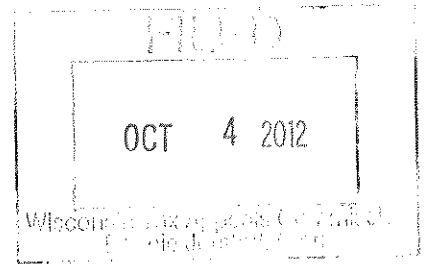


STATE OF WISCONSIN  
TAX APPEALS COMMISSION



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GARY LIZALEK,

DOCKET NOS. 11-I-232  
AND 11-I-233

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**ROGER W. LEGRAND, COMMISSIONER:**

These matters come before the Commission on a Motion to Dismiss filed by the Respondent, the Wisconsin Department of Revenue, on April 2, 2012. The basis for the motion is that Petitioner has not made a claim upon which relief can be granted. The Department is represented in these matters by Attorney Peter D. Kafkas. The Petitioner in these matters, Mr. Gary C. Lizalek, appears *pro se* and has filed a response in opposition to Respondent's motion.

These cases involve income tax assessments made by the Department against Petitioner for the years 2008 and 2009. The Department asserts that Petitioner did not file income tax returns for the years 2008 and 2009. (Affidavit of Mary E. Nelson, "Nelson Affidavit," Exhibits D and F.) The Department made estimated assessments against Petitioner of \$10,040.67 for the period ending December 31, 2008; and \$8,874.58 for the period ending December 31, 2009. (Nelson Affidavit, Exhibits C

and E.) Petitioner filed Petitions for Review regarding these assessments. Petitioner claims to have complied with the obligation to file income taxes by filing as a trust. (Nelson Affidavit, Exhibits A and B.)

Wis. Stat. § 71.03(2)(a)(1) requires individuals domiciled within the state with a threshold gross income to file income tax returns.

Wis. Stat. § 71.74(3) gives the Department the power to assess parties who fail to file income tax returns according to its best judgment.

The Commission finds that Petitioner failed to file income tax returns for the years 2008 and 2009. The Commission rejects Petitioner's claim that he fulfilled his obligation to file income tax returns by virtue of his filing as a trust. In an earlier case by this same Petitioner, using the same argument, the Commission stated "Petitioner's claim that he is a trust is frivolous and properly disregarded by respondent" *Gary C. Lizalek v. Dep't of Revenue*, Docket No. 03-I-219-SC, (November 7, 2003).

The Commission finds that the Department was correct in issuing estimated assessments against Petitioner under Section Wis. Stat. §§ 71.74(3) and 71.80(1)(a) and disregards Petitioner's claim that filing as a trust somehow defeats his obligation to file and pay state income taxes. Accordingly, the Commission grants Respondent's Motion to Dismiss under Wis. Stat. § 802.06(2)(a)(6).<sup>1</sup>

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<sup>1</sup> There may be some contentions left from the Petitioner's submissions which we did not address directly. If there are, we consider them to be so without merit that they are not worth additional consideration by the Commission. As the Wisconsin Supreme Court has observed, "An appellate court is not a performing bear, required to dance to each and every tune played on an appeal." *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978). To the extent that we have not addressed these other contentions, they are rejected.

As part of its motion, the Department asks for an additional sanction of \$1,000 for a frivolous appeal under Wis. Stat. § 73.01(4)(am) and Wis. Admin. Code § TA 1.63. This statute allows the Commission to make such an assessment when the taxpayer's position in those proceedings is frivolous or groundless. The Code requires the Commission to find one or more grounds for assessing costs. The specific code provision states as follows:

The petitioner or petitioner's representative knew, or should have known, that the appeal was without reasonable basis in law or equity or could not be supported by a good faith argument for an extension, modification or reversal of existing law.

Wis. Admin. Code § 1.63(2)(c).

The Commission has imposed sanctions against Petitioner several times in the past. See, for example, *Gary C. Lizalek v. Dep't of Revenue*, Docket No. 08-I-180, (April 19, 2010), *Gary C. Lizalek v. Dep't of Revenue*, Docket No. 04-T-110, (May 19, 2005), *Gary C. Lizalek v. Dep't of Revenue*, Docket No. 03-I-219-SC, (November 7, 2003). In the latter case, Petitioner made the same arguments he makes in these cases. The Commission found his submissions "filled with frivolous ramblings."

Given the previous rulings of this Commission, Petitioner knew or should have known that his arguments in this appeal are without reasonable basis in law or equity and do not support a change in existing law. Thus, the Commission finds that Petitioner's position in these cases is frivolous and groundless, and that his various submissions in these cases are filled with frivolous ramblings. Accordingly, the

Commission makes an additional assessment of \$1,000 against Petitioner pursuant to Wis. Stat. § 73.01(4)(am).

**THEREFORE, IT IS ORDERED**

1. Respondent's Motion to Dismiss is granted.
2. The assessments against Petitioner of \$10,040.67 for 2008 and \$8,874.58 for 2009 are upheld.
3. The additional assessment against Petitioner in the amount of \$1,000 (\$500 for Docket No. 11-I-232, and \$500 for Docket No. 11-I-233), is imposed pursuant to Wis. Stat. § 73.01(4)(am).

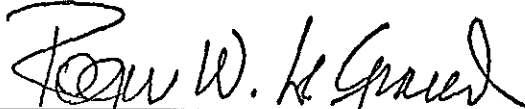
Dated at Madison, Wisconsin, this 4<sup>th</sup> day of October, 2012.

**WISCONSIN TAX APPEALS COMMISSION**



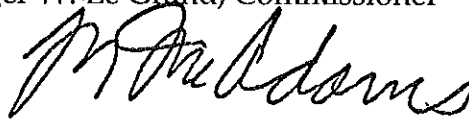
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Lorna Hemp Boll, Chair



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Roger W. Le Grand, Commissioner



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Thomas J. McAdams, 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.