

STATE OF WISCONSIN
TAX APPEALS COMMISSION

RAYMOND BARTON,

DOCKET NO. 06-I-117
 and 06-I-118

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE

Respondent.

DIANE E. NORMAN, COMMISSIONER:

This matter comes before the Commission for a ruling on a motion to dismiss and, in the alternative, for summary judgment filed by respondent, the Wisconsin Department of Revenue (“Department”). Petitioner, Raymond Barton, appears *pro se* and has submitted a response to respondent’s motion, affidavits with exhibits, a motion to strike the Department’s affidavit in support of its motion and a memorandum of law in opposition to the Department's motion. The Department is represented by Attorney Lisa Ann Gilmore, who has submitted an affidavit with exhibits, a memorandum of law, and a reply brief in support of the motion.

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

JURISDICTIONAL AND MATERIAL FACTS

1. Petitioner was a full-time resident of the state of Wisconsin for all of the years 1997 through 2004 (“the years at issue”). (Affidavit of Lisa Ann Gilmore, ¶ 2.)

2. By correspondence dated September 22, 2005, the Department informed petitioner that the Internal Revenue Service (“IRS”) had reported taxable income received by petitioner for the years at issue and requested that petitioner file Wisconsin individual income tax returns for those years. (Gilmore Aff., Exh. 1.)

3. Petitioner has failed to file a Wisconsin individual income tax return for any of the years at issue. (Gilmore Aff., ¶ 6.)

4. By notice dated November 14, 2005, the Department issued to petitioner an assessment of income tax for the years 1997 through 2000 in the amount of \$30,233.43, including tax, delinquent interest, penalties and fees. (Gilmore Aff., Exh. 2.)

5. By notice dated November 14, 2005, the Department issued to petitioner another assessment of income tax for the years 2001 through 2004 in the amount of \$34,279.46, including tax, delinquent interest, penalties and fees. (Gilmore Aff., Exh. 3.)

6. By correspondence dated November 25, 2005, petitioner filed with the Department a document entitled, “Written Response To Form Letter of September 22, 2005. AND ENTRY OF FINAL ADMINISTRATIVE DETERMINATION VIA TACIT PROCURATION.” (Gilmore Aff., Exh. 4.) In relevant part, this document questions the authority of the Department to assess income tax pursuant to Chapters 71 or 77 of the Wisconsin Statutes because petitioner alleges that these chapters are of an “unknown and uncertain authority.”¹ (Gilmore Aff., Exh. 4, p. 3.) The document also contains several questions and answers regarding the November 14, 2005 assessments (“the assessments”) in which all answers deny petitioner’s liability to pay any income taxes

¹ Petitioner received from the Department copies of Chapters 71 and 77 of the Wisconsin statutes that are attached to his “Reply to Answer” filed with the Commission on June 19, 2006.

pursuant to the assessments. (Gilmore Aff., Exh. 4, pp. 4-6.) Following the questions and answers, the document contains a section entitled, "FINAL ADMINISTRATIVE DETERMINATION," which states that petitioner had responded to all questions in the Department's September 22, 2005 correspondence, that he was under no obligation "to file returns, answer form letter requests, complete forms or supply private information," and that the assessments "are hereby abated and withdrawn - effective immediately." (Gilmore Aff., Exh. 4, p. 6.) Following this section, the document states:

DETERMINATION FINAL

This determination becomes FINAL unless specifically objected to in detail within (14) days of receipt. Extension of time herein granted if statutory authority is cited within said (14) days, which provides for greater timeframe. (Emphasis in original.)

(Gilmore Aff., Exh. 4, p. 7.)

7. The Department treated petitioner's November 25, 2005 document as a petition for redetermination of both of the assessments.

8. By correspondence dated December 21, 2005, petitioner filed with the Department a document entitled, "Appeal and Written Objection to (2) NOTICE OF AMOUNT DUE Bearing The Following File Numbers: 391063406/6/1000000000/0 and 391063406/6/2 000000000/0 AND ENTRY OF FINAL ADMINISTRATIVE DETERMATION VIA TACIT PROCURATION." (Petitioner's Affidavit in Support of Response to Motions to Dismiss/Summary Judgment, Exhibit 4.) This document also contains a series of questions along with answers that generally deny petitioner's liability for the assessments and conclude with the following paragraph:

DETERMINATION FINAL

This determination becomes FINAL unless specifically objected to in detail within (14) days of receipt. Extension of time herein granted if statutory authority is cited with said (14) days, which provides for greater timeframe. (Emphasis in original.)

(Petitioner's Aff., Exh. 3, p. 3.)

9. By Notice of Action letters dated February 20, 2006, the Department denied the petition for determination for both assessments. (Gilmore Aff., Exhs. 5 and 6.)

10. Petitioner filed a document entitled "NOTICE OF DEFAULT" with the Commission by certified mail on April 21, 2006, in which he objected to the assessments. In relevant part, this document states that the assessments have been resolved with the documents entitled, "ENTRY OF FINAL DETERMINATION VIA TACIT PROCURATION" dated November 25, 2005 and December 21, 2005 and that the Department is precluded from protesting these final determinations in any subsequent proceeding.

11. The "NOTICE OF DEFAULT" document filed with the Commission by petitioner by certified mail on April 21, 2006 shall be considered a timely filed petition for review for both assessments.

12. On October 11, 2006, the Department filed its motion to dismiss and, in the alternative, for summary judgment.

13. On November 28, 2006, petitioner filed his response to the motion which, in relevant part, states that the Department has no evidence to support the income amounts found in the assessments and that these matters have been resolved with the documents entitled, "ENTRY OF FINAL DETERMINATION VIA TACIT

PROCURATION” dated November 25, 2005, so that the Department is “precluded from arguing, attempting to controvert, or otherwise protest the finality of those administrative findings/determinations in this, or any subsequent process, whether administrative or judicial.” (Emphasis in original.)

14. Included with petitioner’s response filed November 28, 2006, is a “Notice of Motion and Motion to Strike Respondent’s Affidavit in Support of Motion to Dismiss/Summary Judgment,” which requests that the Commission strike portions of Attorney Lisa Ann Gilmore’s affidavit, alleging that certain statements of facts in the affidavit are not true. In relevant part, petitioner states that the amounts of income found in the assessments were “merely pulled out of thin air.” (Emphasis in original.) Further, petitioner states that he challenges the authority of Chapters 71 and 77 of the Wisconsin Statutes which he states are “of an unknown and uncertain authority and are therefore invalid.”

15. On December 8, 2006, the Department filed its reply brief.

RULING

Summary judgment is warranted where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Wis. Stat. § 802.08(2).

Wisconsin Statutes § 71.02(1) provides that “there shall be assessed, levied, collected and paid a tax on all net incomes of individuals . . . residing within the state” Net income is derived from gross income, after subtracting allowable statutory deductions and exemptions. See Wis. Stat. § 71.01(16) (defining “Wisconsin

taxable income”). “Gross income” is defined as “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,” and includes, but is not limited to, wages, salaries, commissions, and other compensation for services. Wis. Stat. § 71.03(1).

“Any person required to file an income . . . tax return, who fails, neglects or refuses to do so . . . shall be assessed by the department according to its best judgment.” Wis. Stat. § 71.74(3). In the performance of its duty to assess incomes, the Department is empowered to estimate incomes. Wis. Stat. § 71.80(1)(a). Assessments made by the Department are presumed to be correct, and the burden is on petitioners to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984); Wis. Stat. § 77.59(1).

The Department estimated petitioner’s Wisconsin gross income for the years at issue because petitioner failed to file a Wisconsin income tax return for any of the years at issue. The Department received information from the IRS that petitioner had received taxable income for the years at issue, estimated petitioner’s income for those years at issue and issued the assessments based on those estimates. While petitioner argues that the annual incomes that have been estimated by the Department were “pulled out of thin air,” he offers no evidence to show that the amounts of the estimates are incorrect. The Department was authorized to estimate petitioner’s incomes under Wis. Stat. § 71.74(3) and petitioner had the burden to show that the estimates and the resulting assessments were incorrect. Petitioner has failed to meet this burden of proving that the assessments are incorrect in any way and there is no

genuine issue of material fact in this case. The Department is entitled to judgment as a matter of law.

Petitioner also claims to void the assessments by attempting to replace Wisconsin statutes with rules he has invented while failing to address whether or not he is liable for the assessments. He argues that the letters and documents he sent to the Department after receiving the assessments preclude the Department from any further argument that petitioner is liable for the assessments. However, petitioner cites no authority for this assertion. These letters and documents were not requests for admissions, as there was no litigation going on at the time. Petitioner was not entitled to require a response from the Department to his baseless pre-litigation letters. Petitioner's arguments will not be sanctioned by the Commission simply because the Department did not respond in the time period demanded by petitioner's letters prior to filing his petition for review with the Commission.

Petitioner also seems to be arguing that the State of Wisconsin has no authority to impose taxes on him since he stated that Chapters 71 and 77 of the Wisconsin Statutes are of "unknown and uncertain authority and are therefore invalid." These arguments and ones like them are groundless and frivolous, and have never prevailed in Wisconsin, nor, as far as the Commission is aware, in any court in the country. See *Bierman v. C.I.R.*, 769 F. 2d 707, 708 (11th Cir. 1985) (finding similar arguments "patently frivolous" and noting that they "have been rejected by courts at all levels of the judiciary"); *Tracy v. Dep't of Revenue*, 133 Wis. 2d 151 (Ct. App. 1986); *Steele v. Dep't of Revenue*, WTAC Docket No. 05-I-79 (December 12, 2005); *Kroeger v. Dep't of Revenue*, WTAC Docket No. 04-I-228 (March 21, 2005); and *Boon v. Dep't of Revenue*, 1999

Wisc. Tax LEXIS 7 (WTAC 1999), *aff'd on other grounds* (Milwaukee Co. Cir. Ct. 1999).

There is no genuine issue of material fact in this case, and the Department is entitled to summary judgment as a matter of law. Based on the applicable statutes and cases cited herein, we further find that petitioner knew, or should have known, that his appeal was without reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. Petitioner's appeal is therefore frivolous and groundless. Consequently, petitioner is subject to an additional assessment of damages under Wis. Stat. § 73.01(4)(am). Wis. Admin. Code § TA 1.63.

IT IS ORDERED

1. The Department's motion for summary judgment is granted, and its action on petitioner's petition for redetermination is affirmed.
2. Petitioner's "Motion to Strike" is denied.
3. An additional assessment of \$300.00 is imposed on petitioner pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 8th day of February, 2007.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"