

MICHAEL J. RIETH
691 S. Green Bay Road, #111
Neenah, WI 54956-3153,

Petitioner,

VS.

RULING AND ORDER

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

GRANTING SUMMARY

JUDGMENT

Respondent.

This matter comes before the Commission on a motion for judgment on the pleadings or for summary judgment filed by respondent, Wisconsin Department of Revenue (hereinafter, "Department"), for failure to state a claim on which relief can be granted.

Petitioner, Michael J. Rieth, appears *pro se* and has submitted various documents, described in more detail below. The Department is represented by Attorney Sheree Robertson, who has submitted affidavits and exhibits.

Having considered the entire record herein, the Commission finds, rules, and orders as follows.

UNDISPUTED MATERIAL FACTS

1. Petitioner was a Wisconsin resident during 1998.
2. By notice dated February 24, 2003, the Department issued

petitioner an income tax assessment for the year 1998 for failing to file a 1998 Wisconsin income tax return. The assessment was in the total amount of \$17,972.00, including \$9,078.00 in tax, \$6,594.00 in interest, \$2,270.00 in penalties, and \$30.00 in fees.

3. Under date of April 21, 2003, petitioner filed a petition for redetermination with the Department. The petition stated that petitioner would file a Wisconsin tax return only if he received a determination of liability for federal taxes. It also requested a "certified copy of the specific Administrative Agreement for administration of Wisconsin income taxes between United States Department of Treasury Internal Revenue Service and State of Wisconsin Department of Revenue." [Emphasis in original.] (Petition for Redetermination at 2.)

4. By letter dated June 13, 2003, John C. Teasdale, the Department's Resolution Officer responsible for reviewing petitioner's petition for redetermination, requested petitioner to file his 1998 income tax return, and warned petitioner that claims similar to his have been deemed groundless and frivolous by the Commission and courts.

5. On or about July 8, 2003, petitioner contacted Mr. Teasdale to request additional time, until September 1, 2003, to complete and file his 1998 income tax return, which was granted. Petitioner failed to file his return.

6. Under date of October 20, 2003, the Department issued its Notice of Action denying the petition for redetermination.

7. Petitioner filed a petition for review with the Commission on December 22, 2003.

8. The Department filed a Notice of Motion and Motion for Judgment on the Pleadings or for Summary Judgment on February 3, 2004, which included an affidavit by Mr. Teasdale in support of the motion, as well as exhibits in support of the affidavit and motion.

9. On March 29, 2004, petitioner filed with the Commission a "Notice of Affidavit of the Facts Demand for the Contracts and Evidence" (hereinafter, "Notice of Affidavit"), which named as respondents Don M. Millis, then-chairperson of the Commission, and Thomas D. Mathews of the Internal Revenue Service. This document generally alleged that the federal and Wisconsin governments had no authority to tax petitioner, and also demanded various affidavits, contracts, acts of Congress and the state legislature, and other documents.

10. On April 12, 2004, the Department filed a letter with the Commission, asserting that petitioner's Notice of Affidavit was not a response to the Department's February 3, 2004 motion, and that the Department properly assessed income taxes against petitioner. Along with that letter, the Department also filed an affidavit by Mr. Teasdale and attached exhibits.

11. On May 7, 2004, petitioner filed a "Notice of Default Nihil Dicit" (hereinafter, "Notice of Default") with the Commission, again naming Don M. Millis and Thomas D. Mathews as respondents and adding Sheree Robertson, the Department's attorney, as a respondent. The Notice of Default contains most of the same assertions as those advanced in the Notice of Affidavit.

12. On May 25, 2004, Attorney Robertson filed a letter with the

Commission stating that she was not a respondent as asserted by petitioner, that petitioner's tax protester contentions have been repeatedly held groundless by the Commission and state and federal courts, and that the Commission should grant the Department's motion for judgment on the pleadings or for summary judgment.

RULING

Summary judgment is warranted where "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." Wis. Stat. § 802.08(2). There is no genuine issue of material fact in this case, and the Department is entitled to judgment as a matter of law.

Wisconsin Statutes § 71.02(1) provides that "there shall be assessed, levied, collected and paid a tax on all net incomes of individuals . . . residing within the state. . . ." Wisconsin Statutes § 71.74(3) provides that "[a]ny person required to file an income . . . tax return, who fails, neglects or refuses to do so . . . shall be assessed by the department according to its best judgment."

Petitioner fails to establish that he was not subject to the Department's income tax assessment under these statutory provisions. Indeed, he never so much as alludes to this governing statutory authority, despite being directed to it by the Department (see Department's April 2, 2003 letter to petitioner attached to Pet. for Redetermination). Instead, at every step of the proceedings in this case, petitioner has made only incoherent and irrelevant assertions that do not even rise to the level of

arguments.

In his petition for redetermination to the Department, petitioner only expressed his erroneous belief that the Department was required to provide him with some type of "Administrative Agreement" between the Department and the Internal Revenue Service. He also included an affidavit and a twenty-five page document, both of which—to the extent they are intelligible—appear to question the authority of the federal government to tax its citizens.

In his petition to the Commission, the only issues petitioner states are "1. What laws make me liable?" and "2. Am I a liable person?" (Pet. at 1.) These questions are posed despite the Department's having repeatedly directed him to applicable legal authority. His Notice of Affidavit and Notice of Default are incomprehensible, filled with ramblings such as "All duly constituted acts of the state legislature of the STATE OF WISCONSIN, the Republic, enacted into positive law, expressly stating such acts as of a republican and not territorial nature, giving jurisdiction and authority over sovereign citizens in their *sui juris* character and in their private venues to the judicial courts of the State WISCONSIN, the corporation" (Notice of Affidavit at 4; Notice of Default at 6.)

The crux of petitioner's arguments appears to be that the State of Wisconsin has no authority to impose taxes on him. These arguments and ones like them have been consistently rejected in prior cases before the Commission and the courts. They are groundless and frivolous, and have never prevailed in Wisconsin, nor, as far as the Commission is aware, in any court in the country. *See Bierman v. C.I.R.*, 769

F. 2d 707, 708 (11th Cir. 1985) (finding similar arguments "patently frivolous" and noting that they "have been rejected by courts at all levels of the judiciary."). See, also, *Tracy v. Dep't of Revenue*, 133 Wis. 2d 151 (Ct. App. 1986); *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); *Norskog v. Dep't of Revenue*, 1999 Wisc. Tax LEXIS 19 (WTAC 1999); *Lonsdale v. C.I.R.*, 661 F. 2d 71 (5th Cir. 1981). Thus, the conclusion of the Commission over twenty years ago in *Betow v. Dep't 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. . . . 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 Department provided petitioner with authority informing him that arguments such as his have been deemed frivolous and groundless by the Commission and courts, and that making them could subject him to further assessments under Wis.

Stat. § 73.01(4)(am).¹ Petitioner nonetheless proceeded to waste this state's resources by pursuing his groundless and frivolous claims, thereby subjecting him to an additional assessment pursuant to § 73.01(4)(am).

ORDER

1. The Department's motion for summary judgment is granted, and its action on petitioner's petition for redetermination is affirmed.

¹ Though not obligated to do so, the Department provided petitioner with the Commission's decision in *Jerome Redcay v. Dep't of Revenue*, Docket No. 00-I-51-SC (Apr. 3, 2001). Although *Redcay* is a small claims case and therefore not of precedential value, see, e.g., *Hafner, et al. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-395 (WTAC 1998), the decision cites precedential authority establishing the groundlessness of claims such as those petitioner advances.

2. An additional assessment of \$300 is imposed on petitioner pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 16th day of September, 2004.²

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Acting Chairperson

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"

² This Ruling and Order is issued by a single Commissioner under the authority provided by Wis. Stat. § 73.01(4)(em)2, as created by 2003 Wisconsin Act 33, § 1614d.