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SIMON GARY JAMES 01CV3178 061302 DANE CTY CIR CT

JUN 17 2002

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 12

DANE COUNTY

GARY JAMES SIMON,
Petitioner,

v.

Case No. 01 CV 3178

WISCONSIN DEPARTMENT OF REVENUE, and
WISCONSIN TAX APPEALS COMMISSION,
Respondents.

DECISION AND ORDER

INTRODUCTION

The Petitioner, Gary Simon, pursuant to Wis. Stat. § 227, requests the review of the Ruling and Order of the Wisconsin Tax Appeal Commission (WTAC) issued against him on October 17, 2001 (hereinafter "Ruling"). The petitioner, Gary James Simon, is challenging the WTAC's decision concerning three consolidated proceedings: docket number, 01-I-61 (tax years 1993 thru 1996); docket number, 01-I-62 (tax years 1996 thru 1999); and docket number 01-I-100 (tax years 1993 thru 1999). The Court, after review of the record, supports the Respondents' determination for the reasons outlined below.

OVERVIEW

This review springs from a taxpayer's refusal to comply with the state law which imposes a lawful obligation to pay tax upon income to the state. In defending his position, Simon has raised a number of issues, none of which carry any legal weight.

On September 11, 2000, a Wisconsin Department of Revenue (WDOR) auditor

acknowledged receipt of Simon's 1993 through 1996 Wisconsin income tax forms; in each case, the Petitioner requested a refund of all taxes withheld during the 1993 through 1996 period, Ruling, p. 2. For tax years 1993, 1994, and 1995, the petitioner reported income of \$120, \$76.75, and \$24.26, respectively. As to 1996, 1997, 1998 and 1999, he reported no income, Ruling p. 4. Each form included W-2 statements which reflected wages for each year of approximately \$35,000 to \$44,000. The refunds requested ranged from \$2,250 to \$2,850 for each year.

On September 11, 2000, the Department acknowledged receipt of the returns for years 1993 through 1996 and requested that the petitioner file and sign tax returns reporting all income. The petitioner was warned that he needed to file proper returns, otherwise the WDOR would estimate his income for the years in question and issue an assessment based on that estimate, Ruling, pp. 2-3; Wis. Stat. § 71.74(3). As to this request, the petitioner filed a petition for review before the Commission.

On October 23, 2000, the WDOR issued an assessment of \$19,266.05 against the petitioner to collect income tax owed by Petitioner as well as interest, penalties, and late filing fees. On January 22, 2001, the WDOR levied an assessment of \$19,264.05 against Simon for the years 1993 through 1995. As with the WDOR's determination for the years 1996 through 1999, this assessment includes income tax owed, interest, penalties, and late filing fees. The Petitioner filed petitions for review before the Commission as to these assessments and further sought an order protecting him from WDOR efforts to collect the taxes and penalties deemed owing. In the proceeding

before the Commission, the WDOR sought an order quashing discovery sought by the petitioner and an assessment pursuant to sec. 73.01(4)(am), Wis. Stats.

STANDARD OF REVIEW

This review comes under Wis. Stat. § 227.53. Under Wis. Stat. § 227.57(10) a reviewing court must accord *due weight* to an agency's experience, technical competence, and specialized knowledge . . . as well as discretionary authority" Furthermore, the deference granted by the courts also relates to the longstanding interpretation of a statute by a relevant agency. See Port Affiliates, Inc. v. Dep't of Revenue, 190 Wis.2d 271, 280, 526 N.W.2d 806 (Ct. App. 1994). The court, in Port Affiliates, Inc., stated, "[W]e will affirm the [agency's] interpretation of the statute if it is reasonable, even if another conclusion would be equally reasonable." Stated conversely, "[a] court does not . . . give deference to an agency's interpretation of a statute when the court concludes that the agency's interpretation directly contravenes the words of the statute, is clearly contrary to legislative intent, or is otherwise unreasonable or without rational basis." Id. at 279-80.

The Wisconsin Supreme Court has further refined this analysis to three levels of consideration: great weight, due weight, and *de novo*. See Harnischfeger Corp. v. LIRC, 196 Wis.2d 650, 659-60, 539 N.W.2d 98 (1995). If, once the background of a statute and the agency involved as been explored, a court finds that (1) the legislature has charged an office with the duty of administering the provision in question; (2) that the agency's interpretation is longstanding; (3) that agency relied on its expertise or specialized knowledge in forming the definition; and (4) the agency's interpretation

provides uniformity and consistency in the application of the statute, reliance on the great weight deference standard proves appropriate. See id. at 660. Moreover, if a court finds the four measures listed above it must sustain the decision under review even if other, reasonably situated, interpretations present themselves.¹ See Sea View Estates Beach Club, Inc. v. Dep't of Natural Resources, 223 Wis.2d 138, 149, 588 N.W.2d 667 (Ct. App. 1998). This analysis extends to due weight deference as well. See UFE, Inc. v. LIRC, 201 Wis.2d 274 n.3, 584 N.W.2d 57 (1996).²

DISCUSSION AND ANALYSIS

First, the Court finds that the legislature has charged the WTAC and the WDOR with the duty of administering the provisions associated with Wisconsin's tax laws. Furthermore, the Court recognizes that the interpretations forwarded by the WTAC and the WDOR in this action reach well into the past. And, in reaching their decision, the WTAC and the WDOR relied on their expertise and specialized knowledge in the area of Wisconsin tax law. Finally, the Court finds that the WTAC and the WDOR's

¹Wis. Stat. § 227.57(6) requires a court to avoid substituting its judgment for that of the hearing examiner or board, unless the decision is not supported by "substantial evidence." Gibson v. State Pub. Defender, 154 Wis.2d 813, 454 N.W.2d 46 (Ct. App. 1990), outlines the substantial evidence test used by Wisconsin's courts. Succinctly, the test demands that a court, once it has reviewed the evidence and all associated inferences must sustain the agency decision if a reasonable person might have made the same finding as the examiner. See id. at 813. The Court points out that "substantial evidence" does not mean "a preponderance of evidence." See Advance Die Casting Co. v. LIRC, 154 Wis.2d 239, 250, 453 N.W.2d 487 (Ct. App. 1989).

²Because of the standards forwarded by the legislature in Wis. Stat. § 227.57(10) and the supreme court's myriad decisions on the matter, *de novo* review of an agency's determination occurs rather infrequently.

interpretation generates uniformity and consistency in the application of the relevant statutes. Due to this, the Court reviews this case under the "great weight" standard. See Harnischfeger Corp. 196 Wis.2d at 659-60, 539 N.W.2d at .

The Petitioner, in seeking judicial review under Wis. Stat. § 227.53, asserts that the Respondents have made a number of errors. He consistently misunderstands fundamental concepts upon which Wisconsin law is founded and, as a consequence of his profound misunderstanding, he offers extensive argument of no value whatsoever. For example, Chapter 401 of the Wisconsin Statutes applies to the Uniform Commercial Code and the resulting contracts and transactions carried out under its provisions. Chapter 401 is unrelated to the Wisconsin tax code and sec. 401.207, Wis. Stats. has absolutely nothing to do with the requirement that a taxpayer sign an income tax return.

Wis. Stat. § 71.74(3) states, " Any person required to file an income or franchise tax return, who fails, neglects or refuses to do so within the time prescribed by this chapter or files a return that does not disclose the person's entire net income, shall be assessed by the department according to its best judgment." In essence, the state legislature has simply provided the WDOR one alternative which may be employed when faced with an uncooperative taxpayer. This enactment is a rational, reasonable measure and the petitioner has not offered any competent argument to the contrary.

Wis. Stat. 71.74(3) allows the state to collect a tax that is owed. If the WDOR assessment of Simon's income for the years in question exceeds his actual income, he merely has to file a proper tax return to resolve any discrepancies. Simon, however, has

refused to do this but has simply challenged the WDOR's authority to use this estimation mechanism. Apparently, the petitioner wants the Court to ignore Wis. Stat. § 71.74(3) and place a burden of proof on the WDOR despite established precedent, Woller v. Dep't of Taxation, 35 Wis.2d 227, 232, 151 N.W.2d 170, 172 (1967) (here, the court held that, "When the assessment is disputed, . . . the burden of proof is on the taxpayer to show error")

In essence, an essence which is below layer upon layer of polemic, the petitioner argues that the laws of Wisconsin requiring the payment of income tax to the state cannot lawfully be applied to him. These arguments have often been made and, more important, these arguments have been resolved adverse to the petitioner's position, Tracy v. Department of Revenue, 133 Wis.2d 151, 160, 394 N.W.2d 756 (1986); Lonsdale v. C.I.R., 661 F.2d 71, 72 (5th Cir. 1981).

Finally, the Petitioner contends that the Commission improperly granted the WDOR's motion for a protective order under Wis. Stat. § 804.01(3). The Commission concluded that the petitioner's "documents contain only frivolous, irrelevant, and useless ramblings", Ruling, p. 10. The Commission is clearly correct in its assessment and did not err in granting a protective order.

CONCLUSION

It is the determination of the court that the petitioner has shown no basis whatever to limit or modify the Ruling of the Commission. By any possibly applicable standard of review the Commission's Ruling must be upheld in every respect.

ORDER

For the reasons discussed above, the court affirms each of the five orders which appear at page 10 of the Commission's October 17, 2001. This is intended to be a final order within the ^{meaning} ~~meaning~~ of sec. 808.03(1), Wis. Stats.

BY THE COURT, this 13th day of June, 2002

Judge David T. Flanagan
Dane County Circuit Court Branch 12

cc: Gary James Simon

~~Atty. Stephen NURKS~~

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