

STATE OF WISCONSIN
TAX APPEALS COMMISSION

MICHAEL LENZ,

DOCKET NO. 14-I-038

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

DAVID D. WILMOTH, COMMISSIONER:

This case comes before the Commission on several motions filed by the parties. The Petitioner in this matter is Michael Lenz of Mukwonago, Wisconsin, who is *pro se*. The Respondent, the Wisconsin Department of Revenue (the "Department"), is represented in this matter by Attorney Mark S. Zimmer.

The various motions filed by the parties and presently pending before the Commission are:

1. A Motion for Recorded Proceedings, filed by the Petitioner on February 18, 2014.
2. A Motion for Order Deeming Averments in Petition are Admitted in the Alternate, Determination of Sufficiency of Answer, filed by the Petitioner on March 13, 2014.¹

¹ On March 17, 2014, the Petitioner filed a document captioned "Petitioner's Reply to Answer" in which he demands an order for the same remedies as requested in his March 13, 2014, Motion for Order Deeming Averments in Petition are Admitted in the Alternate, Determination of Sufficiency of Answer. Consequently, we treat this document as a supplement to and extension of this motion.

3. A Motion to Show Cause, filed by the Petitioner on March 13, 2014.
4. A Motion for Summary Judgment, filed by the Department on April 3, 2014.
5. A Motion to Strike portions of an affidavit of Mark S. Zimmer, filed by the Petitioner on April 10, 2014.
6. A Motion to Strike portions of an affidavit of Mary Nelson, filed by the Petitioner on April 14, 2014.
7. Motion to Destroy Records and Remove References, filed by the Petitioner on April 21, 2014.

BACKGROUND

The Petitioner is no stranger to the Commission. He was here in 2010 on an appeal of the Department's adjustment of a refund claim he and his spouse filed for tax year 2008. *Michael and Diana Lenz*, Docket No. 10-I-03 (the "2010 Lenz Case"). In that matter, the Petitioners advanced various arguments as to why payments made to them by their employers during calendar year 2008 were not subject to federal or state income tax and, consequently, why the Department should refund to them all Wisconsin income tax withholdings made by their employers. By a Decision and Order dated April 29, 2011, the Commission granted summary judgment to the Department and imposed a damage assessment of \$500 on the Petitioners for having advanced positions which were frivolous and groundless.

The Petitioners appealed the Commission's Decision and Order to the Waukesha County Circuit Court, which affirmed the Commission's actions stating:

Lenz's convoluted and defective reasoning reflects misunderstanding of the interpretation of language and a misapplication of law. While Mr. Lenz's views, expressed in the brief signed only by him, may reflect the dream of certain anti-government activists and even anarchists, the laws applicable here were put in place by consent of the governed; to-wit, Wisconsin's tax laws were duly adopted by the constitutionally composed and elected Legislature with approval of the Governor of the state. Relief from state income taxes on wages resides in the hands of the elected representatives of the people, not the courts.

Lenz v. Dep't. of Revenue, Case No. 11-CV-2481 (Waukesha County Cir. Ct., Oct. 24, 2011).

The Petitioner now brings an appeal to the Commission for tax year 2012, again complaining that the Department will not refund to him all amounts his employer withheld for Wisconsin income taxes. Further, he claims the Department had no right or authority to turn over to the IRS, in response to a notice of levy for unpaid federal taxes, amounts he would otherwise have been entitled to receive as a refund. In support of his appeal, the Petitioner asserts essentially the same arguments and positions as he did in the 2010 Lenz Case. While some arguments and assertions are identical to those previously advanced, there are some variations on the theme. But, in the end, he argues that the payments made to him by his employer for tax year 2012 are not subject to Wisconsin income tax.

THE PETITIONER'S MOTIONS

1. Motion for Recorded Proceedings

The Petitioner requested an order that all proceedings in this matter be recorded. He provided no basis or rationale for his request.

Because the Commission will decide this matter on the motions filed by the parties without a hearing, there is no need to rule on the Petitioner's motion.

2. Motion for Order Deeming Averments in Petition are Admitted in the Alternate, Determination of Sufficiency of Answer

Paragraph 1 of the Department's Answer to the Petitioner's Petition for Review in this matter admitted certain of the allegations made in the Petition. Paragraph 2 asserted a general denial of all other allegations of fact set forth in the Petition and every contention of law to the effect that the action of the Department in this matter was in error. Paragraph 3 asserted an affirmative defense to the Petitioner's claim that the Department erroneously responded to the IRS notice of levy. Finally, after referring to the 2010 Lenz Case, the Department's Answer requested that the Commission impose a damage assessment of \$1,000 against the Petitioner for taking positions which are "frivolous and groundless."

The Petitioner argued that the Department is required by Wis. Stat. § 802.02(2) to admit or deny each and every allegation, paragraph by paragraph, and that allowing a general denial "would not be in the interest of the efficient administration of justice as the length of time to narrow issues for trial is unnecessarily extended." He, therefore, moved the Commission for an order declaring that each averment of the Petition not specifically denied by the Department be deemed admitted or, in the alternative, for a default judgment against the Department for its failure to file a sufficient answer.

Historically, the Commission has been willing to accept almost any writing received from a petitioner as a valid petition for review, no matter how meager.

Conversely, the Commission has typically accepted answers from the Department whether short or long. Many times, because of the brevity or inconclusiveness of a petition for review, it is difficult, if not impossible, to provide a detailed answer. In those cases where a petitioner has gone to the trouble of setting out more detailed averments in a petition, the Commission sometimes receives an answer from the Department providing similarly detailed responses, and other times receives what amounts to a general denial of most averments of fact and law. Either way, the Commission has accepted these answers.

Recently, the Commission has received comments from some petitioners and petitioner's representatives about answers containing a general denial filed by the Department in response to petitions setting forth specific and detailed facts and legal claims. As a result, in an appropriate case, the Commission may be inclined to grant a motion to make such an answer more specific. But this is not that case. The Petitioner's Petition for Review in this matter consists of 177 separate numbered paragraphs, most of which are groundless on their face, many of which are the same factual averments and legal claims rejected in the 2010 Lenz Case, some of which are nearly unintelligible, and all of which together are an attempt to support the Petitioner's misguided view that the payments he receives from his employer are not subject to Wisconsin income tax. We do not believe it is in the interests of administrative economy to require the Department, or the Commission, to attempt to cogently reply to each one of Petitioner's 177 paragraphs.

Consequently, we determine that the Department's answer in this matter is sufficient, and the Petitioner's motion is denied.

3. Motion to Show Cause

The Petitioner moved the Commission for an order directed to the Department's representative, Attorney Mark S. Zimmer, to show cause why he should not be barred from practicing law before the Commission in this case "for inducing the Commission to an action based upon fraudulent conduct and for prejudicing the Commission against the Petitioner from a fair and impartial hearing before it." In general, the Petitioner's basis for his motion is his contention that Mr. Zimmer has "abused his legal training and license to practice law to misdirect the WTAC by fraud away from the grants and the limitations of taxing power of the federal government and the government of the state of Wisconsin." He claims that Mr. Zimmer's fraud was the sole basis for the Commission's adverse ruling against him in the 2010 Lenz Case, and that Mr. Zimmer is at it again. The Petitioner also complains that Mr. Zimmer has prejudiced the Commission against him in this case by referring to the decision of the Waukesha County Circuit Court (as well as the Commission's own decision) in the 2010 Lenz Case.

We have carefully reviewed each of the 88 numbered paragraphs of the Petitioner's Motion to Show Cause and we find no basis for issuing the order requested. Consequently, the motion is denied.

4. Motion to Strike Portions of Zimmer Affidavit

The Petitioner moved the Commission for an order striking portions of the affidavit of Mark S. Zimmer filed along with the Department's Motion for Summary Judgment. In particular, he asks the Commission to strike references to the decision of the Waukesha County Circuit Court in the 2010 Lenz Case, any "presumption of the existence of properly executed federal seizure" or "the purported presumption of authority of the

State Income Tax Levy Program to seize property of a private Citizen of this state,” and any references by Mr. Zimmer that the Petitioner made arguments that his wages and salary are not income.

We have reviewed Mr. Zimmer’s affidavit in the context in which it was submitted and find no basis for striking any portion of it. Consequently, the Petitioner’s motion is denied.

5. Motion to Strike Portions of Nelson Affidavit

The Petitioner moved the Commission for an order striking portions of the affidavit of Department of Revenue Resolution Unit Supervisor Mary E. Nelson filed along with the Department’s Motion for Summary Judgment. In particular, he asks the Commission to strike references to the Federal W-2 issued by the Petitioner’s employer, references to the Notice of Refund issued by the Department, and references to funds seized by the IRS by levy against the Petitioner.

We have reviewed Ms. Nelson’s affidavit in the context in which it was submitted and find no basis for striking any portion of it. Consequently, the Petitioner’s motion is denied.

6. Motion to Destroy Records and Remove References

The Petitioner moved the Commission for “an order to remove and destroy all electronic and paper renderings of information in relation to and derived from the Federal Form W-2 and those that display the social security number assigned by the federal government to the Petitioner” In support of his motion to remove or destroy any references to his Federal Form W-2 for calendar year 2012 and any information related thereto, the Petitioner cites 42 USC § 1306(a)(1), which, with certain exceptions, prohibits

the disclosure by an “applicable agency” of “any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act or under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code [of 1939], or under regulations made under authority thereof...” But 42 USC § 1306(a)(2) defines an “applicable agency” as either the Social Security Administration or the Department of Health and Human Services. It does not limit disclosure by the IRS or state tax agencies.

What does limit the disclosure of return information by the IRS or state tax agencies is § 6103(a) of the Internal Revenue Code. While this section of the Code provides broad nondisclosure protection to return information, it is subject to numerous exceptions, one of which is § 6103(h)(4)(A) which provides that “return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration ... if the taxpayer is a party to the proceeding...” In *Paul F. Thomas v. United States of America and Lake Country Reporter, Inc.*, 890 F.2d 18, 671 F.Supp. 15 (7th Cir. 1989), a Wisconsin resident complained about a press release made by the IRS and published by the Lake Country Reporter disclosing that he had lost a U.S. Tax Court case in which he, like the Petitioner here, argued that the payments he had received from his employer were not wages subject to federal income tax. Concluding that no prohibited disclosure had been made, the 7th Circuit Court of Appeals stated:

The information disclosed in the press release did not come from Thomas's tax return--not directly, at any rate. It came from the Tax Court's opinion. The disclosure of return information by the judges of the Tax Court in their opinion was authorized by the same statutory provision that authorized the IRS to disclose it in the Tax Court proceeding, §6103(h)(4)....

Indeed, it would be impossible to administer and enforce federal and state tax laws if return information could not be disclosed in a proceeding involving disputes between taxpayers and taxing authorities. Consequently, the Petitioner's Motion for an order to remove and destroy all electronic and paper renderings of information in relation to and derived from his Federal Form W-2 is denied.

The Petitioner also moved for an order to remove and destroy all documents that display his social security number. The documents he refers to are three letters of the Petitioner which he appears to have attached to his 2012 Wisconsin Income tax return, a copy of which is attached as Exhibit 1 to the Nelson Affidavit. We wholeheartedly agree that the Petitioner's social security number should not be disclosed in documents which are part of the public record in this matter, and we note that the Department, in other documents submitted as exhibits, redacted the Petitioner's social security number wherever it appeared. Consequently, we hereby order that the Petitioner's social security number be redacted from all copies of Exhibit 1 to the Nelson Affidavit in the files of the Commission. The Commission will provide each of the parties with a copy of Exhibit 1 to the Nelson Affidavit with appropriate redactions.

THE RESPONDENT'S MOTION

The Department filed a Motion for Summary Judgment along with affidavits, exhibits and a supporting brief. In response, the Petitioner filed his two Motions to Strike and his Motion to Destroy Records and Remove References, which have been dealt with above.

Standard of Review

A party is entitled to summary judgment when there are no genuine issues of material fact and that party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2). A material fact is one that would influence the outcome of the controversy. *Metropolitan Ventures, LLC v. GEA Associates*, 2006 WI 71, ¶21, 291 Wis. 2d 393, 717 N.W.2d 58. The "mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Baxter v. DNR*, 165 Wis. 2d 298, 312, 477 N.W.2d 648 (Ct. App. 1991). An issue of fact is genuine if a reasonable jury could find for the nonmoving party. *Id.* In our review of a summary judgment motion, we are prohibited from deciding issues of fact; our inquiry is limited to determining whether a material factual issue exists. *Id.* Any reasonable doubts as to the existence of a factual issue must be resolved against the moving party. *Maynard v. Port Publ'ns., Inc.*, 98 Wis. 2d 555, 563, 297 N.W.2d 500 (1980).

Facts

For purposes of deciding this motion, we find the following facts:

A. Jurisdictional Facts

1. The Petitioner filed a 2012 Wisconsin Form 1 tax return on or about April 15, 2013, and claimed under penalties of law on an attachment that he "received insufficient gain, profit, or income derived from any source to trigger a requirement to file a federal return of tax. As there is no federal income sufficient to trigger a filing requirement, there can be no federal adjusted gross income and no 'Wisconsin taxable income' by way of statutory definition...." On this Form 1, Petitioner claimed a status of married, filing separately, stated a federal adjusted gross income of \$1,100 for Wisconsin purposes, and asserted that he was entitled to a refund of \$7,634 Wisconsin tax withheld and a Homestead Credit of \$1,168, for a total refund claimed of \$8,802. (Affidavit of Mary E. Nelson ("Nelson Aff."), ¶ 2, Ex. 1.)

2. The Petitioner received a Notice of Refund from the Department dated May 31, 2013, adjusting the Petitioner's claimed refund to \$771. The adjustment was made to add in the \$120,954.50 of unreported wage income of the Petitioner, as reported on the Federal Form W-2 issued by Petitioner's employer. (Nelson Aff., ¶ 7, Ex. 4.)

3. The Petitioner's \$771 refund was seized by the Internal Revenue Service by levy against the Petitioner in the amount of \$746, plus the Department's \$25 fee for costs as authorized by § 73.03(52)(a), Wis. Stats. (Nelson Aff., ¶ 8, Ex. 5.)

4. A Petition for Redetermination from the Petitioner dated June 5, 2013, was timely received by the Department. (Nelson Aff., ¶ 9, Ex. 6.)

5. By Notice of Action dated December 5, 2013, the Department denied the

Petitioner's Petition for Redetermination. (Nelson Aff., ¶ 10, Ex. 7.)

6. The Petitioner's timely Petition for Review was received in the office of the Commission on February 6, 2014. (Nelson Aff., ¶ 11.)

B. Other Material Facts

7. The Petitioner did not attach any W-2 wage statements to his return. (Nelson Aff., ¶ 3.)

8. The Department has access to the W-2 information filed for Wisconsin employers with the Internal Revenue Service, and, according to the W-2 records of the Internal Revenue Service, the Petitioner in fact had wages, tips, or other compensation for the year 2012 from American Refining and Biochemical, Inc., of West Conshohocken, Pennsylvania, in the amount of \$120,954.50, with Wisconsin income tax withheld in the amount of \$7,634.24. (Nelson Aff., 4, Ex. 2.)

9. Forms W-2 are required to be submitted by employers to the Internal Revenue Service with a Form W-3, which provides "Under penalties of perjury, I declare that I have examined this return and accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete." (Nelson Aff., ¶ 5, Ex. 3.)

10. The Petitioner was aware that the argument that his wages and salary are not income were found to be "frivolous and groundless" by the Commission in the decision of the Commission in the 2010 Lenz Case, in which damages of \$500 were imposed. (Affidavit of Mark S. Zimmer ("Zimmer Aff."), ¶ 3, Ex. 10.)

11. The Commission's \$500 damage assessment was upheld by Waukesha County Circuit Court, Case No. 11-CV-2481, in a decision rendered October 24, 2011. (Zimmer Aff., ¶4, Ex. 11.)

12. On February 20, 2014, Attorney Mark S. Zimmer issued a letter to the Petitioner's employer or former employer, American Refining and Biochemical, Inc., requesting a notarized statement as to whether Petitioner Michael Lenz was an employee, the amounts of wages paid by said company to the Petitioner, and whether the W-2 issued by said company was erroneous in any way. (Zimmer Aff., ¶ 5, Ex. 12.)

13. On March 12, 2014, Attorney Zimmer received a notarized response from Richard C. Smith, Vice President and Secretary of American Refining & Biochemical, Inc., (the "Company") stating that:

1. Michael A. W. Lenz was employed by the Company during the entire calendar year 2012;
2. The aggregate amount of wages paid by the Company to Mr. Lenz during calendar year 2012 was \$120,954.50; and
3. The W-2 filed by the Company for Mr. Lenz for the calendar year 2012 was accurate in all respects.

(Zimmer Aff., ¶ 7, Ex. 13.)

14. In connection with the 2010 Lenz Case, Attorney Zimmer provided to the Petitioners² a copy of the Commission's decision in *Louis M. Sytsma*, noting that the taxpayer in those cases made arguments nearly identical with those of the Petitioners in the 2010 Lenz Case, and that the Commission sanctioned Mr. Sytsma for filing frivolous petitions by adding \$500 to the amounts due, and requesting that these Petitioners

² Petitioner's wife, Diana Lenz, was also a party sanctioned in the prior case since she had signed a joint tax return. She is not a party to the present case since the Petitioner filed as married filing separately for 2012.

withdraw the petition. The Petitioners did not do so. (Zimmer Aff., ¶ 8, Ex. 14.)

15. The Internal Revenue Service electronically levied against the State of Wisconsin Department of Revenue for Petitioner, among others, for unpaid federal taxes totaling \$30,139.72 dating from 2008 and thereafter, pursuant to the State Income Tax Levy Program. In accordance with such levy, the Department paid to the Internal Revenue Service the sum of \$746, and retained the Department's fee of \$25 as authorized by Wis. Stat. § 73.03(52)(a). (Nelson Aff., ¶ 12, Ex. 5.)

Conclusions of Law

1. The Department's action on the Petitioner's Petition for Redetermination in this case is correct.

2. The Petitioner was warned by the Department that his claims were frivolous or groundless and that they could be subject to sanctions, and the Department provided him with authority to that effect.

3. The Petitioner had previously been sanctioned by the Commission for raising frivolous and groundless claims, and those sanctions were upheld by the Circuit Court for Waukesha County.

4. The Commission finds that these proceedings have been instituted or maintained primarily for delay and the Petitioner's position in these proceedings is frivolous or groundless. Under the circumstances, an assessment of damages in the amount of \$1,000.00 in accordance with Wis. Stat. § 73.01(4)(am) is appropriate.

Decision

The facts in this case are virtually identical in all material respects to those presented in the 2010 Lenz Case. The positions advanced by the Petitioner here are virtually the same as those the Commission and the Circuit Court rejected in the 2010 Lenz Case. These positions were found in the 2010 Lenz Case to be frivolous and groundless and, as a result, the Commission imposed a \$500 damage assessment on the Petitioner, which was upheld by the Circuit Court.

For these reasons, we adopt the rationale and reasoning expressed by the Commission in its decision in the 2010 Lenz Case in support of our decision in this matter.

ORDER

Based on the foregoing, the Commission orders as follows:

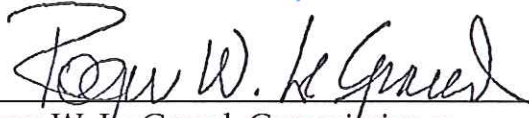
1. The Petitioner's Motions are denied, except that the Petitioner's social security number shall be redacted from all copies of Exhibit 1 of the Nelson Affidavit in the files of the Commission;
2. There being no genuine issues of material fact, the Department's Motion for Summary Judgment is granted;
3. The Department's Motion for sanctions is granted and the Petitioner is assessed damages of \$1,000.00.

Dated at Madison, Wisconsin, this 22nd day of May, 2014.

WISCONSIN TAX APPEALS COMMISSION



Lorna Hemp Boll, Chair



Roger W. LeGrand, Commissioner



David D. Wilmoth, 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 either in-person, by certified mail, or by courier, and served upon the other party (which usually is the Department of Revenue) 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.