

KLEIMAN WILLIAM D 82CV2129 040384 DANE CTY CIR CT

- Petitioner filed a petition for judicial review with this court on April 30, 1982. The court dismissed the petition on September 27, 1983, after petitioner failed to file a timely brief in this matter. Upon the petitioner's request, this court vacated the order of dismissal and reopened the case in an order dated October 24, 1983.

ISSUE

Are petitioner's wages subject to withholding for Wisconsin income tax purposes?

DECISION

Petitioner originally challenged the Commission's decision and order on seven grounds. Since, however, petitioner's brief was based solely on the allegation that the Commission's decision misinterpreted the United States and Wisconsin constitutions and other law, and because petitioner asserted that all of his other allegations would stand or fall on this allegation (Petitioner's brief at p. 1), this decision will address only whether the Commission's decision was contrary to law.

Section 73.015(2), Stats., provides that any determination of the Commission is subject to review in the manner provided in Ch. 227, Stats. Since this appeal is based on a claim that the Commission misinterpreted the federal and state constitutions and other law, the Commission's decision must be upheld unless the Commission erroneously interpreted the law and a correct interpretation compels a different result. Sec. 227.20(5), Stats.

Petitioner challenges the State's authority to tax personal income received in the form of wages. Article VIII, Sec. 1 of the Wisconsin Constitution provides that the State may impose taxes on incomes, privileges and occupations. The term "incomes" has been interpreted to mean profit or gain from capital, labor, or both.

State ex rel. Bundy v. Nygaard, 163 Wis. 387, 310 (1916). Under the federal constitutional scheme, the states retain plenary power of taxation. Therefore, the states may tax the property of their citizens in such a manner and to such an extent as they see fit. Pollock v. Farmers' Loan & Trust Co., 158 U.S. 617, 620 (1895).

Wisconsin's income tax provisions adopt the definition of income utilized in the Internal Revenue Code. See, sec. 71.02(2), Stats. Section 61(a) of the Internal Revenue Code, 26 U.S.C., defines "gross income" for tax purposes as "all income from whatever source derived," including "compensation for services." Rules promulgated by the Department of the Treasury state that wages and salaries are income to the recipient taxpayers. 26 C.F.R. sec. 1.61-2(a)(1). Moreover, the United States Supreme Court, interpreting sec. 61(a) and the withholding provisions contained in 26 U.S.C. sec. 3202(2), noted:

The two concepts -- income and wages -- obviously are not the same. Wages usually are income, but many items qualify as income but clearly are not wages. Central Illinois Public Service Co. v. United States, 433 U.S. 21, 33 (1978). (Emphasis added).

Courts have held on numerous occasions, and it is beyond question, that income derived from the common law right to work is taxable. See, e.g., United States v. Buras, 633 F.2d 1356, 1361 (9th Cir. 1980); United States v. Rossell, 585 F.2d 368, 370 (8th Cir. 1978). In Funk v. C.I.R., 687 F.2d 264 (8th cir. 1982), where the taxpayers asserted that an exchange of their labor for money amounted to an equal exchange which could not be taxed, the court rejected arguments similar to those made by petitioner herein:

Taxpayers' argument that compensation for labor is not constitutionally subject to the federal income tax is without merit. There is no constitutional impediment to levying an income tax on compensation for a taxpayer's labor. . . . Furthermore, sec. 61(a) of the Code defines gross

income as "all income from whatever source derived, including . . . compensation for service." In sum, the sixteenth amendment authorizes the imposition of a tax upon income without apportionment among the states, and under the statute, the term "income" includes the compensation a taxpayer receives in return for services rendered. Taxpayers' argument that wages received for services are not taxable as income is clearly frivolous. Funk v. C.I.R., supra, at p. 265.

Petitioner's claim is equally frivolous. Taxation of the petitioner's wages is clearly permissible under the federal and state constitutions, and withholding is a constitutionally legitimate means for collecting income taxes. Beatty v. C.I.R., 667 F.2d 501, 502 (5th Cir. 1982); United States v. Shimek, 445 F. Supp. 884, 889 (M.D. Pa. 1978).


Petitioner's arguments fail to demonstrate any basis for exempting him from his obligations under Wisconsin's income tax laws.

CONCLUSION AND ORDER

For the reasons stated above and based on the record herein, I conclude that the Commission's decision does not erroneously interpret the law. Accordingly, the decision of the Commission is hereby affirmed

Dated this 3rd day of April, 1984.

BY THE COURT


Angus B. Bartell
Circuit Judge

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