

STATE OF WISCONSIN
TAX APPEALS COMMISSION

GARY T. KAZYNSKI,

DOCKET NO. 13-I-169

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

ROGER W. LEGRAND, COMMISSIONER:

This case comes before the Commission on a Motion to Dismiss and a Motion for Summary Judgment filed by Respondent, Attorney La Keisha Wright Butler, of the Wisconsin Department of Revenue ("the Department"). The Petitioner appears *pro se* in this matter.

The Commission denies the Department's Motion to Dismiss. The Commission grants the Motion for Summary Judgment.

FACTS

1. On July 10, 2012, the Department mailed a letter to Petitioner requesting that he file an individual income tax return for the 2009 tax year. (Ex. 1.)
2. By Notice dated September 20, 2012, the Department issued to Petitioner an estimated assessment in the amount of \$5,436.35, including tax, delinquent

interest, 25% negligence penalty, and a late filing fee. The assessment was issued due to Petitioner's failure to file a Wisconsin income tax return for 2009. (Ex. 2.)

3. By letter received on December 3, 2012, Petitioner filed a Petition for Redetermination with the Department objecting to the assessment. Petitioner argued that the "name and number you have billed do not belong to me." He also included a sworn affidavit of citizenship and domicile and claimed that he was not a resident of the "United States." (Ex. 3.)

4. On, or about April 8, 2013, the Department sent a letter to Petitioner explaining his obligation to file an individual income tax return for the 2009 tax year. (Ex. 4.)

5. By Notice dated May 14, 2013, the Department issued a Notice of Action denying Petitioner's Petition for Redetermination because Petitioner failed to file a return and because his Petition for Redetermination was late. (Ex. 5.)

6. Petitioner timely filed a Petition for Review with the Tax Appeals Commission via USPS Certified Mail on July 15, 2013. (Ex. 6.)

7. Wisconsin Statute § 71.02 imposes tax on the net income of all individuals residing in the state.

8. Wisconsin Statute § 71.03(2) requires every person domiciled in the state with gross income at or above a threshold amount to file a return.

9. Petitioner filed a 2008 federal income tax return with attached Schedule C. (Ex. 7.)

10. The instructions for Wisconsin Income Tax Form 1 indicate that the threshold amount for filing a tax return in 2009 was \$18,410.00. (Ex. 8.)

11. Petitioner did not file an individual Wisconsin income tax return for the 2009 tax year. (Ex. 1.)

12. Based on his failure to file, the Department of Revenue assessed Petitioner's 2009 estimated income tax at \$5,436.35. (Ex. 2.)

13. In his filings, Petitioner did not contest the amount of the estimated assessment.

MOTION TO DISMISS

The Department based its Motion to Dismiss on the ground that Petitioner did not file a proper Petition for Redetermination within 60 days after receipt of Respondent's Notice of Estimated Tax Amount Due, as required by Wis. Stat. § 71.88(1)(a). Petitioner argues that the Wis. Stat. § 71.88(1)(a) gives a person 60 days after receipt of the Notice to petition the Department of Revenue for redetermination. In this case, the Department issued a Notice of Estimated Tax Amount Due to Petitioner dated September 20, 2012. The Department received the Petition for Redetermination on December 3, 2012. This was more than 60 days after the date on the Notice. However, Petitioner claims he received the Notice on November 27, 2012. The Department provided no evidence as to

when it mailed or when Petitioner received the Notice of Estimated Tax Amount Due. Because Petitioner's claim that he received the Notice on November 27, 2012, is inherently self-serving, there is no credible proof of when the Notice was sent or received. Consequently, the Motion to Dismiss is denied.

MOTION FOR SUMMARY JUDGMENT

Under Wis. Stat. § 802.08, summary judgment shall be granted 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 judgment as a matter of law.

In this case, Respondent moved for a Summary Judgment on the ground that Petitioner did not file a Wisconsin income tax return for the year 2009. Wis. Stat. § 71.03, requires every individual domiciled in this state during the entire taxable year, who has a gross income at or above a threshold amount, to file an income tax return. In cases when a person fails to file a return, Wis. Stat. § 71.74, allows the Department to make a default assessment according to its best judgment.

This is what occurred in this case. Petitioner failed to file a 2009 Wisconsin income tax return. Based on the fact that, in 2008, Petitioner's income was above the threshold amount, he was required to file a 2009 Wisconsin income tax return. Since Petitioner failed to do so, Wis. Stat. § 71.74, allowed the Department to make a default assessment. Petitioner did not contest the amount of the estimated assessment.

In his defense, Petitioner makes a number of arguments, many of them incomprehensible and nonsensical. The only relevant claim is that he was domiciled outside the State of Wisconsin. If that was the case, he might not be subject to Wisconsin income tax. However, the files show that he responds to mail sent to an address in Clintonville, Wisconsin. Although his Petition for Review and affidavit claim on one hand that he is domiciled outside the "Subject Matter Jurisdiction defined in the State law as U.S. (Federal Zone), Commonwealth of Puerto Rico, and Federal Territories," his "Affidavit of Citizenship" claims, "I am a Sovereign Citizen and Resident of the State of Wisconsin, and have resided in Wisconsin since 1996." By his own admission, Petitioner is domiciled in the State of Wisconsin.

The other arguments made by Petitioner were incomprehensible and not worthy of analysis. After considering all of the arguments made by Petitioner, the Commission concludes that no genuine issue as to any material fact exists, and grants the Department summary judgment as a matter of law. Petitioner, a self-proclaimed resident of the State of Wisconsin, failed to file a Wisconsin income tax return for the year 2009. Because he did not file his 2009 Wisconsin income tax return, the Department was correct in issuing its estimated assessment based on the information contained in his 2008 federal tax return which was over the threshold amount for filing a 2009 Wisconsin tax return. Petitioner did not contest that amount.

ORDER

1. Respondent's assessment of Wisconsin income tax for the year 2009 is affirmed.

2. The Petition for Review is dismissed.

Dated at Madison, Wisconsin, this 31st day of July, 2014.

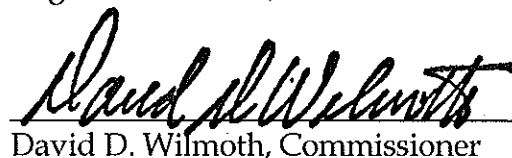
WISCONSIN TAX APPEALS COMMISSION



Lorna Hemp Boll, Chair



Roger W. LeGrand, Commissioner



David D. Wilmoth, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION
5005 University Avenue - Suite 110
Madison, Wisconsin - 53705

NOTICE OF APPEAL INFORMATION

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES ALLOWED
FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS
RESPONDENT**

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternatively, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeals Commission either in-person, by certified mail, or by courier, and served upon the other party (which usually is the Department of Revenue) within 30 days of this decision if there has been no petition for rehearing, or within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or the Wisconsin Statutes. The website for the courts is <http://wicourts.gov>.

This notice is part of the decision and incorporated therein.