

STATE OF WISCONSIN
TAX APPEALS COMMISSION

JAMES A. STUART, JR.,

DOCKET NO. 06-I-282

Petitioner,

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. Although the amount in controversy qualifies this case as a small claims case, the Commission has determined on its own motion that this case will not be heard as such under Wis. Stat. § 73.01(1)(b).

Petitioner appears *pro se* and has filed a brief in opposition to the motion with attached affidavits and exhibits. Attorney Sheree Robertson 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 July 10, 2006, the Department notified petitioner that tax and interest totaling \$2,167.31 remained due on his Wisconsin income tax return for the year 2005 (the “year at issue”) (the “Assessment”). (Affidavit of Sheree Robertson filed March 5, 2007, Ex. 1.)

2. Under date of July 13, 2006, petitioner filed with the Department an objection to the Assessment, which the Department treated as a timely petition for redetermination. In his objection, petitioner asserted that his 2005 wages did not constitute “wages” reportable as income for federal or Wisconsin income tax purposes. (Robertson Affidavit, Ex. 2.)

3. By Notice of Action dated October 30, 2006 issued to petitioner, the Department denied the petition for redetermination on the basis that petitioner’s 2005 wages were subject to Wisconsin income tax. (Robertson Affidavit, Ex. 3.)

4. On December 11, 2006, petitioner filed a “Motion for Determination of Status,” which the Commission received and treated as a petition for review of the Assessment.

5. On January 8, 2007, the Department filed a motion to dismiss the petition on the grounds that it did not constitute a petition for review, and, in the alternative, an answer to the petition.

6. On January 30, 2007, the Commission issued its Order denying the Department’s motion to dismiss and directing petitioner to file a statement supporting the petition as required by Wis. Stat. § 73.01(5)(b) by February 20, 2007.

7. On February 12, 2007, petitioner filed a statement setting forth the facts and legal arguments that are the basis for his petition.

8. On February 27, 2007, the Department filed an answer to the petition.

9. On March 5, 2007, the Department filed a Notice of Motion, Motion for Summary Judgment and supporting affidavit and exhibits.

10. On March 13, 2007, the Commission ordered briefing on the Department's motion.

11. On March 21, 2007, petitioner filed a brief in opposition to the motion, with attached affidavits and exhibits.

12. On April 2, 2007, the Department filed a reply brief.

13. On April 30, 2007, petitioner filed his "Latest Reply to a Motion for Summary Judgment," with an affidavit.

14. Petitioner filed a Wisconsin individual income tax return for the year at issue as a full-year Wisconsin resident. On that return, petitioner reported his federal adjusted gross income as totaling \$631.00, which included no wage income. (Robertson Affidavit, Ex. 4.)

15. Attached to petitioner's 2005 Wisconsin income tax return were a 2005 IRS Form 4852 Substitute Form W-2 and a "Corrected" 2005 IRS Form 1099-MISC, apparently prepared by petitioner, that reported zero income paid to him by New Age Chemical Inc. for that year. (Robertson Affidavit, Ex. 4.)

16. New Age Chemical Inc., petitioner's employer, filed a 2005 IRS

Form W-2 reporting that it paid wages to petitioner totaling \$125,114.84 for that year. (Affidavit of Earl N. Munson filed March 30, 2007, ¶ 5, Ex. 1.)

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).

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). Petitioner has failed to meet his burden to prove that the 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 has filed documents that recite arguments typically offered by tax protestors.

Petitioner does not deny that he was a Wisconsin resident during all of 2005, nor that he was required to file a Wisconsin income tax return for that year, which he in fact filed. Nor does petitioner deny that his employer, New Age Chemical Inc., paid him an amount totaling \$125,114.84 in 2005, which it reported as wages paid to

him on a 2005 IRS Form W-2. Thus, there are no material facts in dispute in this case. However, petitioner asserts that wages paid by a private for-profit employer do not constitute taxable income in Wisconsin. The only issue in dispute, therefore, is whether

the Assessment is invalid as a matter of law under the definition of “wages” applicable for Wisconsin income tax purposes.¹

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 considered cases with facts and legal arguments that were very 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 relies on a litany of tired tax protestor legal arguments, apparently to delay or avoid paying state income taxes for the year 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).

¹ In his initial petition and in his brief filed on March 21, 2007, petitioner challenges the Commission's jurisdiction to hear his petition. If we agreed with the grounds for petitioner's jurisdictional challenge, which are not at all apparent, we would dismiss the petition. However, we note that petitioner paid the \$25.00 statutory filing fee for his petition and has not withdrawn the petition nor moved for its dismissal. Thus, we assume that, despite his statements to the contrary, petitioner consents to the Commission's jurisdiction in this matter.

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"