine Department employees (no Wisconsin statute so provides); some Department letters to them are not signed, and this somehow invalidates the assessment (a foolish argument); and that the Wisconsin legislature improperly delegated its lawmaking authority by adopting portions of the Internal Revenue Code by reference ("In incorporating this federal . . . law, the Wisconsin legislature has not delegated its legislative authority." *Dane County Hospital & Home v. LIRC*, 125 Wis. 2d 308, 324 (Ct. App. 1985)).

The Department has asserted that this commission lacks jurisdiction over constitutional issues. This is not accurate. In *Sawejka v. Morgan*, 56 Wis. 2d 70, 80-81 (1972), the Wisconsin Supreme Court upheld a trial court's determination that this commission is authorized to rule on the validity or constitutionality of applying a Wisconsin tax statute. And 19 years later, in *Hogan v. Musolf*, 163 Wis. 2d 1, 21-22 (1991), the Wisconsin Supreme Court stated that it need not decide whether the Commission has the authority to declare a statute unconstitutional. The Court then stated the following:

. . . Where the United States Supreme Court has held that another state's taxing scheme, which is substantially similar to Wisconsin's, violates federal law or the constitution, we conclude that the

Department and the Commission have the authority to determine whether the continued application of the Wisconsin taxing scheme also violates federal law or the constitution. See *Sawejka v. Morgan*, 56 Wis. 2d 70, 80, 201 N.W.2d 528 (1972) (deciding that the tax appeals commission has the authority to make the initial decision with respect to the validity or constitutionality of applying a tax statute in a given situation). The agencies would become ineffectual if they lost their authority to review a case every time a constitutional claim was asserted. . . .

Petitioners are attempting, by verbal gymnastics and chicanery, to argue that Wisconsin's income tax laws for 1998 and 1999 do not apply to them. 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 do not prevail now.

The conclusion of the Commission many years ago in *Betow v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-032, 11,608 (WTAC 1982), is equally applicable to petitioners' 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. C.I.R.*, 696 F. 2d 1234 (9th Cir. 1983).


Petitioners' arguments are frivolous, irrelevant, and useless ramblings about the Department's authority and the Wisconsin income tax statutes. Because petitioners have offered nothing but groundless and frivolous arguments, an additional assessment is imposed, as provided in Wis. Stat. § 73.01(4)(am).

ORDER

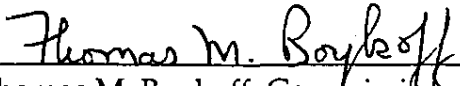
1. The Department's motion for summary judgment is granted, and the petition for review is dismissed.
2. Petitioners' motion for summary judgment is denied.
3. Petitioners are assessed an additional \$500 pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 11th day of December, 2001.

WISCONSIN TAX APPEALS COMMISSION



Don M. Millis, Acting Chairperson



Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"