

MITCHELL WILLIAM A 81CV2194 060581 DANE CTY CIR CT

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JUN 11 1981
LEGAL DIVISION

STATE OF WISCONSIN : IN CIRCUIT COURT : DANE COUNTY

#81 CV 2194

WILLIAM A. MITCHELL,

Plaintiff,

-vs-

MEMORANDUM

DECISION

SECRETARY OF REVENUE, MARK E.
MUSOLF, and CHIEF, CENTRAL
COMPLIANCE SECTION, W. H. WESCOTT,
and AUTOMATION ENGINEERING COMPANY,
AA ELECTRIC DIVISION, GENERAL
MANAGER, NEIL STEIN,

Defendants.

This action seeks a temporary injunction to prohibit the defendants from withholding income taxes pursuant to Ch. 71, Stats. The underlying action seeks a declaratory judgment and permanent injunctive relief.

Defendants move to dismiss the action for failure to state a claim upon which relief can be granted. I agree that the action must be dismissed.

Plaintiff filed Form WT-4 with his employer claiming exemption from withholding taxes. Sec. 71.20(14) Stats. The department voided the form as incorrect and sent notice of this fact to the plaintiff and his employer. Sec. 71.20(15)(b). The employer began withholding on the basis of five (5) exemptions [Plaintiff's last filed form deemed correct by the department].

The department acted within its statutory authority. Plaintiff's recourse is pursuant to Ch. 71 under administrative procedures set out therein. To seek the Court's intervention at this stage is premature and inappropriate.

After exhausting administrative procedures, review is available pursuant to Ch. 227. This could then raise a constitutional challenge to the administrative scheme legislatively authorized in Ch. 71.

Motion to dismiss is granted.¹

So ordered.

Dated: June 5, 1981.

BY THE COURT:



P. CHARLES JONES, CIRCUIT JUDGE
DANE COUNTY CIRCUIT COURT III

¹ This decision obviates any consideration of a stay in the administrative proceedings presently under way. Issues of primary jurisdiction and exhaustion of administrative remedies further support dismissal. As the Court said in Nodell Inv. Corp. v. Glendale (1977) 78-Wis. 2d 416, 427, n 13:

"Considering the doctrines of prior resort and of exhaustion together, the net result is in effect that the administrative agency is entitled to

(Footnote 1 cont'd.)

the first and the next-to-the-last word; It must be given an opportunity to speak first (this is the doctrine of prior resort) and it cannot be deprived of the power to pass upon the case until it has spoken its final word with reference thereto. The last word is the court's on judicial review."