

STATE OF WISCONSIN
TAX APPEALS COMMISSION

AARON BYRNE,

DOCKET NO. 09-I-132

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

This case comes before the Commission on the motion of the Respondent, the Wisconsin Department of Revenue (the "Department"), for summary judgment on the basis that there is no genuine issue of material fact and the Department is entitled to judgment as a matter of law under Wis. Stat. § 802.08 and Wis. Admin. Code § TA 1.31. Petitioner Aaron Byrne appears *pro se* in this case and has not filed a response to the motion. Attorney Linda M. Mintener represents the Department and has filed a notice of motion, motion and affidavit with exhibits in support of the motion.

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

FINDINGS OF FACT

1. On September 6, 2006, the Department received notice from the Internal Revenue Service ("IRS") pursuant to § 6103(d) of the Internal Revenue Code that the IRS had adjusted the Petitioner's federal income tax for the year 2003. (Affidavit of Attorney Linda M. Mintener dated October 5, 2009 ("Mintener Aff."), ¶ 2,

Ex. 1-2.)

2. By a Notice of Amount Due and Office Audit Worksheet dated February 23, 2009, the Department notified the Petitioner that it had adjusted his Wisconsin income tax for 2003 based on the IRS adjustment of his federal income tax for that same year, resulting in a total amount due of \$4,247.03, including tax, interest and penalty. (Mintener Aff. ¶ 3, Ex. 2.)

3. On or about February 27, 2009, the Petitioner filed a petition for redetermination with the Department. (Mintener Aff. ¶ 4, Ex. 3.)

4. By a Notice of Action dated May 20, 2009, the Department denied the Petitioner's petition for redetermination. (Mintener Aff. ¶ 5, Ex. 4.)

5. On July 21, 2009, the Commission received the Petitioner's petition for review dated July 17, 2009.

6. On August 7, 2009, the Department filed an answer to the petition.

7. On October 5, 2009, the Department filed a notice of motion and motion for summary judgment with attached affidavit and exhibits in support of the motion.

8. On October 9, 2009, the Commission issued a briefing order requiring the Petitioner to file a response to the Department's motion by November 9, 2009.

9. The Petitioner did not file a response to the motion.

CONCLUSION OF LAW

There is no genuine issue of material fact in this matter and the Department is entitled to judgment as a matter of law pursuant to Wis. Stat. § 802.08 and Wis. Admin. Code § TA 1.31.

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). If the moving party has established a *prima facie* case for summary judgment, then the opposing party must establish that there is a genuine issue of material fact that entitles that party to a trial. *Grams v. Boss*, 97 Wis.2d 332, 338, 294 N.W.2d 473 (1980). The Commission concludes that the Petitioner has not shown that there is a genuine issue of material fact in dispute in this case, and the Department therefore is entitled to judgment as a matter of law.

Assessments made by the Department are presumed to be correct, and the burden is on the Petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984); Wis. Stat. § 77.59(1). In order to prove that an assessment is incorrect, a petitioner must begin by responding to Department motions and complying with the Commission's orders.

In this case, the Petitioner challenges the Department's adjustment to his 2003 return and resulting assessment on two bases. First, the Petitioner argues that the

IRS should have notified him of the requirement to contact the Department regarding the federal adjustment. Second, the Petitioner argues that the assessment is barred by the 4-year statute of limitations. In response, the Department argues that, pursuant to Wis. Stat. § 71.76, the Petitioner was required to notify the Department of the IRS adjustment to his 2003 federal income tax within 90 days of the IRS' final determination in his case, and his failure to do so extended the period in which it could issue this assessment pursuant to Wis. Stat. § 71.77(7)(b).

The Petitioner does not dispute that he did not provide the required notice to the Department, and also does not dispute the accuracy of the additional income tax assessed by the Department. Rather, he argues that the IRS should have notified the Department and that the Department should have acted more quickly, resulting in reduced interest. He also argues that the errors made on his 2003 returns were caused by faulty tax preparation software and he therefore should not be assessed a penalty.

Regarding the interest assessed, no statute permits the waiver or abatement of the applicable interest charges, and the Commission has previously held that it does not have jurisdiction to review such mandatory interest on delinquent taxes. *See, French v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-213 (WTAC July 25, 1983). Thus, we find that the interest charges included in this assessment are required by statute. Regarding the penalty, the Petitioner did not respond to the Department's motion, and this argument is underdeveloped in the petition for review. Based on the record before us, it appears that the Department assessed the penalty due to the Petitioner's failure to provide the notice required by Wis. Stat. § 71.76 of the federal

adjustment to his 2003 income tax. While the Petitioner's initial error in calculating his 2003 income tax may have been due to good cause, he does not provide any explanation for his failure to notify the Department of the federal adjustment.

With respect to the applicable statutes, the Department's position is correct. The IRS is not required to notify taxpayers of potential state income tax consequences to its actions. However, the Petitioner was required to notify the Department of the IRS adjustment to his 2003 federal income tax. Wis. Stat. § 71.76. Because the Petitioner did not provide the required notice, the 4-year statute of limitations for actions related to the Petitioner's 2003 return began tolling on September 6, 2006, when the Department received notice of the federal adjustment for 2003 from the IRS. Wis. Stat. § 71.77(7)(b). The Department issued this assessment on February 23, 2009, well within the 4-year period allowed by the applicable statute of limitations.

We find that the Department has presented a *prima facie* case in support of its motion, and the Petitioner has not responded. We further find that none of the Petitioner's arguments made in his petition for review establish that there is a genuine issue of material fact in this matter that would necessitate a hearing. Therefore, we find that there is no genuine issue of material fact in this case and the Department is entitled to summary judgment as a matter of law.

ORDER

The Department's motion for summary judgment is granted and its action on the Petitioner's petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 5th day of February, 2010.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger W. Le Grand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"