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STATE OF WISCONSIN

CIRCUIT COURT
Branch 16

MILWAUKEE COUNTY

WILLIAM E. CURRIER,

FILED

Petitioner,

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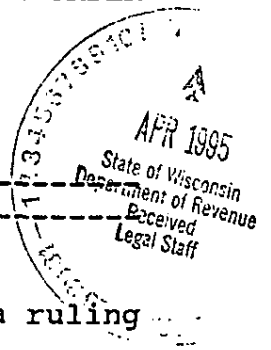
Case No. 94-CV-012289

-vs-

STATE OF WISCONSIN
DEPARTMENT OF REVENUE,

GARY J. BARCZAK MEMORANDUM, OPINION & ORDER
CLERK OF CIRCUIT COURT

Respondent.



The petitioner, William E. Carrier, seeks review of a ruling and order of the Wisconsin Tax Appeals Commission (TAC). The Ruling and Order was dated August 31, 1994, and Carrier's petition for a rehearing was denied by an Order dated October 12, 1994. The petition for judicial review was timely filed, and the parties have briefed the issues. TAC ordered that respondent's motion for summary judgment be granted, and this judicial review is governed by CH. 227 Wis. Stats.

Allowing for Carrier's pro se status and accepting Carrier's oft-stated sincerity, this Court is nevertheless of the opinion that Carrier's petition must be denied and the action of TAC be affirmed. Carrier's dispute is not with the authority of the State to tax, nor does he at this time dispute the actual dollars involved. Carrier's dispute is foundational and relates to the standing of the Department of Revenue (DOR) to proceed on the

issue of Currier's alleged obligation to file Wisconsin Income Tax returns for the taxable years 1982 and 1983 and DOR's failure to provide administrative due process of law. Although in his brief Currier waives argument on the issue he incorporates in the due process argument, his position that specific retirement contracts, including his own, are not annuity benefits subject to execution by taxing authorities.

As to the standing of DOR to proceed, Currier contends that the failure of DOR to pursue a lawsuit in Clark County operates as res judicata with respect to the alleged failure of Currier to file returns for the calendar years 1982 and 1983. DOR petitioned a Clark County Circuit Court for a writ of mandamus compelling Currier to file returns for those two years. The Circuit Court entered a default judgment against Currier when he failed to appear for a hearing. On appeal the Court of Appeals reversed and remanded to the trial court for further proceedings holding that the trial court record would not support a default judgment. No further proceedings were held. Currier argues that the mandamus action itself or the failure of DOR to pursue the action operates as a bar to this proceedings as respects calendar years 1982 and 1983.

Currier is wrong in both respects. There is no requirement at all which would compel DOR to further litigate the mandamus action, nor does Currier present any to support his conclusion. Currier correctly notes that res judicata, when applicable, acts as a bar to relitigation. The problem with Currier's analysis is that the

issue in the mandamus action, i.e. an attempt to compel filing of the returns, is not the issue in this case which is the alleged failure to file.

Additionally, the mandamus action was never litigated to the point where any issues were decided. The only appellate decision involved the application of statutes to the trial court record. Since no issues were decided, there are no issues before this Court subject to preclusion. Carrier accepts, as he must, that double jeopardy is a concept applicable only to criminal proceedings.

This Court makes further findings as to DOR's standing to proceed in this matter. As noted, Carrier raises no constitutional objections to the authority of the State to tax its residents, specifically here based on alleged income, nor does he dispute the authority of the State to legislate and regulate the manner and method of the collection of said taxes.

Carrier's dispute with the Internal Revenue Service (IRS) is clearly not relevant to this proceeding. The authority of the State to tax its residents is in no way premised on the actions of IRS. Though the DOR has elected to piggyback its returns on a Federal 1040, whatever fault Carrier may find with the IRS is not imputed to DOR. Carrier may pursue his dispute with IRS in the appropriate forum which is not this Court.

In the exercise of its responsibility, DOR is authorized by Section 71.74 (3) to make an assessment according to its best judgment where a person fails to make a proper income tax return. If DOR is correct in its determination of what is income, the

record fully supports the assessment made. Judgments are actually made by people, the DOR being able to act only through human input and Currier's question as to the authority of a person to act as an employee of DOR contravenes the reality of governmental function. Currier presents nothing to refute the assessment actually made.

The term "income" includes retirement annuities. Currier is simply wrong when he states that his retirement benefits earned as a result of his service as a West Allis Police Officer are not or should not be taxable income. Such benefits are not included in the listed exemptions of specific retirement benefits, and no law supports Currier's position that he is denied equal protection because of the different treatment. The law is to the contrary.

Currier's due process argument, other than has already been incorporated in this opinion, relates to the refusal of DOR to schedule an informal conference as provided by Wisconsin Administrative Code Sec. Tax 3.91 (5). Though the rule provides for a taxpayer request, the rule does not require or mandate that DOR honor the request. Again, some discretion must be exercised by DOR personnel in deciding whether to accede to such a request. If the request for the conference were granted, the rule provides that DOR would determine the time and place. The rule does not impose a mandatory, non-discretionary duty upon the department.

Currier is obviously dissatisfied with the decision ultimately reached by TAC. But the progress of Currier's dispute with DOR through TAC, and now with the Court, demonstrates the due process afforded him. Due process does not necessarily mean a

result acceptable to the petitioner. Adequate due process provisions for redress of an adverse determination by DOR are evidenced by the record of this case.

Currier continues to allege fraudulent activity on the part of DOR employees in the determination of the assessment and filing of a proof of claim in a bankruptcy proceedings. Although arguably such claims were not preserved for review, this Court will briefly address this matter for the sake of completeness. A review of the discovery demands made by Currier and denied by DOR leads this Court to the conclusion that Currier's proposed areas of inquiry in the various dispositions would not lead to relevant or material evidence. Currier's supposition of fraud has no basis in fact or any reasonable inferences drawn from the fact. If the proof of claim is, in fact, defective, Currier should pursue that in the appropriate forum. There is, in the judgment of this Court, no "badge of fraud" implicated by the filing of the claim as it relates to this judicial review.

The Commission granted the respondent's motion for summary judgment determining in support thereof that there were no disputed issues of material fact. This Court concurs.

Petitioner has failed to present any evidence inconsistent with that finding. Petitioner has not sustained his burden of proof that his income was exempt from taxation during the calendar years 1982 through 1990.

This Court, therefore, orders that TAC's Ruling and Order of August 31, 1994, be affirmed.

BY THE COURT:

HON. WILLIAM D. GARDNER

William D. Gardner,
Circuit Judge

Dated this 6th of April, 1995,
at Milwaukee, Wisconsin.