

**STATE OF WISCONSIN  
TAX APPEALS COMMISSION**

---

**DERI T. AND ALICE M. MUMFORD,**

**DOCKET NO. 07-I-120**

Petitioners,

vs.

**RULING AND ORDER**

**WISCONSIN DEPARTMENT OF REVENUE,**

Respondent.

---

**ROGER W. LEGRAND, COMMISSIONER:**

This case comes before the Commission on cross-motions for summary judgment filed by the Petitioners and the Respondent, respectively. Petitioners are represented by Attorney Eric P. Joranson and Attorney Douglas Frazer of DeWitt Ross & Stephens, S.C. Attorney Sheree Robertson represents Respondent, the Wisconsin Department of Revenue (the "Department").

Having considered the entire record, including the parties' motions, affidavits, exhibits and briefs, the Commission hereby finds, rules and orders as follows:

**FINDINGS OF FACT**

1. By Notice of Amount Due dated January 30, 2006, the Department issued an assessment of additional income tax against the Petitioners for tax year 2001 in the total amount of \$76,799.17, including tax and interest computed to April 3, 2006, which resulted from adjustments made to their 2001 Wisconsin individual income tax return (the "2001 assessment"). (Affidavit of Deri T. Mumford dated April 10, 2008, Ex.

A; Dept. Ex. 2; Affidavit of Terri Stover-Cramer dated May 9, 2008, ¶ 7). The 2001 adjustments were described in an Office Audit Worksheet and explanation sheets attached to the Notice of Amount Due. (Pet. Ex. A; Dept. Ex. 2).

2. By a second Notice of Amount Due dated January 30, 2006, the Department issued an assessment of additional income tax against the Petitioners for tax year 2003 in the total amount of \$11,092.57, including tax and interest computed to April 3, 2006, which resulted from adjustments made to their 2003 Wisconsin individual income tax return (the “2003 assessment”). (Pet. Ex. B; Dept. Ex. 3; Stover-Cramer Aff. ¶7).

3. On April 3, 2006, the Petitioners filed a petition for redetermination of the 2001 and 2003 assessments with the Department. (Dept. Ex. 4; Stover-Cramer Aff. ¶8).

4. By letter dated April 26, 2006, the Department notified the Petitioners that that it had granted their appeal of the 2003 assessment based on information they had submitted, and requested further information regarding their appeal of the 2001 assessment.<sup>1</sup> (Pet. Ex. C; Dept. Ex. 5.)

5. In a document dated May 23, 2006, the Department notified the Petitioners that it had cancelled an assessment notice dated January 30, 2006 “as a result of the information you furnished,” but did not specify either the 2001 or 2003 assessment. (Pet. Ex. D; Mumford Aff., ¶ 8.)

---

<sup>1</sup> Thus, only the 2001 assessment is the subject of this appeal; the 2003 assessment is not at issue.

6. Mr. Mumford states that he received, in late May of 2006, undated documents from the Department's Resolution Unit labeled "Exhibit A-B" and "Exhibit C" for tax year 2001 showing total additional income tax, penalty and interest due in the amount of \$8,816.51, and a "Notice of Amount Due" requiring payment of that amount by May 31, 2007. (Mumford Aff., ¶¶ 9 and 10, Ex. E and F.)

7. In his Affidavit, Mr. Mumford states: "I relied on my belief that the 2001 Assessment had been cancelled, and in doing so, did not preserve all records pertinent to the 2001 Assessment Notice." (Mumford Aff., ¶ 13.)

8. By Notice of Action dated March 27, 2007, the Department notified the Petitioners that it had granted in part and denied in part their petition for redetermination of the 2001 assessment. (Dept. Ex. 13; Affidavit of Ruth Abrams dated May 13, 2008, ¶ 10). The Department alleges that Petitioners' Exhibits E and F (Mumford Aff. ¶¶ 9 and 10) were attached to the March 27, 2007 Notice of Action letter and that these schedules reflect modifications to the original 2001 assessment that were not sent to Petitioners prior to March 27, 2007. (Abrams Aff., ¶ 10.)

9. On May 25, 2007, the Petitioners filed a Petition for Review by certified mail with the Commission.

10. Respondent filed an Answer to Petitioners' Petition for Review.

11. The Petitioners subsequently filed a First Amended Petition for Review arguing that "under the doctrines of estoppel, waiver, or release, respondent is barred from assessing or collecting the amount it seeks."

12. On or about November 28, 2007, the Department filed an Answer

to Petitioners' First Amended Petition for Review.

13. On April 10, 2008, the Petitioners filed a notice of motion and motion for summary judgment, with an Affidavit of Deri T. Mumford dated April 10, 2008, supporting exhibits and brief.

14. On May 14, 2008, the Department filed a response to Petitioners' motion and a notice of motion and motion for summary judgment, with an Affidavit of Terri Stover-Cramer dated May 9, 2008, Affidavit of Ruth Abrams dated May 13, 2008, Affidavit of Sheree Robertson dated May 9, 2008, and supporting exhibits and brief.

### **RULING**

Summary judgment may be granted only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2). The Petitioners contend that the Commission should apply the doctrine of equitable estoppel to this case and estop the Department from requiring further substantiation and collecting the 2001 assessment. The Department argues that the doctrine of estoppel does not apply, and that because Petitioners admit that they cannot substantiate their appeal of the 2001 assessment, the Department is entitled to summary judgment as a matter of law.

#### **1. The Petitioners' Motion**

A party asserting the defense of estoppel must prove the existence of (1) action or inaction by the party against whom estoppel is asserted (2) which induces reliance thereon and (3) causes detriment to the party asserting the estoppel. *Wis. Dep't of Revenue v. Moebius Printing Co.*, 89 Wis. 2d. 610, 634, 279 N.W.2d 213 (1979).

Petitioners contend that the Department sent them the document dated May 23, 2006, that this document induced them to believe that the Department had cancelled the 2001 assessment, and that they relied on this belief when they decided not to preserve their records related to the 2001 tax year. The facts submitted do not support their contentions.

The Department's letter of April 26, 2006 informed the Petitioners that the 2003 assessment had been cancelled and that they would receive a confirmation notice within a few weeks. The letter also asked for further information regarding their 2001 tax returns. The Department's notice dated May 23, 2006 notified the Petitioners that it had cancelled an assessment notice dated January 30, 2006 "as a result of the information you furnished," but did not specify either the 2001 or 2003 assessment.

These facts submitted by the Petitioners do not prove the elements required for the defense of equitable estoppel. By its terms, the May 23, 2006 notice does not specify the 2001 assessment, and does not refer to either the 2001 or 2003 assessment, or both. No other document submitted by the Petitioners shows that their belief that this notice cancelled the 2001 assessment was reasonable or justified.

In addition, the Petitioners have not shown that they relied on the May 23, 2006 notice to their detriment. The only evidence of reliance submitted is Mr. Mumford's sworn statement that, in reliance upon his belief that the Department had cancelled the 2001 assessment, he "did not preserve all records pertinent to the 2001

Assessment Notice.”<sup>2</sup> (Mumford Aff., ¶ 13.) This statement alone does not prove detrimental reliance. The Petitioners do not provide any description of the records pertinent to the 2001 assessment that were not preserved, or the records that were preserved, if any.

Because genuine issues of material fact remain in dispute with respect to the Petitioners’ asserted defense of equitable estoppel, summary judgment is not appropriate and the Petitioners’ motion for summary judgment must be denied.

## **2. The Department’s Motion**

The Department’s assessments are presumptively correct and the burden is on the taxpayer to demonstrate the existence of any incorrectness. *Woller v. Dep’t of Taxation*, 35 Wis.2d 227, 232, 151 N.W.2d 170 (1967). According to Mr. Mumford’s sworn statement, he “did not preserve all records pertinent to the 2001 Assessment Notice.” (Mumford Aff., ¶ 13 (emphasis added).) Thus the Petitioners have conceded that they no longer have all of the records pertinent to the 2001 assessment in their possession, but have not admitted that they have no records pertinent to this assessment, as argued by the Department.

Because questions remain regarding the Petitioners’ ability to substantiate their case, genuine issues of material fact remain in dispute in this matter. Consequently, summary judgment is not appropriate and the Department’s motion for summary judgment must be denied.

---

<sup>2</sup> No statement of Alice M. Mumford, the co-Petitioner, was submitted.

**ORDER**

1. Petitioners' motion for summary judgment is denied.
2. Respondent's motion for summary judgment is denied.
3. The Commission will contact the parties to arrange a telephone status conference in this matter within 30 days of the date hereof.

Dated at Madison, Wisconsin, this 15<sup>th</sup> day of December, 2008.

**WISCONSIN TAX APPEALS COMMISSION**

---

David C. Swanson, Chairperson

---

Roger W. Le Grand, Commissioner

---

Thomas J. McAdams, Commissioner