

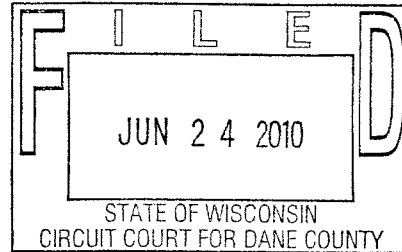
STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 9

DANE COUNTY

DAVID J. AND AUDREE LONGRIE,
DAVID J. LONGRIE,

Petitioners,



v.

Case No. 10 CV 0107

WISCONSIN DEPARTMENT
OF REVENUE,

Respondent.

DECISION AND ORDER ON JUDICIAL REVIEW

In this Wisconsin Statutes Chapter 227 judicial review, petitioners David J. and Audree Longrie challenge a pair of decisions by the Wisconsin Tax Appeals Commission affirming income tax assessments by the Wisconsin Department of Revenue against both petitioners, and a sales and use tax assessment solely against Mr. Longrie. The administrative record has been produced and reviewed, and the parties have fully briefed the issues. There being no request for oral argument, this judicial review is ripe for decision.

For the following reasons, the decisions of the Wisconsin Tax Appeals Commission are affirmed in their entirety.

DISMISSAL OF AUDREE LONGRIE'S APPEAL

The Wisconsin Tax Appeals Commission dismissed Audree Longrie's income tax assessment appeal because she failed to comply with § 71.89 (2), Stats., which provides:

"(2) No person against whom an assessment of income or franchise tax has been made shall be allowed in any action either as a plaintiff or defendant or in any other proceeding to question such an assessment unless the requirements of ss. 71.88 and 71.90(1) shall first have been complied with,

and unless such person shall have made full disclosure under oath at the hearing before the tax appeals commission of any and all income that the person received. The requirement of full disclosure under this subsection may be waived by the department of revenue."

It is undisputed that Audree Longrie did not personally appear at the hearing before the tax appeals commission and, therefore, did not make full disclosure of her income under oath at the hearing. The record also establishes that the Wisconsin Department of Revenue did not waive Ms. Longrie's appearance.

Petitioners argue that the personal appearance of David J. Longrie at the Wisconsin Tax Appeals Commission hearing not only satisfied this condition for his spouse Audree Longrie, but that the Wisconsin Tax Appeals Commission could not reasonably have interpreted § 71.89(2) otherwise in light of § 71.88(1), Stats. That statute, in pertinent part, provides that "[a] petition or an appeal by one spouse is a petition or an appeal by both spouses." Petitioners concede that this court must accord the Wisconsin Tax Appeals Commission's interpretation of § 71.89(2) "great weight difference", and therefore cannot substitute its own view of the law for that of the Commission but must sustain the Commission's interpretation of the law if it is reasonable, even if there are other interpretations of the law just as reasonable or even more reasonable. The burden is on petitioners to make the required showing that the Commission's statutory interpretation is unreasonable.

Here, not only is the Wisconsin Department of Revenue's legal interpretation reasonable, it is entirely correct. The statute is as clear as day in requiring Ms. Longrie's appearance to testify under oath as a precondition for her appeal, *in addition to* her husband's filing a petition on her behalf. Section 71.88(1)'s provision that one spouse's petition for appeal suffices for both does not conflict with § 71.89(2) whatsoever except under a tortured reading of the two statutes, which, of course, is disfavored. A fundamental rule of statutory construction is that all parts of a statutory scheme are to be harmonized by any reasonable interpretation that will give full effect to each. That is precisely what the Wisconsin Tax Appeals Commission did here.

DISALLOWANCE OF "VERIFIED" COST OF GOODS SOLD ("COGS")

The taxpayer petitioners contend that the Commission erred in disallowing deductions in 1994 and 1995 for expenses claimed by Mr. Longrie on his sales and use tax return in the form of "cost of goods sold". They cast the error as one of law, i.e. the COGS should have been allowed as a matter of law because they had been "verified" by the Respondent Wisconsin Department of Revenue in its audit.¹

¹ Petitioners state:

In fact, however, the Commission's decision turned not on a legal conclusion, but on a factual determination based upon the evidentiary record that the taxpayers had failed to satisfy their evidentiary burden of proof, principally because they lacked documentary evidence supporting the claimed expenses. On this record, their decision must be affirmed because it is supported by substantial credible evidence, *unless* petitioners are correct that, as a matter of law, the so-called "verification" of the COGS expenses by respondent *ipso facto* entitles Mr. Longrie to the deduction.

They are not.

As a starting point, petitioners fail to cite any authority -- and the court can find none -- to support their contention that "verifying" expenses by the auditor is dispositive before the Commission where the "verification" consists only of a taxpayer's sworn affidavit without documentation. Even more basic to this judicial review, and perhaps as a result of petitioners' decision not to cross-examine, what the Department auditor meant by the term "verified" is unclear on this record, particularly the significance of the "verification" on the weight and credibility of petitioners' claimed (but otherwise undocumented) expenses.

In the end, petitioners' argument boils down to a contention that, because the respondent Department of Revenue has allowed "verified" expenses for other taxpayers, it must do so here. However, beyond the fact that the respondent Department of Revenue and ultimately the Commission -- not this court -- are the ultimate arbiters of evidentiary credibility and therefore are at liberty to accord whatever weight to "verified" expenses they deem appropriate within the context of the entire evidentiary record in any particular case, the argument is a non-starter. This is because the particular facts of the other cases in which the "verified" expenses have been allowed are not before the court, and thus there is no basis to conclude that similar cases have been treated differently, let alone impermissibly so. Additionally, respondent has offered substantial and compelling reasons why petitioners' grossly undocumented expenses here are suspect, including that Mr. Longrie failed to file sales tax returns and remit related sales taxes for his business, and was uncooperative and less than forthcoming during the eight years of investigation. In short, as the Commission concluded, petitioners have failed to carry their burden to overcome the presumption of correctness that attends respondent's tax assessments because they lack clear

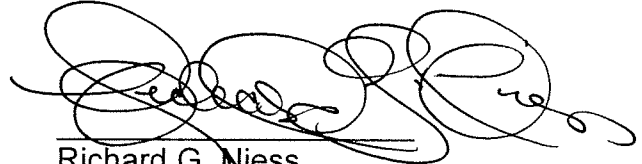
"Essentially, the argument comes down to the fact that the Department of Revenue has the obligation to allow verified expenses in its audits and that if it fails to do so the Tax Appeals Commission has the obligation to not affirm the assessment."

(Petitioners' Brief in Support of Petition for Judicial Review, p. 2).

and satisfactory evidence that respondent erred. On this judicial review, petitioners offer scant reason to conclude otherwise.

Dated this 24 day of June, 2010.

BY THE COURT:



Richard G. Niess
Circuit Judge

CC: Attorney David F. Grams
Assistant Attorney General F. Thomas Creeron III