

STATE OF WISCONSIN
TAX APPEALS COMMISSION

MICHAEL A. PHARO
P.O. Box 256
Mt. Horeb, WI 53572,

DOCKET NO. 03-W-302

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8907
Madison, WI 53708 ,

Respondent.

THOMAS M. BOYKOFF, COMMISSIONER:

This case comes before the Commission on a motion filed by respondent, Wisconsin Department of Revenue ("Department"), to dismiss the petition for review under Wis. Stat. § 802.06(2)(a)6 for petitioner's failure to state a claim on which relief can be granted or, in the alternative, for summary judgment under Wis. Stat. § 802.08.

Petitioner Michael A. Pharo appears pro se. The Department appears by Chief Counsel Lili Best Crane. Both parties have submitted affidavits with exhibits and briefs.

Based upon the entire record in this case and the parties' submissions, the Commission hereby finds, concludes, and orders as follows:

FACTS

1. Under date of October 18, 1999, the Department issued an

assessment to petitioner for \$24,646.98 for withholding tax, interest, and a penalty under Wis. Stat. § 71.83(1)(b)2 regarding personal liability for the withholding taxes of American Security & Protection for the periods January 1995-April 1995, October 1995-July 1996, and October 1996-May 1997.

2. Under date of December 21, 1999, petitioner filed a petition for redetermination of the assessment. Under date of January 7, 2000, the Department sent petitioner a letter requesting additional information, to which petitioner replied by letter dated February 4, 2000.

3. Under date of March 27, 2000, Resolution Officer Alex Prost sent petitioner a letter notifying him that the case had been assigned to Mr. Prost and setting forth the facts as he understood them.

4. Under date of May 15, 2001, petitioner sent Mr. Prost a letter and, among other things, stated that he was "willing to enter into a negotiated settlement" (p. 2.)

5. Under date of July 30, 2002, the parties entered into a "Closing Agreement" settling the case. In that agreement, the parties stipulated "that this agreement and the payment of . . . [amounts agreed to as withholding taxes] shall serve as a final disposition of the office audit assessment" in dispute. The settlement amount was \$9,350.29, which petitioner paid.

6. On December 1, 2003, petitioner appealed to the Commission the same taxes covered in the July 30, 2002 Closing Agreement. In his petition for review, petitioner argued, as he asserted in his petition for redetermination to the Department,

that he was not the responsible officer or party for paying the taxes at issue. He raised three additional objections: (1) he had no knowledge of taxes due in the assessment; (2) he did not fail to pay taxes; and (3) he disagreed with the calculations of the amount of the settlement.

RULING

The petitioner and Department entered into a Closing Agreement to settle the Department's assessment and petitioner's disagreement with it. Portions of the settlement agreement read as follows:

IT IS HEREBY STIPULATED AND AGREED That *for purposes of settlement* of the office audit assessment dated October 18, 1999, the correct adjusted amounts of the above named, Michael A. Pharo . . . are in the amounts set forth on the attached schedule(s) [Emphasis supplied.]

IT IS FURTHER STIPULATED that this agreement permits the taxpayer to make monthly payments as set forth on the attached schedule. . . .

IT IS FURTHER STIPULATED that this agreement and the payment of . . . [the amounts agreed to] *shall serve as a final disposition* of the office audit assessment referred to above. [Emphasis supplied.]

The Commission and the judiciary have long recognized that the parties to a Closing Agreement can rely on the finality of the agreement. The taxpayer can rely on it to preclude future Department assessments on the same issues for the same periods specified, and the Department can rely on it to resolve any later claims or assertions on the same matters for the same periods. See, *U.S. Shoe Corp. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 203-039 (Dane Co. Cir. Ct. February 28, 1989), and *W.R.*

Grace & Co. v. Dep't of Revenue, Wis. Tax Rptr. (CCH) ¶ 203-037 (WTAC 1989).

The title of the "Closing Agreement" and its contents (especially the provisions cited above) clearly demonstrate that the document resolved the dispute between the parties over the October 18, 1999 assessment. The agreement's language and the reason for both parties agreeing to the document are clear and unequivocal.

Petitioner asserts that "This Closing Agreement . . . did not determine liability. At no time did the Petitioner wave [sic] his rights to further appeal" (Petitioner's Response to Respondent's Motion, Affidavit of Michael Pharo, unnumbered p. 2, para. 9) ("Petitioner's Response".) He further argues that he "was not the responsible party for payment [of] the taxes of the Corporation . . .; he only attempted to resolve the matter at hand as an intermediary." (Id., para. 11.)

These assertions lack merit. They attempt to negate the agreement which petitioner and the Department freely entered into. If this argument prevailed, future parties could resolve a matter by settlement, then appeal to the Commission with the hope they might get an even better deal. The tax appeals system would be flooded with matters already resolved and could not function that way.

Petitioner also contends that he is entitled to a review by the Commission on any assessments made by the Department. That broad statement is not accurate. It ignores that there are statutory time periods for filing appeals; that the Commission only has jurisdiction over specified matters¹; and the finality of clear, unambiguous

¹ See Wis. Stat. § 73.01.

agreements which are freely entered into.

Based on the foregoing, the Commission grants the Department's motion to dismiss.

IT IS ORDERED

That petitioner's petition for review is dismissed.

Dated at Madison, Wisconsin, this 7th day of April, 2004.

WISCONSIN TAX APPEALS COMMISSION

Don M. Millis, Commission Chairperson

Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"