

STATE OF WISCONSIN
TAX APPEALS COMMISSION

WALLACE AND SHIRLEEN ROSS
1090 Allen Lane
Magnolia, MS 39652,

DOCKET NO. 03-I-22

Petitioners,

vs.

DECISION AND ORDER

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

Respondent.

DON M. MILLIS, COMMISSION CHAIRPERSON:

This matter came before the Commission for trial on September 25, 2003, and October 13, 2003, in Madison.¹ Both parties have submitted post-hearing briefs. Petitioners represented themselves and were assisted by Rosetta Davis, their tax preparer. Respondent is represented by Attorney Sheree Robertson.

Based upon the evidence received at trial, the submissions of the parties, and the entire record in this matter, the Commission hereby finds, concludes, and orders as follows:

FINDINGS OF FACT

1. For most of the period under review (1997 through 1999), petitioners were residents of Wisconsin, residing in Milwaukee. At some point during

¹ Petitioners appeared by telephone on the second day of trial on October 13, 2003.

1999, following the retirement of petitioner Wallace Ross on July 1, 1999, petitioners moved to Mississippi.

2. For each of the years 1997 through 1999, petitioners filed both original and amended Wisconsin income tax returns. The amended returns were filed in late 2000.

3. The original returns and amended returns were inconsistent in many respects. In some respects, petitioners failed to provide documentation supporting changes sought in the amended returns.

4. Prior to the time of the audit, respondent issued refunds based upon the returns.

5. Under the date of November 12, 2001, respondent issued an income tax assessment to petitioners for the years 1997 through 1999. At the time of the assessment, the total amount due was \$3,535.64, including tax and interest.

6. During its audit, respondent used the documentation provided in the returns and provided later to establish Wisconsin income for petitioners for each of the years at issue, essentially recreating a return for each year.

7. Petitioners' claim of depreciation for an automobile in 1997 received significant testimony at trial.²

² A considerable amount of testimony was also received on respondent's denial of an IRA deduction shown on the original 1999 income tax return. It is not clear whether this deduction was made on the amended return for 1999. When respondent reconstructed petitioners' 1999 income tax return, this IRA deduction was not included. Petitioners' tax preparer testified that the IRA deduction was not included on the amended 1999 return because petitioners were not entitled to it. Since respondent did not consider the 1999 IRA deduction when it reconstructed the 1999 return, the concession by petitioners' tax preparer becomes inconsequential.

8. Respondent disallowed the depreciation claimed by petitioners on their 1997 return with respect to a 1991 Plymouth Voyager that was used by Mrs. Ross in the course of operating a travel agency on a part-time basis. Petitioners claimed 100 percent of the depreciation on the 1991 Plymouth Voyager.

9. Petitioners used the 1991 Plymouth Voyager for purposes other than Mrs. Ross' business, including Mrs. Ross' regular full-time job.

10. Mrs. Ross did not maintain a contemporaneous mileage log with respect to the 1991 Plymouth Voyager. At the time the amended return for 1997 was filed, petitioners and their tax preparer had no records of her use of the vehicle, but based the claimed expense on an estimated reconstruction of Mrs. Ross' various uses of the vehicle.³

11. On or about January 22, 2002, respondent received petitioners' petition for redetermination objecting to the assessment. Under the date of January 13, 2003, respondent issued a notice of action letter to petitioners denying the petition for redetermination. Petitioners filed a timely petition for review with the Commission.

12. At trial, petitioners' tax preparer admitted that a number of mistakes were made in the preparation of the amended returns.

13. Attached to petitioners' brief were revised amended Wisconsin income tax returns for 1997 through 1999. Petitioners assert that these returns finally

³ While it is not obvious on the amended return for 1997, it appears that petitioners based their claimed expenses for the 1991 Plymouth Voyager in the amended return on an estimate of the miles used in business multiplied by the IRS mileage rate and upon certain claimed actual expenses. However, petitioners did not offer any documentation of miles used in business or of the expenses incurred.

correct the mistakes they conceded at trial. Petitioners, however, did not provide any documentation in support of their position.

CONCLUSION OF LAW

Petitioners have failed to demonstrate that any of the adjustments made by respondent were incorrect.

OPINION

Petitioners bear the burden before the Commission of showing that the actions of respondent are incorrect. *Woller v. Dep't of Taxation*, 35 Wis. 2d 227, 232 (1967). If petitioners fail to meet that burden, the Commission is obligated to sustain the determination of respondent.

With respect to the only issue about which there was significant testimony—the depreciation deduction for the 1991 Plymouth Voyager—petitioners have failed to demonstrate that they are entitled to prevail. Treasury Regulation section 1.274-5T(c) provides extensive guidance for substantiating travel expenses. Petitioners have not come close to meeting this standard.

The Commission cannot consider the newly amended returns that were attached to petitioners' brief. The statute of limitations for amending these years has passed. The returns provide no useful documentation or substantiation to support petitioners' position.

Therefore, the Commission is obligated to sustain respondent's action on the petition for redetermination.

The Commission wants to emphasize that we do not believe that petitioners or their tax preparer have attempted to circumvent or abuse the tax laws. Rather, it appears that the cause of the problem is a lack of understanding of the tax laws and the need for substantiation.

ORDER

Respondent's action on the petition for redetermination is affirmed.⁴

Dated at Madison, Wisconsin, this 19th day of May, 2004.

WISCONSIN TAX APPEALS COMMISSION

Don M. Millis, Commission Chairperson

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"

⁴ This Decision and Order is issued by a single Commissioner under the authority provided by section 73.01(4)(em)2 of the Statutes as created by 2003 Wisconsin Act 33, § 1614d.