

**STATE OF WISCONSIN**  
**TAX APPEALS COMMISSION**

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**KEITH ROWE**  
46400 West Jackson Lake Road  
Cable, WI 54821,

**DOCKET NO. 96-I-1025**

Petitioner,

vs.

**RULING AND ORDER**

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

Respondent.

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**DON M. MILLIS, COMMISSION CHAIRPERSON:**

This matter comes before the Commission on respondent's motion for partial summary judgment. Respondent has filed a brief and an affidavit in support of its motion. Petitioner has not responded to respondent's motion. Petitioner appears pro se. Respondent is represented by Attorney Robert C. Stellick, Jr.

Based on the submissions of respondent and the entire record in this matter, the Commission finds, rules, and orders as follows.

In a letter dated April 9, 1990, petitioner filed a claim for refund with respondent with respect to tax years 1971 through 1988. Implicit in petitioner's claim for refund was his argument that because he was a member of the U. S. Military Employee Retirement System as of December 31, 1963, Wisconsin improperly taxed his military

pension income during these years in light of the U. S. Supreme Court's decision in *Davis v. Michigan*, 489 U. S. 803 (1989).

On October 15, 1990, respondent issued a notice of action letter denying petitioner's claim for refund.

Because of ongoing litigation involving the application of *Davis v. Michigan*, respondent included on its notice of action letter a form on which petitioner could appeal respondent's denial of his claim for refund, thereby constituting a petition for redetermination. Petitioner executed this form, and it was filed with respondent on October 19, 1990.

On February 2, 1994, respondent and the Wisconsin Military Retirees Alliance ("WMRA") entered into an agreement to settle claims similar to those raised by petitioner. (Petitioner was a member of the WMRA.) This agreement provided, in essence, that respondent would offer to settle timely claims for refund for the years 1984 through 1988 filed by WMRA members for amounts of income tax that was collected on certain federal pension payments, plus interest.

Pursuant to this agreement, respondent sent the appropriate documents to petitioner offering to settle all of petitioner's refund claims in exchange for a series of six installment payments over a 30-month period commencing on May 15, 1994. These documents included a form for petitioner to complete proving his eligibility for settlement payments under the agreement with WMRA. Petitioner did not return the form.

On August 22, 1996, respondent once again sent the documentation to

petitioner attempting to reach a settlement pursuant to the agreement with WMRA. Again, petitioner did not respond to respondent's offer.

On October 30, 1996, respondent denied petitioner's petition for redetermination. Petitioner then filed a petition for review with the Commission on December 3, 1996.

At the time the petition for review was filed, the Commission had several thousand similar dockets involving the taxation of federal retirees. Unfortunately, this docket was lost in the morass of federal retiree cases, and neither party nor the Commission took action to ensure prosecution of this docket until respondent filed its motion for partial summary judgment on May 3, 2004.

On June 14, 2004, petitioner entered into an Agreement and Release with respondent under which petitioner will receive a payment from respondent of \$19,951.03, plus interest from December 31, 2003, to the date of the payment, in settlement of his claims for refund for 1985 through 1988.

The Agreement does not address petitioner's claim for refund with respect to 1971 through 1984, the years that are the subject of respondent's motion for partial summary judgment.

Section 71.75(2) of the 1990 Statutes provided that a claim for refund may be made not later than 4 years following the unextended due date of the return for the year which is the subject of the claim for refund. Petitioner's claim for refund was dated April 9, 1990. The claim for refund was timely only with respect to 1985 through 1988.

The unextended due date for the 1984 return was April 17, 1985,<sup>1</sup> nearly 5 years prior to petitioner's claim for refund.

Because the claim for refund with respect to years 1984 and before was not filed in a timely fashion, the Commission lacks subject matter jurisdiction over the petition for review with respect to these years, and to this extent, it must be dismissed. With respect to the years 1985 through 1988, respondent's action on the petition for redetermination must be modified as provided in the June 14, 2004, Agreement and Release.

### **ORDER**

Respondent's motion for partial summary judgment is granted, and the petition for review is dismissed with respect to years 1971 through 1984;

Respondent's action on the petition for redetermination with respect to years 1985 through 1988 is modified in accordance with the June 14, 2004, Agreement and Release and, as modified, is affirmed.<sup>2</sup>

Dated at Madison, Wisconsin, this 12th day of July, 2004.

**WISCONSIN TAX APPEALS COMMISSION**

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Don M. Millis, Commission Chairperson

**ATTACHMENT: "NOTICE OF APPEAL INFORMATION"**

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<sup>1</sup> April 15, 1985 was a Saturday, making the due date for 1984 returns April 17, 1985.

<sup>2</sup> This Ruling and Order is issued by a single Commissioner under the authority provided by section 73.01(4)(em)2 of the Statutes as created by 2003 Wisconsin Act 33, § 1614d.