

STATE OF WISCONSIN
TAX APPEALS COMMISSION

GARY E. RICKMEYER,

Petitioner,

DOCKET NOS. 06-I-285
AND 06-I-286

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DAVID C. SWANSON, COMMISSIONER:

This case comes before the Commission on the motion of the Wisconsin Department of Revenue ("Department") for summary judgment on the basis that there is no genuine issue as to any 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 appears *pro se* and has filed a brief in support of his petition and an affidavit with exhibits in opposition to the motion. Attorney Michael J. Buchanan represents the Department and has filed an affidavit with exhibits and a brief in support of the motion, as well as a reply brief.

Having considered the entire record, including the motion, affidavits, exhibits and briefs, the Commission hereby finds, rules, and orders as follows:

JURISDICTIONAL AND MATERIAL FACTS

1. By Notice to petitioner dated April 17, 2006, the Department notified petitioner that a total amount of \$12,311.49 (comprising tax, interest, penalties

and fees) remained due on his Wisconsin income tax returns for the years 2000 and 2001, and by additional Notice to petitioner dated April 24, 2006, the Department notified petitioner that a total amount of \$14,203.55 (comprising tax, interest, penalties and fees) remained due on his Wisconsin income tax returns for the years 2002, 2003 and 2004 (collectively with 2000 and 2001, the “years at issue”) (together, the “Assessments”). (Affidavit of Michael J. Buchanan filed February 23, 2007, Ex. 1 and 2.)

2. Under date of May 13, 2006, petitioner filed with the Department a timely petition for redetermination of the Assessments, accompanied by a memorandum of law asserting on various grounds that petitioner is not subject to Wisconsin income tax. (Buchanan Affidavit, Ex. 3.)

3. By correspondence to petitioner dated February 28, 2006, June 30, 2006 (two letters), and September 27, 2006, the Department requested that petitioner file Wisconsin income tax returns for one or more the years at issue. (Buchanan Affidavit, Ex. 6, 7, 8 and 9.)

4. By letter dated March 23, 2006, petitioner notified respondent that he did not intend to file Wisconsin income tax returns for the years at issue. (Buchanan Affidavit, Ex. 10.)

5. By Notices of Action dated October 30, 2006 issued to petitioner with respect to each Assessment, the Department denied the petition for redetermination on the basis that petitioner had failed to file Wisconsin income tax returns for the years at issue, as requested by the Department. (Buchanan Affidavit, Ex. 4 and 5.)

5. On December 18, 2006, petitioner filed a petition for review of the Assessments, and completed payment of the two applicable \$25.00 filing fees on December 27, 2006.

6. On January 26, 2007, the Department filed its amended answer to the petition, and on February 23, 2007 the Department filed a Notice of Motion, Motion for Summary Judgment and supporting brief, affidavit and exhibits.

7. On February 28, 2006, the Commission issued a briefing order on the Department's motion.

8. On March 22, 2007, petitioner filed an affidavit in response to the motion with exhibits.

9. On March 30, 2007, the Department filed a reply brief.

10. Petitioner was a full-year Wisconsin resident for each of the years at issue. (Buchanan Affidavit, ¶¶ 11-16.)

11. During each of the years at issue, an individual resident of Wisconsin was required to file a Wisconsin income tax return if his or her gross income totaled \$9,000 or more in that year. (Buchanan Affidavit, Ex. 17-21.)

12. Petitioner has not filed a Wisconsin income tax return for any of the years at issue. (Buchanan Affidavit, ¶ 18.)

13. Petitioner received wages in excess of the Wisconsin income tax return filing requirement in each of the years at issue. (Buchanan Affidavit, ¶¶ 12-16.)

RULING

A summary judgment motion will be granted if 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). A party moving for summary judgment has the burden to establish the absence of a genuine, that is, disputed, issue as to any material fact. *Grams v. Boss*, 97 Wis. 2d 332, 338-39, 294 N.W.2d 473 (1980).

If the moving party establishes a *prima facie* case for summary judgment, the court then examines the affidavits in opposition to the motion to see if the other party's affidavits show facts sufficient to entitle him to trial. *Artmar, Inc. v. United Fire & Casualty Co.*, 34 Wis.2d 181, 188, 148 N.W.2d 641, 644 (1967). Once a *prima facie* case is established, “the party in opposition to the motion may not rest upon the mere allegations or denials of the pleadings, but must, by affidavits or other statutory means, set forth specific facts showing that there exists a genuine issue requiring a trial.” *Board of Regents v. Mussallem*, 94 Wis. 2d 657, 673, 289 N.W.2d 801, 809 (1980), citing Wis. Stat. § 802.08(3). Any evidentiary facts in an affidavit are to be taken as true unless contradicted by other opposing affidavits or proof. *Artmar*, 34 Wis.2d at 188. Where the party opposing summary judgment fails to respond or raise an issue of material fact, the trial court is authorized to grant summary judgment pursuant to Wis. Stat. § 802.08(3). *Board of Regents*, 94 Wis.2d at 673.

Wisconsin Statutes § 71.02(1) provides that “there shall be assessed, levied, collected and paid a tax on all net incomes of individuals . . . residing within the state” Net income is derived from gross income, after subtracting allowable

statutory deductions and exemptions. See Wis. Stat. § 71.01(16) (defining “Wisconsin taxable income”). “Gross income” is defined as “all income, from whatever source derived and in whatever form realized, whether in money, property or services, which is not exempt from Wisconsin income taxes”, and includes, but is not limited to, “compensation for services, including wages [and] salaries” Wis. Stat. § 71.03(1).

Any resident of Wisconsin whose gross income exceeds the threshold amount set annually by the Department is required to file a Wisconsin income tax return with the Department. Wis. Stat. § 71.03(2). For each of the years at issue, this threshold amount was \$9,000. “Any person required to file an income . . . tax return, who fails, neglects or refuses to do so . . . shall be assessed by the department according to its best judgment.” Wis. Stat. § 71.74(3). In the performance of its duty to assess incomes, the Department is empowered to estimate incomes. Wis. Stat. § 71.80(1)(a). Assessments made by the Department are presumed to be correct, and the burden is on 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).

The Department estimated petitioner's Wisconsin gross income for the years at issue because petitioner failed to file Wisconsin income tax returns for those years, and the Department issued the Assessments based on those estimates. Petitioner has failed to meet his burden to prove that either Assessment is incorrect.

Petitioner filed a petition for review and responded to the Department's motion, but he has never submitted any evidence to support his own claims or rebut the

Department's evidence or arguments. Petitioner instead recites arguments typically offered by tax protestors, stressing his conclusion that, for various reasons, the Wisconsin income tax does not apply to him. Petitioner also objects to the evidence in the record and the procedures used by the Department in making the Assessments.

Petitioner does not deny that he was a Wisconsin resident during the years at issue, nor that he was paid wages in Wisconsin in excess of \$9,000 during each of the years at issue, nor that he has failed to file a Wisconsin income tax return for each of the years at issue. He does not even question the Department's estimates of his income for the years at issue. Thus, there are no material facts in dispute in this case. However, petitioner asserts that his income was not taxable in Wisconsin as claimed in the Assessments, and requests proof of his liability for Wisconsin income tax.

In *Callahan v. Dep't of Revenue*, WTAC Docket No. 05-I-107 (January 9, 2006) and *Jerry E. and Lorilee L. King v. Dep't of Revenue*, WTAC Docket No. 06-I-32 (September 18, 2006), the Commission recently considered cases with facts and legal arguments that were similar to the facts and law at issue in this case. In those cases, the petitioners argued, on a variety of grounds, that various types of wages are effectively immune from Wisconsin income tax. We rejected those arguments in *Callahan* and *King*, and we reject them again here.

In his petition and subsequent filings, petitioner denies being a "tax protestor," yet relies on standard tax protestor legal arguments, apparently to delay or avoid paying state income taxes for the years at issue. These arguments and ones like them have been consistently rejected in prior cases before the Commission and the

courts. They are groundless and frivolous, and have never prevailed in Wisconsin, nor, as far as the Commission is aware, in any court in the country. See *Tracy v. Dep't of Revenue*, 133 Wis. 2d 151 (Ct. App. 1986); *Steele v. Dep't of Revenue*, WTAC Docket No. 05-I-79 (December 12, 2005); *Kroeger v. Dep't of Revenue*, WTAC Docket No. 04-I-228 (March 21, 2005); *Boon v. Dep't of Revenue*, 1999 Wisc. Tax LEXIS 7 (WTAC 1999), *aff'd on other grounds* (Milwaukee Co. Cir. Ct. 1999).

There is no genuine issue of material fact in this case, and the Department is entitled to summary judgment as a matter of law. In addition, in light of the well-established authority cited above, petitioner's claims are groundless, frivolous, and a waste of state resources. Petitioner is therefore subject to an additional assessment in the amount of \$300.00, pursuant to Wis. Stat. § 73.01(4)(am).

IT IS ORDERED

1. The Department's motion for summary judgment is granted, and its action on petitioner's petition for redetermination is affirmed.
2. An additional assessment of \$300.00 is imposed on petitioner pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 7th day of June, 2007.

WISCONSIN TAX APPEALS COMMISSION

Diane E. Norman, Acting Chairperson

David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"