

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

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**TOBIAS C. AND KAREN S. TOREM**  
5401 W. Keefe Avenue  
Milwaukee, WI 53216,

**DOCKET NOS. 03-I-223,  
03-I-224, 03-I-225, and 03-I-226**

Petitioners,

vs.

**DECISION AND ORDER**

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

Respondent.

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**JENNIFER E. NASHOLD, COMMISSIONER:**

The above-entitled matters came before the Commission for a hearing on March 7, 2005. Petitioner Tobias C. Torem appeared in person and represented himself. Petitioner Karen S. Torem did not appear, and her personal appearance was waived. Respondent, Wisconsin Department of Revenue (Department), appeared by Attorney Donald J. Goldsworthy. No post-hearing briefs were filed.

Having considered the entire record before it, the Commission finds, concludes, and orders as follows:

**FINDINGS OF FACT**

1. By notices dated April 8, 2002, the Department issued three separate assessments against petitioners for the years 1989 through 1996, which were

based on adjustments made by the federal Internal Revenue Service for those years, primarily for business mileage expenses claimed by petitioners on federal Schedule C of their tax returns. The first assessment was for years 1989, 1990, and 1991, in the amount of \$5,338.56; the second was for years 1992, 1993, and 1994, in the amount of \$5,701.64; and the third was for years 1995 and 1996, in the amount of \$3,362.29.

2. By notice dated April 8, 2002, the Department issued an additional assessment against petitioners for years 1997, 1998, and 1999, in the amount of \$3,431.26. This assessment was also based on adjustments made to business mileage expenses petitioners had claimed on their federal Schedule C. The total amount assessed for years 1989 through 1999 was \$17,833.75.

3. Petitioners filed timely petitions for redetermination with the Department with respect to all of the assessments.<sup>1</sup>

4. Mr. Torem is a rabbi. At the hearing held in this matter, he testified that the business mileage expenses claimed relate to his kosher supervision work, which includes visiting plants, factories, and farms to ascertain the kosher status of milk on farms and to assist in the production of kosher cheese.

5. Mr. Torem did not keep a log of miles traveled for his work, nor has he submitted any type of documentation to the Department or Commission demonstrating the business miles traveled for his work.

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<sup>1</sup> At the hearing, counsel for the Department submitted a letter from the attorney who represented petitioners at the time, dated May 6, 2002, which the Department represented was the petition for redetermination for each of the assessments. However, the captions of the Department's notices of action indicate that the petitions for redetermination were filed April 11, 2002. The Commission need not decide the actual date the petitions for redetermination were filed, as there is no dispute that they were timely filed with respect to each of the docket numbers before the Commission.

6. By notices of action dated April 10, 2003, received by petitioners on June 7, 2003, the Department denied petitioners' petitions for redetermination with respect to all of the assessments.

7. On August 4, 2003, petitioners filed timely petitions for review with the Commission with respect to all of the assessments.

### CONCLUSION OF LAW AND OPINION

Assessments made by the Department are presumed to be correct, and the burden is upon the petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. Wis. Stat. § 77.59(1); *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶202-401 (WTAC 1984). Tax exemptions, deductions, and privileges are matters of legislative grace and will be strictly construed against the taxpayer. *Fall River Canning Co. v. Dep't of Taxation*, 3 Wis. 2d 632, 637, 89 N.W.2d 203 (1958). A deduction can be granted only if there is clear and unambiguous language providing for the deduction; in cases of doubt, the statute must be strictly construed against granting the deduction. *Madison Gas and Electric Co. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-001 (WTAC 1982).

Petitioners have not presented any evidence or legal argument challenging the Department's assessments. Indeed, Mr. Torem's entire defense at hearing was his own assertion that he drove the miles legitimately during the course of his work. This assertion, with no documentation to substantiate it and no authority demonstrating that it represents a valid legal defense, is insufficient to rebut the presumption of correctness attendant to the Department's assessments. Because

petitioners have not shown any facts or authority that would entitle them to the relief they seek from this Commission, we are compelled to uphold the Department's assessments in these matters.

**ORDER**

The Department's actions on petitioners' petitions for redetermination are affirmed.

Dated at Madison, Wisconsin, this 19th day of July, 2005.

**WISCONSIN TAX APPEALS COMMISSION**

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Jennifer E. Nashold, Commissioner

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Diane E. Norman, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"