

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

April 9, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1406

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

WILLIAM E. CURRIER,

Petitioner-Appellant,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent-Respondent.

APPEAL from an order of the circuit court for Milwaukee County:
WILLIAM D. GARDNER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. William E. Currier appeals, *pro se*, from an order of the circuit court, which affirmed a ruling and order of the Wisconsin Tax Appeals Commission. Currier claims that: (1) the Wisconsin Department of Revenue lacked jurisdiction to assess taxes against him and the Commission lacked jurisdiction to review the assessments; (2) the Department's action was barred by claim preclusion; (3) he was denied due process; and (4) the

Department filed a false claim against him in his bankruptcy action. Because both the Department and the Commission had proper jurisdiction; because claim preclusion does not apply; because Currier was not deprived of his due process rights; and because the claim filed in the bankruptcy action was not false, we affirm.

I. BACKGROUND

This case arises out of Currier's failure to file Wisconsin income tax returns for the tax years 1982 through 1990. In February 1992, the Department issued an estimated income tax assessment for those years in the amount of \$20,171. Currier filed a petition for redetermination and requested an informal conference. The Department denied the petition and the request for an informal conference.

In December 1992, Currier filed a petition for review with the Commission. In August 1994, the Commission granted the Department's motion for summary judgment and affirmed the Department's denial of Currier's petition for redetermination. The Commission determined that Currier had failed to establish that the Department's tax assessment was incorrect. Currier appealed to the circuit court, which affirmed the Commission's order. Currier now appeals.

II. DISCUSSION

A. Jurisdiction.

Currier claims that the Department did not have jurisdiction to assess taxes against him and the Commission did not have jurisdiction to review the assessments. We disagree. The Department is expressly authorized by statute to assess taxes against him under the circumstances present in this case. See §§ 71.74(3) and 71.80(1)(a), STATS.¹ The Commission's statutory

¹ Section 71.74(3), STATS., provides:

authority to review the assessment was invoked when Currier filed his petition for review. *See* § 73.01(5), STATS.

(..continued)

DEFAULT ASSESSMENT. Any person required to make an income or franchise tax return, who fails, neglects or refuses to do so in the manner and form and within the time prescribed by this chapter, or makes a return that does not disclose the person's entire net income, shall be assessed by the department according to its best judgment.

Section 71.80(1)(a), STATS., provides:

The department of revenue shall assess incomes as provided in this chapter and in performance of such duty the department shall possess all powers now or hereafter granted by law to the department in the assessment of personal property and also the power to estimate incomes.

B. Claim Preclusion.

Currier also claims that this action was barred by the doctrine of claim preclusion. He alleges that a writ of mandamus sought by the Department in 1984 to compel Currier to file his 1982 and 1983 Wisconsin income tax returns precludes the Department from enforcing the assessment in the instant case. We disagree.

Claim preclusion bars relitigating the same cause of action between the same parties when a valid, final judgment on the merits is rendered in a judicial proceeding. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-51, 525 N.W.2d 723, 727-28 (1995). In the instant case, the cause of action is different. The 1984 action sought to compel Currier to file tax returns. The instant action assessed taxes against Currier for the years 1982 through 1990. Further, there was no final judgment rendered in the 1984 action. Accordingly, claim preclusion does not apply.

C. Due Process.

Currier next claims that his due process rights were violated. Again, we do not agree. He contends that he was denied due process when the Department denied his request for an informal conference, and that the Commission evidenced bias towards him in rendering its decision. We reject both contentions.

In arguing he should have been granted an informal conference, Currier relies on WISCONSIN ADMINISTRATIVE CODE § 3.91(5), which provides:

INFORMAL CONFERENCE. A taxpayer may request in a petition for redetermination or at any time before the department of revenue has acted on the petition, an informal conference at which the facts and issues involved in the assessment or determination may be discussed. The conference shall be held at a time and place determined by the department.

Currier interprets this provision to mean that an informal conference is mandatory. We do not agree with Currier's interpretation. The only mandatory language relates to the time and place of the conference if the Department decides to grant the taxpayer's request.

In arguing that the Commission was biased against him, Currier cites the following paragraph from the Commission's decision:

Each year, the respondent, Wisconsin Department of Revenue, endures untold numbers of appeals filed by pro se taxpayers who, in the tortured logic of their discourse, imagine that they have scoured the statutes, cut the Gordian knot, and magically freed themselves from state income tax liability. This is such a case.

This quotation does not display evidence of bias. Rather, it is a conclusion regarding the position of the parties based on the evidence in the record.

Therefore, we reject Currier's due process arguments.

D. False Claim.

Finally, Currier claims the Department filed a false claim for a tax lien against him in his bankruptcy action. We have reviewed the claim filed by the Department. It does not represent that a tax lien has been filed. The document shows that it is an unsecured claim and that liability is contested. Accordingly, we reject Currier's argument on this issue.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.