

STATE OF WISCONSIN
TAX APPEALS COMMISSION

HARRY AND GEORGIA HALL,

Petitioner,

DOCKET NOS. 16-I-280, 16-I-281,
16-I-282, 16-I-283, 16-I-284,
16-I-285, 16-I-286, 16-I-287,
16-I-288, AND 16-I-289

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

In an order dated January 10, 2017, the Commission dismissed these cases based upon the Department's withdrawal of its assessments. Petitioners have moved for costs pursuant to Wis. Stat. § 227.485. We grant Petitioners' Motion in part.

FACTS

1. At some point prior to August 2015, Respondent (the "Department") learned from the Internal Revenue Service that for a number of years Petitioners had several sources of Wisconsin income associated with Petitioners' Wisconsin address. (Affidavit of Resolution Officer Carrie Kloss ("Kloss Aff."), ¶ 3, Ex. 1.)

2. In a letter dated August 3, 2015, the Department sent its first inquiry to Petitioners because Petitioners had not filed Wisconsin tax returns during the years for which they had Wisconsin income, 2005-2013. (Kloss Aff., Ex. 2.)

3. Petitioners responded by indicating that they had set up legal

residence in Louisiana in December 2004. (Kloss Aff., Ex. 3.)

4. In a letter dated September 1, 2015, the Department explained that it needed more information to determine Petitioners' legal domicile and asked Petitioners to complete a residency questionnaire. The Department noted Petitioners had received, at their Wisconsin address, W-2s reporting pension and social security income. The Department also observed that Petitioners had a vehicle registered in Wisconsin, one of them had a Wisconsin driver's license, and they owned property in Wisconsin. (Kloss Aff., Ex. 4.)

5. Petitioners responded with a letter dated October 16, 2015, in which they explained their presence in both states. The letter confirmed that Petitioners did spend several months each year in Wisconsin, they had a vehicle registered and insured in Wisconsin, and Mr. Hall had healthcare providers in Wisconsin. (Kloss Aff., Ex 5.)

6. In a letter dated November 12, 2015, the Department notified Petitioners that the Department had concluded that the Petitioners were in fact Wisconsin residents. Petitioners were requested to send additional information "so that the department can better determine your residency status." The letter contained a list of questions and a request for both federal and Louisiana tax returns for the years in question. (Kloss Aff., Ex. 6.)

7. In a letter dated December 21, 2015, Petitioners responded or partially responded to some of the questions outlined in Ex. 6, but Petitioners did not enclose the Louisiana tax returns. The letter mentioned that Petitioners were in Wisconsin May through October, that they received mail at their Wisconsin address,

and confirmed that their vehicle was registered in Wisconsin. (Kloss Aff., Ex. 7.)

8. When no additional information was received, the Department issued its Notices of Tax Due on January 27, 2016. The Department sent nine separate notices, one for each of the tax years 2005-2013.¹ (Kloss Aff. Ex. 8.)

9. With a letter dated March 25, 2016, Petitioners requested a redetermination of the Department's Notices. (Kloss Aff., Ex. 9.)

10. In investigating for its redetermination, the Department sent a letter dated August 8, 2016, once again asking for details of the residency issues and requesting copies of the Petitioners' Louisiana tax returns. The letter further noted that, because the Department's time in which to act was expiring shortly, Petitioners needed to sign an enclosed extension agreement "to keep your appeal pending at this level." If the agreement was signed by August 26, 2016, Petitioners would then have until September 30, 2016, to provide the requested information. (Kloss Aff., Ex. 10.)

11. Ms. Kloss followed up with reminder letter dated September 14, 2016, which indicated that the "department would like to base its response to your objection fairly and on the full facts, rather than on limited information on file." (Kloss Aff., Ex. 11.)

12. Receiving no response, on September 29, 2016, the Department issued Notices denying the Petitioners' Requests for Redetermination.² In a letter of the same date, the Department indicated that it would withdraw the notices if the

¹ Exhibit 8 includes Notices only for the tax years 2005-2013, but the cases before the Commission also include 2014.

² Like Exhibit 8, Exhibit 12 also only includes Notices for the tax years 2005-2013, but the cases before the Commission also include 2014.

Petitioners would sign the extension agreement. (Kloss Aff., Ex. 12.)

13. Petitioners responded by filing ten³ Petitions for Review with Tax Appeals Commission on November 28, 2016. Attached to the Petitions were many documents responsive to the Department's earlier requests, including one Louisiana tax return, for the year 2005, and an email purportedly confirming that Petitioners had filed tax returns in Louisiana for the tax years 2005-2009. (Commission file.)

14. With the Petitions, Petitioners paid ten \$25 filing fees for a total of \$250. (Commission file.)

15. By letter dated January 5, 2017, Attorney Kelly Altschul, counsel for the Department, notified the Commission that the Department was canceling the assessments at issue. (Commission file.)

16. Via email dated January 5, 2017, and clarified by subsequent email letter dated January 9, 2017, Petitioners moved for costs.

17. There being no issues remaining in dispute in the underlying cases, on January 10, 2017, the Commission issued an order dismissing the Petitions for Review along with a briefing order relating to the issue of costs. (Commission file.)

18. Both sides have submitted arguments and supporting documents regarding Petitioners' Motion for Costs. (Commission file.)

³ See earlier footnotes.

DECISION

Petitioners bring this motion pursuant to Wis. Stat. § 227.485. That subsection states:

In any contested case in which an individual . . . is the prevailing party and submits a motion for costs under this section, the hearing examiner shall award the prevailing party the costs incurred in connection with the contested case, unless the hearing examiner finds that the state agency which is the losing party was substantially justified in taking its position or that special circumstances exist that would make the award unjust.

Most cases involving motions for costs involve motions brought after a verdict, so the prevailing party is clearly determined. With a voluntary dismissal, the identity of a “winning” and “losing” party is not so clear. Less clear is the appropriateness of awarding costs. Even if Petitioners can be considered a prevailing party, an award of costs in this case is not always appropriate. *See Behnke v. DHSS*, 146 Wis. 2d 178, 183, 430 N.W.2d 600, 602 (Ct. App. 1988). Caselaw emphasizes that the statute provides for an award of costs *unless* we find that the Department was “substantially justified in taking its position” or in cases where special circumstances exist that would make the award unjust. *Behnke*; Wis. Stat. § 227.485.

In this case, before bringing its assessments, the Department had reason to believe Petitioners were Wisconsin residents with unreported Wisconsin income. They owned property in this state, they had pension income in this state, they registered a vehicle in this state, and they purchased vehicle insurance in this state. Mrs. Hall had a Wisconsin driver’s license.

The Department requested additional information such as Louisiana tax

returns, which it did not receive. Eventually, the Department issued its assessments. The Petitioners requested a redetermination. The Department continued to request additional information. When the Department ran short of time to complete its investigation, it offered to extend the time limit for its redetermination, but the Halls did not sign the agreement to extend. The Department then denied the Petitions for Redetermination, and the Petitioners appealed to the Commission.

Throughout the process, the Petitioners did provide explanations, some of which continued to indicate the possibility of their being legal residents of Wisconsin. They confirmed a post office address in Wisconsin for the condo they owned in Wisconsin. They indicated that they lived in Wisconsin May through October (approximately six months). Mr. Hall had healthcare providers in Wisconsin. They had a vehicle registered in Wisconsin, insured in Wisconsin, driven in Wisconsin.

We note that the Commission need not be convinced of the merits of the Department's assessments, nor in fact does the Department. The question before the Commission regarding a claim for costs is whether the Department had a reasonable basis for bringing its assessments.

The Department required and requested substantiation for Petitioners' assertion that they were not domiciled in Wisconsin. While Petitioners complied with quite a few of the Department's requests, they did not submit all the requested information. For example, the Petitioners did not submit their Louisiana tax returns or a listing of the dates when Petitioners were physically in Wisconsin. These pieces of information were important to the Department's determination. When, despite more

than one request, these items were not received by the September 2016 deadline for the Department to act on the Petitions for Redetermination, the Department denied the Petitions. When some of the requested tax information was submitted with the Petitions for Review at the Commission, the Department was satisfied that Petitioners were in fact legal residents of Louisiana. Accordingly, the Department withdrew its assessments at that time.

We do not find the Department's actions from assessment through dismissal at the Commission unreasonable. The Commission finds the Department was substantially justified in assessing the Petitioners as Wisconsin residents who had not reported Wisconsin income.

We are, however, troubled by the nine separate assessments made by the Department for nine separate years. The assessments were all issued on the same date based on the same set of facts, the same investigation, and the same conclusions regarding Petitioners' state of legal residence. The Department often issues single assessments covering multiple years, and we see no reason the Department could not have done so in this case. Petitioners should only have needed to pay one \$25 filing fee for its appeal to the Commission. Therefore, we award costs to reimburse Petitioners for the numerous duplicative filing fees associated with their Petitions for Review.

CONCLUSIONS OF LAW

1. The Department was substantially justified in bringing its assessments against the Petitioners.

2. Other than as provided below, Petitioners are not entitled to recover their costs associated with these actions.

3. The Department was not substantially justified in issuing separate assessments on the same date for consecutive years for identical reasons based upon the same facts and the same investigation.

4. Petitioners are entitled to an award of \$225.00 representing nine of the ten filings fees submitted to the Wisconsin Tax Appeals Commission in conjunction with these Petitions for Review.

IT IS ORDERED that Petitioners' Motion for Costs is granted in part and denied in part as described above.

Dated at Madison, Wisconsin, this 29th day of March, 2017.

WISCONSIN TAX APPEALS COMMISSION



Lorna Henry Boll, Chair



David D. Wilmoth, Commissioner



David L. Coon, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION
5005 University Avenue - Suite 110
Madison, Wisconsin - 53705

NOTICE OF APPEAL INFORMATION

NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES ALLOWED
FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS
RESPONDENT

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternatively, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeals Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier within 30 days of this decision if there has been no petition for rehearing, or within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or the Wisconsin Statutes. The website for the courts is <http://wicourts.gov>.

This notice is part of the decision and incorporated therein.