

STATE OF WISCONSIN
TAX APPEALS COMMISSION

CRAIG WINK,

DOCKET NOS. 06-I-248¹
AND 06-I-249-SC

Petitioner,

vs.

DECISION AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DAVID C. SWANSON, COMMISSIONER:

This matter comes before the Commission following a hearing conducted on March 5, 2008 by the undersigned Commissioner. Attorney Adam Skarie appeared for petitioner and Attorney Lisa Ann Gilmore appeared for respondent, the Wisconsin Department of Revenue (the "Department"). At the hearing, the Commission received and entered into evidence the Department's exhibits 1 through 8 in Docket Number 06-I-248 and exhibits 1 through 9 in Docket Number 06-I-249-SC. Petitioner Craig Wink ("Dr. Wink") provided sworn testimony at the hearing.

The Commission previously consolidated these matters for hearing on its own motion. Having considered the sworn testimony and the parties' exhibits, the Commission finds, concludes, decides and orders as follows:

¹ The petition for review in Docket No. 06-I-248 originally was filed on behalf of petitioner and his former wife, Shelly Wink. With the consent of all parties, Shelly Wink was dismissed from this matter at the hearing.

FINDINGS OF FACT

Docket No. 06-I-248

1. In an Office Audit Worksheet and Notice of Amount Due dated July 18, 2005, the Department notified Dr. Wink that it had determined that he received constructive dividends during 2001 and 2002 that had not been included in his reported gross income on his Wisconsin income tax returns for those years (Dept. Ex. 1, Docket No. 06-I-248), and issued an assessment of income tax to him for 2001 and 2002 in the total amount of \$3,527.81, including tax and interest (the "2001-2002 assessment") (Dept. Ex. 2, Docket No. 06-I-248).

2. By letter dated September 15, 2005, Dr. Wink's representative filed with the Department a petition for redetermination of the 2001-2002 assessment. (Dept. Ex. 3, Docket No. 06-I-248.)

3. By Notice of Action dated August 21, 2006, the Department denied the petition for redetermination. (Dept. Ex. 4, Docket No. 06-I-248.)

4. On October 20, 2006, Dr. Wink's representative filed a timely petition for review of this matter with the Commission. (Dept. Ex. 5, Docket No. 06-I-248.)

Docket No. 06-I-249-SC

5. In an Office Audit Worksheet and Notice of Amount Due dated July 18, 2005, the Department notified Dr. Wink that it had determined that he received constructive dividends during 2003 that had not been included in his reported gross income on his Wisconsin income tax return for that year (Dept. Ex. 1, Docket No. 06-I-

249-SC), and issued an assessment of income tax to him for 2003 in the total amount of \$632.68, including tax and interest (the “2003 assessment”) (Dept. Ex. 2, Docket No. 06-I-249-SC).

6. By letter dated September 15, 2005, Dr. Wink’s representative filed with the Department a petition for redetermination of the 2003 assessment. (Dept. Ex. 3, Docket No. 06-I-249-SC.)

7. By Notice of Action dated August 21, 2006, the Department denied the petition for redetermination. (Dept. Ex. 5, Docket No. 06-I-249-SC.)

8. On October 20, 2006, Dr. Wink’s representative filed a timely petition for review of this matter with the Commission. (Dept. Ex. 6, Docket No. 06-I-249-SC.)

Material Facts

9. Dr. Wink was a Wisconsin resident and filed a Wisconsin income tax return for each of the years at issue.

10. Dr. Wink is a chiropractor and provided services through Wink Chiropractic Wellness Center, SC, a Wisconsin service corporation (“WCWC”), during the years at issue.

11. Dr. Wink was the sole shareholder, director and officer of WCWC during the years at issue.

12. During the years at issue, Dr. Wink believed WCWC’s bylaws allowed him to charge certain personal expenses to WCWC.

13. On audit, the Department disallowed the personal expenses at

issue in these matters and recharacterized them as constructive dividends paid to Dr. Wink by WCWC, giving rise to the assessments at issue.

14. Dr. Wink hired all attorneys and accountants for WCWC during the years at issue.

15. Dr. Wink testified that WCWC's accountant, Michael E. Spurlock, MBA, has characterized Dr. Wink's personal expenses charged to WCWC as an account receivable on WCWC's books for the years at issue.

15. Dr. Wink testified that he executed a note back to WCWC for the amount of the disallowed personal expenses, that WCWC carries this note as an account receivable on its books, and that interest has been accruing on this amount.

16. Dr. Wink testified that he has made no payments to WCWC on the note at issue.

17. Neither the note executed by Dr. Wink, nor WCWC's bylaws or its books were offered as evidence at the hearing.

18. In the petitions for review filed in these matters, the petitioner's representative stated:² "The taxpayer relied on the advice of his accountant during the preparation of his corporate tax returns. The accountant incorrectly deducted many personal expenses on the corporate return that were disallowed during the audit. The taxpayer would like the chance to repay the corporation for the deducted personal expenses, rather than recognize them as a constructive dividend."

² This statement is quoted from the petition filed in Docket No. 06-I-249-SC. The statement included in Docket No. 06-I-248 is essentially the same, except that it refers to two petitioners, Dr. Wink and his former wife.

19. Attorney Skarie, Dr. Wink's representative, offered copies of financial statements of WCWC for the years ending December 31, 2006 and December 31, 2007 as evidence at the hearing. The Department's representative, Attorney Gilmore, objected to the introduction of this exhibit on the grounds that it had not been filed with the Commission nor provided to the Department prior to the hearing, as required by the Commission's Notice and Order of Hearing dated September 11, 2007. The Commission denied petitioner's motion to receive petitioner's exhibit A into evidence at the hearing on that basis.

CONCLUSION OF LAW

Petitioner has failed to satisfy his burden of proof in these matters.

DECISION

Assessments made by the Department are presumed to be correct, and the burden is on the petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984); Wis. Stat. § 77.59(1). Tax exemptions, deductions, and privileges are matters of legislative grace and will be strictly construed against the taxpayer. *Fall River Canning Co. v. Dep't of Taxation*, 3 Wis. 2d 632, 637, 89 N.W.2d 203 (1958).

The dispute in these matters focuses on the Department's disallowance of certain personal expenses of Dr. Wink paid by WCWC and the Department's recharacterization of those expenses as constructive dividends paid to Dr. Wink during the years at issue. In the petitions for review, petitioner's representative admits that the

expenses were properly disallowed, but requests that Dr. Wink be permitted to repay the corporation to avoid the assessments at issue. At the hearing, petitioner's representative argued that WCWC's former accountant was responsible for incorrectly reporting the expenses and that the expenses should be recharacterized as a loan made to Dr. Wink.

As an initial matter, petitioner argues that his former accountant was responsible for the reporting error that gave rise to the assessments. However, this fact does not provide a defense against the assessments. *See, e.g., Kimmons v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-631 (WTAC Oct. 7, 2002).

In his petitions for review, petitioner admits that the personal expenses at issue were paid by WCWC but were not treated as a loan to Dr. Wink until after the audit results and assessments were issued. At the hearing, petitioner argued that WCWC's payment of these expenses was a loan made to Dr. Wink, but offered no documentary evidence in support of this argument, such as WCWC's bylaws, its books, or a note executed by Dr. Wink. Dr. Wink testified that he believed that the relevant documents support his position, but admitted that he has made no payments on the note. As a matter of law, a petitioner's uncorroborated testimony as to claimed expenses is insufficient to satisfy the petitioner's burden of proof and overcome the presumption of correctness attached to the related assessment. *See, Conrad LeBeau v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶202-383 (WTAC, June 22, 1984), *aff'd in unpublished decision*, 133 Wis. 2d 476, 394 N.W.2d 920 (Ct. App., August 7, 1986); *St. Charles Lockett v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-807 (WTAC 1986).

Absent any evidence to the contrary, the Commission must presume that the assessments are correct. For the reasons discussed herein,

IT IS ORDERED

The Department's actions on the petitioner's petitions for redetermination in these matters are affirmed.

Dated at Madison, Wisconsin, this 2nd day of September, 2008.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger W. Le Grand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"