

STATE OF WISCONSIN
TAX APPEALS COMMISSION

JERRY E. AND LORILEE L. KING,

DOCKET NO. 06-I-32

Petitioners,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE

Respondent.

DAVID C. SWANSON, COMMISSIONER:

This matter comes before the Commission for a ruling on a motion for summary judgment filed by respondent, the Wisconsin Department of Revenue ("Department"). Petitioners, Jerry E. and Lorilee L. King, appear *pro se* and have submitted a petition, affidavits with exhibits, and a "Motion to Strike" with supporting affidavit and memorandum of law in opposition to the Department's motion. The Department is represented by Attorney Sheree Robertson, who has submitted an affidavit with exhibits, a memorandum of law, and a reply brief in support of the motion.

Having considered the entire record herein, the Commission finds, rules, and orders as follows:

JURISDICTIONAL AND MATERIAL FACTS

1. Petitioners were residents of Wisconsin for all of the year 2001.
2. According to a 2001 I.R.S. Form W-2 filed by The Oilgear Company ("Oilgear") of Milwaukee, Wisconsin, Oilgear paid petitioner Jerry E. King wages

totaling \$93,197 during the year 2001. FICA tax withheld from Mr. King's wages was \$4,984, and Medicare tax withheld was \$1,351. No state income taxes were withheld from this income. (Affidavit of Sheree Robertson, Exh. 5.)

3. According to 2001 I.R.S. Forms 1099 filed by various payers, Mr. King received other amounts of income during 2001, including \$53 of interest income paid by RIPCO Credit Union of Rhineland, Wisconsin. (Robertson Aff., Exh. 5.)

4. Petitioners did not timely file a Wisconsin income tax return for the year 2001.

5. By notice dated July 11, 2005, the Department issued to petitioners an estimated assessment of income tax for the year 2001 in the amount of \$16,127.30, including tax, delinquent interest, and penalties (the "Assessment"). The Assessment was issued due to the failure of petitioners to file an income tax return for the year 2001. (Robertson Aff., Exh. 1.)

6. By letter dated July 28, 2005, petitioners filed an objection to the Assessment, which the Department treated as a petition for redetermination. In that letter, petitioners asserted that they had complied with "all tax laws" by filing "**a statement instead of a return for the year ending December 31, 2001.**" (Emphasis in original.) Petitioners submitted various documents with this letter as support for their conclusions, including a 39-page affidavit of Mr. King dated April 11, 2002. (Robertson Aff., Exh. 2.)

7. Among the many representations made in his affidavit of April 11, 2002, Mr. King claims that during 2001:

I received no 'wages' includable in 'gross income' as the foregoing quoted terms are specially defined and used pursuant to Title 26, U.S.C., Internal Revenue Code, and Title 26 C.F.R., and as the term 'include' is legally defined as a word of limitation in the context of the said quoted terms in *Black's Law Dictionary, Sixth Edition*, p. 763,
.....

(Robertson Aff., Exh. 2 (King Aff. ¶ 4).)

8. By letter dated September 13, 2005, the Department requested that petitioners file a Wisconsin income tax return for 2001 by October 3, 2005. (Robertson Aff., Exh. 4.)

9. On or about October 24, 2005, petitioners filed a 2001 Wisconsin income tax return Form 1A, dated October 20, 2005, reporting no income in wages, \$53 in interest income, a standard deduction of \$13,410, and a deduction for exemptions of \$1,650. With the return, petitioners also submitted a substitute Form W-2 (I.R.S. Form 4852) signed by Mr. King, reporting \$0 in wages received from Oilgear in 2001. (Robertson Aff., Exh. 6.)

10. By Notice of Action dated December 5, 2005, the Department denied the petition for redetermination. (Robertson Aff., Exh. 3.)

11. By letter also dated December 5, 2005, the Department notified petitioners that it did not accept Petitioner's Wisconsin income tax return Form 1A filed on or about October 24, 2005, because no documentation was provided from Oilgear to

substantiate the substitute Form W-2, and the return therefore “does not reflect all your income and is thus fraudulent in nature.” (Robertson Aff., Exh. 7.)

12. Petitioners filed a timely petition for review with the Commission on February 9, 2006.

13. On May 4, 2006, the Department filed its motion for summary judgment.

14. On June 8, 2006, petitioners filed a “Notice of Motion and Motion to Deny Respondent’s Motion for Summary Judgment,” which generally alleges that the Department has not proved the existence of the necessary facts underlying its motion for summary judgment.

15. On June 22, 2006, the Department filed its reply brief.

16. On August 3, 2006, petitioners filed a “Motion to Strike,” with supporting affidavit and memorandum of law, which requests that the Commission strike portions of the Department’s reply brief from the record based on versions of the same arguments advanced by petitioners in previous filings.

RULING

Summary judgment is warranted where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Wis. Stat. § 802.08(2).

Wisconsin Statutes § 71.02(1) provides that “there shall be assessed, levied, collected and paid a tax on all net incomes of individuals . . . residing within the state” Net income is derived from gross income, after subtracting allowable statutory deductions and exemptions. *See* Wis. Stat. § 71.01(16) (defining “Wisconsin taxable income”). “Gross income” is defined as “all income, from whatever source derived and in whatever form realized, whether in money, property or services, which is not exempt from Wisconsin income taxes,” and includes, but is not limited to, wages, salaries, commissions, and other compensation for services. Wis. Stat. § 71.03(1).

Any resident of Wisconsin whose gross income exceeds the threshold amount set annually by the Department is required to file a Wisconsin income tax return with the Department. Wis. Stat. § 71.03(2). For 2001, this threshold amount was \$9,000. “Any person required to file an income . . . tax return, who fails, neglects or refuses to do so . . . shall be assessed by the department according to its best judgment.” Wis. Stat. § 71.74(3). In the performance of its duty to assess incomes, the Department is empowered to estimate incomes. Wis. Stat. § 71.80(1)(a). Assessments made by the Department are presumed to be correct, and the burden is on petitioners to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984); Wis. Stat. § 77.59(1).

The Department estimated petitioners’ Wisconsin gross income for 2001 because petitioners failed to file a Wisconsin income tax return for that year, and it issued the Assessment based on that estimate. Petitioners have failed to meet their

burden to prove the Assessment incorrect, there is no genuine issue of material fact in this case, and the Department is entitled to judgment as a matter of law.

Petitioners assert that they had no taxable income for the year 2001 because Mr. King's "wages" for 2001, as reported by Oilgear, are not "wages" as defined under applicable federal and Wisconsin law. Petitioners do not deny that Mr. King received \$93,197 from Oilgear in 2001, an amount that Oilgear reported as "wages" paid to Mr. King during that period. Petitioners do not claim that Oilgear made a mistake by reporting this amount as "wages" paid to Mr. King. Thus, there are no material facts in dispute in this case. The only issue in dispute is whether the Assessment is invalid as a matter of law under the definition of "wages" applicable for income tax purposes.

In *Callahan v. Dep't of Revenue*, WTAC Docket No. 05-I-107 (January 9, 2006), the Commission considered a case with facts and legal arguments that were very similar to the facts and law at issue in this case. In that case, the petitioner argued that the federal and state governments can tax the wages of only government employees, and that the wages of employees of private sector employers are effectively immune from income tax. We rejected that argument in *Callahan*, and we reject it again here.

In their filings with both the Department and the Commission, petitioners deny that they are "tax protestors," as that term is commonly understood, but their legal arguments indicate otherwise. These arguments and ones like them have been consistently rejected in prior cases before the Commission and the courts. *See Callahan*. They are groundless and frivolous, and have never prevailed in Wisconsin, nor, as far

as the Commission is aware, in any court in the country. *See, Bierman v. C.I.R.*, 769 F. 2d 707, 708 (11th Cir. 1985) (finding similar arguments “patently frivolous” and noting that they “have been rejected by courts at all levels of the judiciary”); *Tracy v. Dep't of Revenue*, 133 Wis. 2d 151 (Ct. App. 1986); *Steele v. Dep't of Revenue*, WTAC Docket No. 05-I-79 (December 12, 2005); *Kroeger v. Dep't of Revenue*, WTAC Docket No. 04-I-228 (March 21, 2005); and *Boon v. Dep't of Revenue*, 1999 Wisc. Tax LEXIS 7 (WTAC 1999), *aff'd on other grounds* (Milwaukee Co. Cir. Ct. 1999).

There is no genuine issue of material fact in this case, and the Department is entitled to summary judgment as a matter of law. Based on the applicable statutes and cases cited herein, we further find that petitioners knew, or should have known, that their appeal was without reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. Their appeal is therefore frivolous and groundless. Consequently, petitioners are subject to an additional assessment of damages under Wis. Stat. § 73.01(4)(am). Wis. Admin. Code § TA 1.63.

IT IS ORDERED

1. The Department's motion is granted, and its action on petitioners' petition for redetermination is affirmed.
2. Petitioners' "Motion to Deny Respondent's Motion for Summary Judgment" and "Motion to Strike" are denied.
3. An additional assessment of \$300.00 is imposed on petitioners pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 18th day of September, 2006.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"