

STATE OF WISCONSIN
TAX APPEALS COMMISSION

HARTLAND DONLEY,

DOCKET NO. 06-I-225

Petitioner,

vs.

DECISION AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DIANE E. NORMAN, ACTING CHAIRPERSON:

This matter came before the Commission for a hearing on July 19, 2007. Petitioner, Hartland Donley (“petitioner”), appeared in person and represented himself. Respondent, Wisconsin Department of Revenue (“Department”), was represented by Chief Counsel Dana Erlandsen. The parties presented testimony and evidence at the hearing.

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

JURISDICTIONAL FACTS

1. On December 26, 2005, the Department sent a Notice of Amount Due to petitioner for an assessment of income tax plus interest, negligence penalty and fees in the amount of \$6,431.59 for the years 1997, 1998 and 1999 (the “period under review”) (Exhibit 1).

2. By correspondence mailed on February 27, 2006, petitioner filed a request for redetermination of the assessment (Exhibit 2).

3. Under the date of July 31, 2006, the Department sent a Notice of Action to petitioner denying his petition for redetermination (Exhibit 3).

4. On September 6, 2006, petitioner filed a timely petition for review of the assessment with the Commission.

OTHER FACTS

5. The parties in this matter have stipulated that petitioner had health-related problems beginning in 1991 that may have affected his ability to complete his income tax returns and payments in a timely manner during the period under review.

6. Even though he had not yet filed his Wisconsin income tax returns for the years 1994 through 1999 in a timely manner, petitioner made estimated income tax payments in an attempt to pay all of his taxes in a timely manner. These payments were made by check without any accompanying forms or vouchers to identify where to apply these payments.

7. Petitioner made an estimated tax payment by check #11653 for \$1,500 dated April 15, 2000 that he intended to apply to his 1999 income tax (Exhibit 2, page 4). This check did not contain any memorandum nor was it sent with any accompanying form or voucher indicating where to apply the payment.

8. The Department did not apply petitioner's tax payment of \$1,500 by check #11653 to his 1999 income tax. Instead, the Department applied this payment to a delinquent tax assessment for petitioner's 1995 estimated income tax.

9. Petitioner filed his Wisconsin income tax returns for the years 1989 through 1995 in 1997 (Exhibit A).

10. Petitioner received a statement of delinquent tax account dated

December 1, 1997 from the Department which stated that all delinquent taxes had been paid (Exhibit C). Petitioner thought this included all taxes due for 1995, but the statement does not indicate that his 1995 income taxes had been paid.

11. Because petitioner had failed to file his Wisconsin income tax return for 1995 in a timely manner, the Department estimated petitioner's income tax for this year and issued an assessment to him of income tax plus interest, negligence penalties and late fees in the amount of \$1,909.56 on December 1, 1997 (Exhibit 7). Petitioner did not appeal this assessment, so it became a final determination 60 days later on January 30, 1998. Since this tax assessment was unpaid when it became a final determination, it became delinquent. The Department created a delinquent account for this assessment on February 20, 1998 (Exhibit 8).

12. The Department credited petitioner's delinquent 1995 income tax account with payments received as follows (Exhibit 6):

- a. Check #10987 for \$35 dated June 25, 1998
- b. Check #10997 for \$200 dated August 25, 1998
- c. Check #11653 for \$1,500 dated April 15, 2000
- d. Check #1186 for \$446.26 dated November 14, 2000

13. Petitioner filed his Wisconsin income tax returns for the years 1997, 1998 and 1999 in the spring of 2005.

14. Petitioner admitted at the hearing that he does not dispute the assessments for 1997 and 1998. His only dispute is whether his Check #11653 dated April 15, 2000 for \$1,500 should have been applied to his 1999 income tax instead of being applied to his delinquent 1995 income tax assessment.

ISSUES

Did the Department err when it applied petitioner's check #11653 dated April 15, 2000 for \$1,500 to his delinquent 1995 income tax assessment instead of applying it to his 1999 Wisconsin income tax?

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. *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984); Wis. Stat. § 77.59(1).

Petitioner failed to prove by clear and satisfactory evidence that his tax payment of \$1,500 dated April 15, 2000 was misapplied by the Department. He intended that it be applied to his 1999 income taxes and instead, the Department applied the funds to his delinquent 1995 income tax assessment. Petitioner has failed to show that the Department erred in its application of this tax payment.

It is a confusing situation for petitioner because he did not file several income tax returns in a timely manner. Because of his failure to file, the Department estimated petitioner's income for the period under review, and the 1995 assessment went delinquent after other assessments had already become delinquent. When petitioner sent in income tax payments, the Department applied those payments to unpaid delinquent accounts. This was not necessarily what petitioner intended, but there was no way to determine petitioner's intent for the payments when petitioner sent them in without an accompanying form, voucher or instructions as to what year the payment was to be applied. Since petitioner's payments were being applied to

delinquent accounts instead of current assessments, it became difficult for him to determine when assessments had been paid.

When petitioner received the Department's notice dated December 1, 1997 stating that all delinquent tax accounts were paid in full, he mistakenly thought this notice meant that his 1995 income tax assessment had been paid. The notice did not state that petitioner's 1995 income tax assessment had been paid. In fact, the Department did not issue the estimated assessment for petitioner's 1995 income tax until that same day. Because the 1995 assessment did not become delinquent until 60 days after December 1, 1997, it was not reflected at all on the delinquent tax statement.

While this situation is confusing for petitioner, he has failed to show that the Department erred in applying his April 15, 2000 payment of \$1,500 to his 1995 delinquent income tax assessment instead of to his 1999 income tax as he had intended.

ORDER

The Department's action on petitioner's petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 11th day of October, 2007.

WISCONSIN TAX APPEALS COMMISSION

Diane E. Norman, Acting Chairperson

David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"