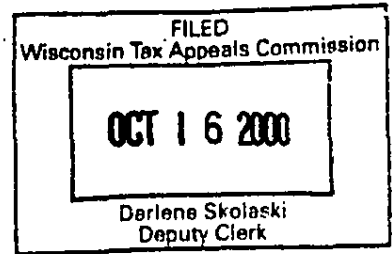


Lebiary



**STATE OF WISCONSIN
TAX APPEALS COMMISSION**

**ROSS L. BOSETTI
BRENDA BOSETTI**
7710 W. Evergreen Road
Waupaca, WI 54981

DOCKET NO. 00-I-53
DOCKET NO. 00-I-54

Petitioners,

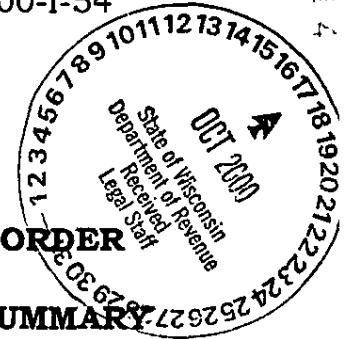
vs.

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

RULING AND ORDER

AWARDING SUMMARY

JUDGMENT



Respondent.

THOMAS M. BOYKOFF, COMMISSIONER:

These matters are before this commission on the motion of respondent Wisconsin Department of Revenue ("Department") for judgment on the pleadings or summary judgment. The Commission has reviewed both parties' submissions. The petitioners appear by Gene Bridges, d/b/a Associated Tax Consultants, of Billings, Montana. Attorney Veronica Folstad represents the Department.

Having considered the entire record, the Commission hereby finds, rules, and orders as follows:

Undisputed Material Jurisdictional Facts

1. Under date of September 15, 1999, Mr. Bosetti filed with the Department a claim for refund of all income taxes he paid with his 1996, 1997,

and 1998 Wisconsin income tax returns. Under the same date, Mrs. Bosetti filed a similar claim for refund, requesting a refund of all income taxes she paid with her 1997 and 1998 Wisconsin income tax returns.

2. In separate notices dated October 29, 1999, the Department notified petitioners that their respective claims for refund were denied.

3. Under date of November 11, 1999, each petitioner filed a petition for redetermination with the Department, which, under date of January 14, 2000, the Department denied.

4. Under date of March 16, 2000, petitioners filed timely petitions for review with this Commission.

Additional Undisputed Material Facts

5. Mr. Bosetti timely filed his 1996 Wisconsin income tax return (Form 1) as an unmarried "head of household." On the form, his address was E2215 Nelson Road, Waupaca, WI 54981-8731, and his Wisconsin income for the year was \$80,810.56. Attached to his tax return were one W-2 form and three 1099-R forms listing his address as above. Also attached to his tax return was a divorce judgment issued by the Winnebago County Circuit Court, dated September 14, 1992 but effective May 12, 1992, stating that before commencement of the divorce action (January 19, 1990), Mr. Bosetti was a resident of Wisconsin for at least six months and of Winnebago County for at least 30 days.

6. Petitioners timely filed a 1997 joint Wisconsin income tax

return (Form 1) on which their address was shown as E2215 Nelson Road, Waupaca, WI 54981, and on which their Wisconsin income was \$64,943.88. Four W-2 forms were attached, and the Nelson Road address was on each. Also attached was a copy of petitioners' federal income tax return containing a Schedule C in which Mrs. Bosetti indicated that she had engaged in a direct selling business and listed the Nelson Road address as her business address. Also attached was a copy of Mrs. Bosetti's divorce judgment issued by the Waupaca County Circuit Court, dated November 5, 1996. The judgment stated that before the commencement of the divorce action (date not specified), Mrs. Bosetti was a resident of Wisconsin for at least six months and of Waupaca County for at least 30 days.

7. Petitioners timely filed a joint 1998 Wisconsin income tax return (Form 1) on which their address was 7710 W. Evergreen, Waupaca, WI 54981, and on which their Wisconsin income was \$68,411.96. Three W-2 forms were attached, and the Evergreen address was on each. Also attached was a copy of petitioners' federal income tax return containing a Schedule C on which Mrs. Bosetti indicated that she had engaged in direct selling and listed her home address as her business address.

Conclusions of Law

1. There is no genuine issue of material fact, and these cases are appropriate for summary judgment. Wis. Stat. § 802.08.

2. Petitioner Mr. Bosetti was not a nonresident alien individual

for 1996 Wisconsin income tax purposes, nor were both petitioners nonresident alien individuals for 1997 and 1998 Wisconsin income tax purposes. Their claims for refund of taxes paid in those years were properly denied by the Department.

3. Petitioners' arguments that the Wisconsin income tax did not apply to them from 1996 to 1998 are frivolous and groundless, thereby subjecting petitioners to an additional assessment under Wis. Stat. § 73.01(4)(am).

Ruling

As the party moving for summary judgment, the Department must demonstrate that there is no genuine issue as to any material fact and that the Department is entitled to a judgment as a matter of law. Wis. Stat. § 802.08.

There is no issue of material fact in these cases. Petitioners do not dispute the facts. They only present some unique legal arguments based on the undisputed facts.

Under date of September 15, 1999, petitioners' Montana representative filed a claim for refund of petitioners' income taxes paid with their 1996 to 1998 Wisconsin income tax returns. Under the undisputed facts, petitioners made several assertions: (1) during the period involved, they were nonresident aliens and therefore, they believe, were not obligated to pay Wisconsin income tax; (2) they revoke their prior election to pay income taxes under an election nonresident aliens have pursuant to Internal Revenue Code ("IRC") §§ 871(b) and 6013(g) and request refunds of the Wisconsin income

taxes paid with their 1996 to 1998 income tax returns; (3) there is a "nexus" between the IRC and Wisconsin tax laws that excuses petitioners from paying Wisconsin income tax because they are nonresident alien individuals and the tax laws do not apply to them; and (4) the Wisconsin Statutes do not define "income".

Petitioners assert that they were nonresident alien individuals under federal tax law and, as such, were not subject to Wisconsin's income tax for 1996 to 1998. A nonresident alien individual is "an individual whose residence is not within the United States, and who is not a citizen of the United States." IRC Regulation § 1.871-2(a).

Petitioners are not nonresident alien individuals. They resided in Wisconsin at the Wisconsin addresses on their 1996 to 1998 Wisconsin income tax returns. During these years, Mr. Bosetti received substantial income from Wisconsin employers who provided him with W-2 forms containing his Wisconsin addresses. In 1997 and 1998, Mrs. Bosetti received income from Wisconsin employers which issued W-2 forms containing her Wisconsin address. She also reported losses from a small business which her federal Schedule C for each year stated was conducted in her Wisconsin residence. Petitioners' claim that they were nonresident alien individuals defies undisputed facts in their Wisconsin income tax returns, which petitioners

signed as true under penalties of law.¹

Petitioners assert that, as nonresident alien individuals, they revoke their election to pay Wisconsin income taxes under IRC §§ 871(b) and 6013(g). However, these provisions do not apply here because petitioners are not nonresident alien individuals.

Petitioners also assert that there is a "nexus" between the Internal Revenue Code and Wisconsin's income tax laws. They cite a federal Regulation interpreting a provision of the IRC which imposes the income tax on the income of citizens and residents of the United States. IRC Regulation § 1.1-1(a)(1). They then assert that they are nonresident alien individuals and that the income tax statutes do not apply to them. This argument engages in semantic gymnastics and illogically concludes that Wisconsin cannot tax the income of petitioners.

This is both absurd and irrelevant. Wisconsin's income tax is *not* imposed by the IRC. It is imposed by Wis. Stat. § 71.02(1) as follows:

... there shall be assessed, levied, collected and paid a tax on all net incomes of individuals ... by every natural person residing within the state ... [and others].

Both petitioners resided in Wisconsin when they filed their 1996, 1997, and 1998 Wisconsin income tax returns. The tax is, therefore, imposed on their incomes.

¹ Each of the three income tax returns involved here has the following statement above the signatures: "Under penalties of law, I declare that this return and all attachments are true, correct, and complete to the best of my knowledge and belief."

Petitioners further argue that the Wisconsin Statutes do not define "income." This is correct. However, "gross income" is defined in Wis. Stat. § 71.03(1), in part, as follows:

... "gross income" means all income, from whatever source derived and in whatever form realized, whether in money, property or services, which is not exempt from Wisconsin income taxes. "Gross income" includes, but is not limited to, the following items: compensation for services, including salaries, wages and fees, commissions and similar items; gross income derived from business; ... annuities; ... pensions;

This definition includes salaries, wages, gross income derived from business (in Mrs. Bosetti's case, a loss), annuities, and pensions. These comprise all the income received and reported by Mr. Bosetti in tax years 1996 to 1998 and by Mrs. Bosetti in tax years 1997 and 1998.

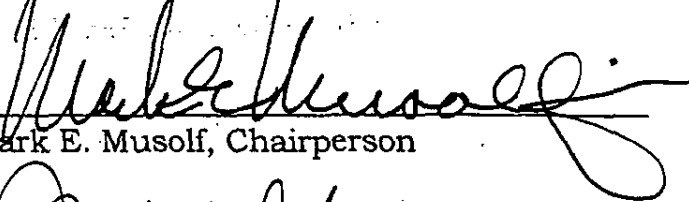
Petitioners have only offered groundless and frivolous arguments in trying to prove their case. Therefore, an additional assessment of \$500 is imposed, as provided in Wis. Stat. § 73.01(4)(am).

ORDER

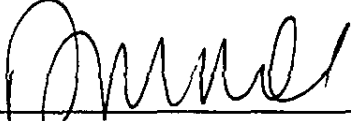
1. The Department's motion for summary judgment is granted, and its actions on petitioners' petitions for redetermination are affirmed.
2. Petitioners are assessed an additional \$500 pursuant to Wis. Stat. § 73.01(4)(am), as it appears to the Commission that their position in this proceeding is frivolous and groundless.

Dated at Madison, Wisconsin, this 16th day of October, 2000.

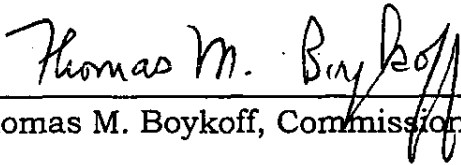
WISCONSIN TAX APPEALS COMMISSION



Mark E. Musolf, Chairperson



Don M. Millis, Commissioner



Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"