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COURT OF APPEALS
DECISION
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A party may, in addition to filing a petition to review an order of the Court of Appeals pursuant to Rule 809.62(1), within 30 days hereof, pursuant to Rule 809.62(1).

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
RECEIVED
JUL 23 1985
LEGAL DIVISION

No. 84-902
No. 85-0327

STATE OF WISCONSIN IN COURT OF APPEALS
DISTRICT IV

WILLIAM D. KLEIMAN,
Petitioner-Appellant,

v.

WISCONSIN DEPARTMENT
OF REVENUE,
Respondent.

WILLIAM D. KLEIMAN,
Petitioner-Appellant,

v.

STATE OF WISCONSIN, WISCONSIN
DEPARTMENT OF REVENUE AND
WISCONSIN TAX APPEALS COMMISSION,
Respondents.

APPEAL from an order of the circuit court of Dane county: ANGELA B. BARTELL, Judge. Affirmed.

APPEAL from an order of the circuit court of Dane county: MARK A. FRANKEL, Judge. Affirmed.

Before Gartzke, P.J., Dykman and Eich, JJ.

This opinion is subject to the provisions of the Official Reports, in the bound volume of the Official Reports.

FILED

JUL 11 1985

CLERK OF COURT OF APPEALS
OF WISCONSIN

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PER CURIAM. William Kleiman appeals from orders affirming decisions of the Wisconsin Tax Appeals Commission. The issues in no. 84-902 are whether wages are income which the state may tax, and whether the income tax unconstitutionally infringes on the fundamental right to work. The issues in no. 85-0327 are whether the circuit court failed to rule on appellant's jurisdiction argument, and whether the state's power to tax "may be so exercised as to make it a potential instrument of enslavement." We consolidated these appeals. We conclude that wages are taxable income, the imposition of a tax on appellant's income is not "enslavement," and the state's taxation of appellant's wages is constitutional. We accordingly affirm both orders.

In no. 84-902, appellant and his employer were notified that the Department of Revenue was voiding appellant's Wisconsin Withholding Exemption Certificate. In no. 85-0327, appellant was assessed \$2,555.32 in additional income tax for 1980 and 1981. In both cases, appellant filed petitions for redetermination¹ which were denied October 27, 1981 and September 12, 1983, respectively. He appealed to the Commission, which granted respondent summary

judgment in both appeals. The trial court affirmed the Commission in both appeals.

Appellant contends in no. 84-902 that the income tax on individuals was first enacted as a temporary, emergency wartime measure, but was repealed, leaving only the original tax on incomes covered by 26 U.S.C. sec. 22(a) (1940). He argues that the term "income" used in sec. 22(a) did not include an individual's wages.

Wisconsin bases its definition of income subject to taxation on the federal definition, with modifications not relevant here. Sec. 71.02(2)(e), Stats. Gross income is defined in 26 U.S.C. sec. 61(a) (1982) as "all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services ...". This section replaced 26 U.S.C. sec. 22(a) (1940). Chapter 1, 68A Stat. 17 (1954). Whether 26 U.S.C. sec. 61(a) (1982) includes wages in the definition of income is a question of law. No deference to the trial court is required. Sacotte v. Ideal-Werk Krug & Priester, 121 Wis.2d 401, 405, 359 N.W.2d 393, 395 (1984) (citation omitted).

Whatever the legislative history of the former section, 26 U.S.C. sec. 61(a) (1982) unambiguously defines

income to include compensation for services. Funk v. C.I.R., 687 F.2d 264, 265 (8th Cir. 1982). Wages are included in that definition of income.

Appellant contends that the taxation of wages unconstitutionally infringes the exercise of his fundamental right to work and earn a living under both the federal and state constitutions. He argues that courts have struck down taxes on newspapers, religious literature, and printer's ink because those taxes infringe on the exercise of a constitutional right. Grosjean v. American Press Co., 297 U.S. 233 (1936); Murdock v. Pennsylvania, 319 U.S. 105 (1943); Minneapolis Star v. Minnesota Comm. of Rev., 460 U.S. 575 (1983).

A statute is presumed constitutional. The challenger must prove unconstitutionality beyond a reasonable doubt. Noranda Exploration, Inc. v. Ostrom, 113 Wis.2d 612, 626, 335 N.W.2d 596, 604 (1983)(citations omitted).

The difference between the cases cited by appellant and this case is that both the federal and state constitutions grant Congress and the state legislature the power to tax incomes. The Sixteenth Amendment to the U.S. Constitution provides, "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived,

without apportionment among the several States, and without regard to any census or enumeration." Wis. Const. art. VIII, sec. 1, provides in part, "Taxes may also be imposed on incomes..."

Appellant contends in no. 85-0327 that the trial court failed to rule on his jurisdiction argument. The trial court held that respondent has jurisdiction to administer and collect a tax on appellant's income. Appellant does not disagree with this proposition, but contends that the court failed to decide whether the state may assert its power of taxation so as to "enslave the general citizenry." The issue is one of law. We may decide the issue as well as the trial court. We will do so.

"Enslavement of the general citizenry" is, of course, appellant's characterization of the state's taxation policies. A "slave" is a person held in servitude as the chattel of another. Webster's New Collegiate Dictionary 1091 (1977). The maximum rate of income taxation for the calendar years 1980 and 1981 was 10%. Sec. 71.09(1b)(h), Stats. Appellant's income for these years was estimated at \$25,000 and \$30,000, respectively. The rate of taxation for these income levels was 9.5%. Sec. 71.09(1b)(g). Were the

Wisconsin Department of Revenue to own appellant, it would be entitled to all his wages, not a maximum of 10%. Appellant's argument is that government is not entitled to tax property he has "earned". That is in reality an argument that government may not levy taxes. Such an argument defies history and common sense and is frivolous. If appellant is unhappy about the level of income taxes, the proper forum in which to complain is the legislature.

Appellant has not proven beyond a reasonable doubt that the state's tax on wages is unconstitutional.

By the Court.--Orders affirmed.

Publication in the official reports is not recommended.

APPENDIX

¹ In no. 85-0327, appellant filed a "demand for proof of jurisdiction," which was treated as a petition for redetermination. No provision exists in the statutes or administrative rules for a "demand for proof of jurisdiction." Respondent need not "prove" its jurisdiction before it can assess taxes.