

medical insurance premiums paid by your wife when in fact her employer indicates such deduction did not take place."

3. The appellant was assessed additional tax, interest, and penalty (pursuant to s. 71.11(47), Stats.), for the years 1972, 1973, 1974, and 1975, following an audit conducted in 1976-1977.

4. This assessment was appealed to the Wisconsin Tax Appeals Commission as docket No. I-6061, in which the parties were the appellant and the respondent in this proceeding before the Personnel Board.

5. The Tax Appeals Commission in its final decision ruled that the 1972 assessment was foreclosed due to improper service of the notice of assessment, and affirmed the assessments for 1973, 1974 and 1975, including the negligence penalty imposed pursuant to s. 71.11(47), Stats.

6. It is found that the appellant negligently prepared Wisconsin income tax returns for the years 1973-1975 on the basis of incomplete records and estimates, contrary to the Wisconsin tax laws and his departmental training.

7. The appellant had claimed deductions in 1973 and 1974^{*} for medical insurance premiums. He stated to the Department of Revenue auditor that these were based on payroll deductions by an employer of his wife and on parts of his auto and home insurance policies which contained medical benefits, and on deductions from his state paid salary.

8. His wife's employer had not made such payroll deductions.

9. The appellant's insurance policies did not support the claimed deduction.

10. The appellant's work as a Tax Representative includes the collection of delinquent state taxes and the enforcement of state tax laws, and he has been trained in these duties.

* The Board deletes the year 1972 from the Proposed Decision because that assessment was rejected by the Tax Appeals Commission.

CONCLUSIONS OF LAW

1. This appeal is properly before the Board pursuant to s. 16.05(1)(e), Stats.
2. The burden of proof is on the respondent to show just cause for the discipline imposed.
3. The decision of the Tax Appeals Commission set forth in finding #5 is to res judicata or conclusive on the board with respect to those matters decided by the Tax Appeals Commission.
4. The respondent has satisfied its burden.
5. There was just cause for the 5 day suspension imposed in this case.

OPINION

The burden of proving just cause for employe discipline such as a suspension is on the employer (respondent). See Reinke v. Personnel Board, 53 Wis. 2d 123, 191 N.W. 2d 833 (1971). In evaluating whether just cause exists the supreme court has pointed out:

" . . . persons assume distinguishing obligations upon the assumption of specific government employment. Conduct that may not be deleterious to the performance of a specific governmental position, i.e. a department of agriculture employee may be extremely deleterious to the performance of another governmental occupation, i.e. teacher or houseparent in a mental ward." Safransky v. Personnel Board, 63 Wis. 2d 464, 475, 215 N.W. 2d 379 (1974).

The board has no difficulty in deciding that it is appropriate for the respondent to hold to a high degree of accountability a tax representative such as the appellant with respect to the handling of his own tax matters. Otherwise, public confidence in the department could be seriously impaired.

Hay v. DOR
Case No. 77-92
Page Four

The question of the appellant's tax liability was properly before the Tax Appeals Commission and the decision of that body is res judicata or binding on this board as to all matters decided by the Commission. See Martin v. DOT, Wis. Pers. Bd. No. 75-69 (4/11/78).

With respect to the second numbered paragraph of the letter of notice of suspension set forth in finding #2, although there was no objection on the grounds of inadequate notice, the board notes that with the exception of the example, it is quite general. There were six areas of deficiency and a relatively extensive audit. There were 78 pages of audit notes submitted as part of the respondent's case. It is unclear exactly which parts of the audit were considered by the respondent to constitute inappropriate behavior. The board does not reach the question of whether it would be appropriate to raise the question of the adequacy of the notice on its own motion. However, because the findings on charge #1 and the specific example under charge #2 amply support a conclusion of just cause, the board declines to analyze each of the many instances testified to by respondent's witnesses to attempt to determine if each constitutes an appropriate basis for the discipline imposed.

Finally, the board notes that one of appellant's arguments was that he was singled out for some kind of personally motivated harassment. The record reflects that the review of appellant's returns was one of approximately 500 such reviews of professional type department employees, and the record does not support the appellant's contention.

ORDER

The respondent's action imposing a 5 day suspension without pay is sustained

Hay v. DOR
Case No. 77-92
Page Five

and this appeal is dismissed.

Dated: June 16, 1978

STATE PERSONNEL BOARD

James R. Morgan, Chairperson *

* The appellant has requested that Mr. Morgan, formerly Secretary of the Department of Revenue refrain from participation in the discussion and decision of this case. Mr. Morgan left the department in February 1971, which was before the first year audited (1971) and the audit (1976). He has had no prior awareness of this case or the appellant. The request is denied.