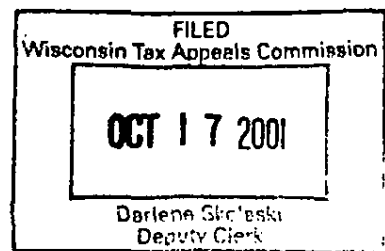


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**STATE OF WISCONSIN
TAX APPEALS COMMISSION**



GARY J. SIMON
827 Hillcrest Heights
Green Bay, WI 54313-6919,

**DOCKET NOS. 01-I-61
01-I-62
01-I-100**

Petitioner,

vs.

RULING AND ORDER

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

Respondent.

THOMAS M. BOYKOFF, COMMISSIONER:

These cases come before the Commission on the motions of respondent, Wisconsin Department of Revenue ("Department").

In Docket No. 01-I-61, the Department moves to dismiss petitioner's petition for review under Wis. Stat. §§ 71.88 and 73.01(5)(a) on the basis that it was filed prematurely.

In Docket No. 01-I-62 (covering income tax years 1996 through 1999), the Department moves for a protective order under Wis. Stat. § 804.01(3) on the grounds that petitioner's interrogatory is an annoyance, irrelevant, and an undue burden and expense without any material benefit to petitioner. The Department also moves to dismiss petitioner's petition for review under Wis. Stat. § 802.06(2)(a)6 on the basis that petitioner has failed to state a claim upon which relief can be granted.

In Docket No. 01-I-100 (covering income tax years 1993 to 1995),

the Department moves to dismiss petitioner's petition for review under Wis. Stat. § 802.06(2)(a)6 on the basis that petitioner has failed to state a claim upon which relief can be granted.

Petitioner opposes the Department's motions and moves for an order protecting him from the Department's assertions that he owes Wisconsin income tax.

These cases are consolidated for actions on the motions. A telephonic hearing was held on July 10, 2001, with the presiding Commissioner in Madison, Wisconsin.

Petitioner appears pro se. Attorney Neal E. Schmidt represents the Department.

Having considered the motions, the arguments of the parties, petitioner's brief,¹ and the entire record, the Commission hereby finds, rules, and orders as follows:

FACTS

Docket No. 01-I-61 Income tax years 1993 through 1996

1. Under date of September 11, 2000, a Department auditor acknowledged receipt of petitioner's 1993 through 1996 Wisconsin income tax forms, which requested a refund of all income taxes withheld for those years. The auditor stated that wages are subject to Wisconsin's income tax, and requested that petitioner file and sign income tax returns reporting all income

¹ The Department did not file a brief.

received. The auditor stated that if proper returns were not filed, the Department would estimate petitioner's income for those years and issue an assessment based on that estimate of income.

2. Petitioner appealed this letter to the Commission by filing a petition for review.

Docket No. 01-I-62
Income tax years 1996 through 1999

3. Under date of October 23, 2000, the Department issued an estimated assessment to petitioner for income tax years 1996 through 1999 for \$19,266.05, consisting of income tax, interest, negligence penalties, and late filing fees.

4. Under date of December 22, 2000, petitioner filed a petition for redetermination with the Department, which the Department denied by letter dated February 12, 2001.

5. Petitioner timely filed a petition for review with the Commission.

Docket No. 01-I-100
Income tax years 1993 through 1995

6. Under date of January 22, 2001, the Department issued an estimated assessment to petitioner for income tax years 1993 through 1995 for \$19,264.05, consisting of income tax, interest, negligence penalties, and late filing fees.

7. Under date of March 22, 2001, petitioner filed a petition for redetermination with the Department, which the Department denied by letter dated April 23, 2001.

8. Petitioner filed a timely appeal of this action with the Commission.

9. On the signature line of the 1993 through 1995 tax forms, petitioner wrote "Sec. 401.207 without prejudice" before his signature.

All Dockets

10. For tax years 1993, 1994, and 1995, petitioner reported income of \$120.00, \$76.75, and \$24.26, respectively. On the 1996, 1997, 1998, and 1999 forms, he reported no income. To all of the forms were attached W-2 statements reflecting wages for each year of approximately \$35,000 to \$44,000. The 1993 through 1996 forms were dated April 14, 2000. The 1997 through 1999 forms were dated April 16, 2001. Each form requested a refund of all Wisconsin taxes withheld for that year, ranging from approximately \$2,250 to \$2,850.

11. In each year under review, petitioner was a full-year resident of Wisconsin.

12. In attachments to some of his tax forms and to his petitions for redetermination, petitioner challenges the Department's practice of estimating income and income tax due, and objects to the Department's forms communicating the assessments; cites federal laws (applicable to the Internal Revenue Service) which he believes require that he be interviewed prior to being

assessed; claims that he is denied due process of law under Amendment V of the United States Constitution; asserts that the Department cannot issue an assessment without first holding a hearing and presenting evidence; states that the Department has the burden of proving that he owes income taxes; and asserts that his "wages" are not taxable, that moneys he received for his employment are not includable in "gross income", and that the tax laws apply only to "wages" of United States citizens residing abroad.

13. On May 18, 2001, the Department received a 5-page document from petitioner captioned "Interrogatories." The questions include: Provide Attorney Schmidt's date and place of birth, names he has used since birth, and addresses for the last 10 years; identify each person who "created the assessment" against petitioner and provide the same information about each which was requested of Attorney Schmidt; identify all documents used in the "assessment" against petitioner; identify all rules and statutes that the Department relies upon to determine "what a proper signature is"; identify the person in charge of the Department's computer system and how long the person has held that position; specify "each special or affirmative defense" of the Department; identify "any lien, contract, law, document or any other obligation" that requires petitioner to pay taxes on his labor or which would make petitioner "responsible or obligated to pay the debts" of Wisconsin.

RULING

**Docket No. 01-I-61
Income tax years 1993 through 1996**

Before appealing to the Commission, the statutes require a person to contest an assessment of taxes by filing a petition for redetermination with the Department. Wis. Stat. § 71.88(1). If the Department denies the petition for redetermination in whole or in part, a person may then appeal that denial to the Commission. Wis. Stat. §§ 71.88(2) and 73.01(5)(a).

In this case, there was no petition for redetermination and no action by the Department on a petition for redetermination. Petitioner appealed directly to the Commission from a Department auditor's letter requesting tax information. The statutes do not authorize such an appeal. The appeal is, therefore, premature and improper.

**Docket Nos. 01-I-62 and 01-I-100
Income tax years 1993 through 1999**

Petitioner filed incomplete and incorrect Wisconsin income tax returns for tax years 1993 through 1999. On the 1993, 1994, and 1995 forms, he reported income of \$120.00, \$76.75, and \$24.26, respectively. On the forms for 1996, 1997, 1998, and 1999, he reported no income. W-2 statements attached to these forms, however, reported income ranging from approximately \$35,000 to \$44,000. Petitioner requested a refund of the full amount of Wisconsin income taxes withheld as reflected on the W-2 forms for each year.

Under its authority in Wis. Stat. § 71.74(3), the Department issued estimated assessments "according to its best judgment" because petitioner failed and refused to file tax returns disclosing his entire income. These estimated assessments generally encourage the person to whom they are issued to file a correct return. This result has not been achieved here. However, the Department has followed the correct statutory procedure. In addition, while the Department's form is not a model of lucidity, it is not so flawed as to void an assessment, and it reasonably informs petitioner that he is being assessed Wisconsin income taxes.

One of petitioner's primary arguments is that the Department "has not informed [him] of the nature or source of gross income nor what tax Petitioner supposedly did not pay." (Notice of Motion and Motion Against Dismissal and Protective Order, p. 1, filed Sept. 5, 2001). Section 71.02(1) of the Wisconsin Statutes reads, in part: ". . . there shall be assessed, levied, collected and paid a tax on all net incomes of individuals . . . by every natural person residing within the state . . ." Petitioner received W-2 forms for each year under review, and each W-2 form clearly identifies the amount on which petitioner must pay income tax. His arguments to the contrary and verbal gymnastics are absurd.

Petitioner signed his 1993, 1994, and 1995 tax forms with the following phrase preceding his signature: "Sec. 401.207 without prejudice." Section 401.207 of the statutes deals with a reservation of rights with respect to specific transactions under Wisconsin's version of the Uniform Commercial

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Code ("UCC"). Wis. Stat. chs. 401 to 411. Filing a Wisconsin income tax return is not covered by the UCC, and petitioner's attempt to give his words meaning is null, void, and nonsensical.

Petitioner's 5-page document captioned "Interrogatories" was filed with Attorney Schmidt on May 18, 2001. The questions have nothing to do with whether petitioner filed complete and correct Wisconsin income tax returns. Examples of petitioner's attempt to elicit blatantly irrelevant information include requests for Attorney Schmidt's date and place of birth, names he has used since birth, and his addresses for the last 10 years; a request for the same information about each person who generated the assessments; and a request for the identity of the name of the person in charge of the Department's computer system and how long the person has held that position. Petitioner's interrogatories constitute annoyance and oppression, and they present an undue burden and expense to the Department without any material benefit to the petitioner. See, Wis. Stat. § 804.01(3)(a)1.

Rather than filing correct and complete Wisconsin income tax returns, petitioner has responded to the Department's assessments and its denial of his claims for refund with a series of statements that do not address the Department's actions.

Petitioner is attempting, by verbal gymnastics and chicanery, to falsely argue that Wisconsin's income tax laws for 1993 through 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. 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 practice and about the Wisconsin income tax statutes. Because petitioner has offered only groundless and frivolous arguments, an additional assessment is imposed, as provided in Wis. Stat. § 73.01(4)(am).

ORDERS

1. The Department's motion for a protective order from petitioner's interrogatories is granted, pursuant to Wis. Stat. § 804.01(3)(a)1, and the Department is not required to answer them.

2. The Department's motion to dismiss in Docket No. 01-I-61 is granted, pursuant to Wis. Stat. §§ 71.88 and 73.01(5)(a), and the petition for review is dismissed on the basis that it is premature.

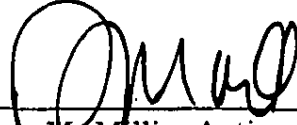
3. The Department's motion to dismiss in Docket Nos. 01-I-62 and 01-I-100 is granted, pursuant to Wis. Stat. § 802.06(2)(a)6, and the petitions for review are dismissed on the basis that they fail to state a claim upon which relief can be granted.

4. Petitioner's motion for an order protecting him from the Department's assertions that he owes Wisconsin income tax is denied.

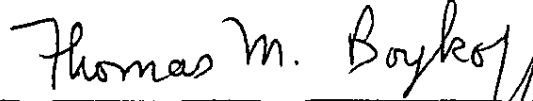
5. Petitioner is assessed an additional \$500 pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 17th day of October, 2001.

WISCONSIN TAX APPEALS COMMISSION



Don M. Millis, Acting Chairperson



Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"