

STATE OF WISCONSIN
TAX APPEALS COMMISSION

FELIX AND MARY ONUKWUGHA,

DOCKET NO. 11-I-155

Petitioners,

vs.

DECISION AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

THOMAS J. McADAMS, COMMISSIONER:

This case comes before the Commission for decision after a hearing was held on May 22, 2012. The Petitioners appeared at the hearing in Milwaukee without an attorney. The Department is represented by Attorney Julie A. Zimmer. In brief, this case involves the Department's claim that the Petitioners had unreported personal services income from 2006 when Mary Onukwugha worked in California. Because of new information first presented at and after the hearing, the Department has moved in its post-trial brief to amend the assessment from \$5,547 to \$477.70. Based on the sworn evidence at the trial and the exhibits submitted by the parties, we find for the Department and simultaneously grant the motion to modify the assessment to \$477.70.

FACTS¹

1. In 2006, the Petitioners were Wisconsin residents. (Ex. 5; Testimony of Mary Onukwugha.)

¹ The facts are taken from the proposed facts the Department submitted. We have made edits.

2. In 2006, Mary Onukwugha took a temporary job in California working as a traveling nurse. (*Id.*)

3. In 2006, Mary Onukwugha was a registered nurse ("RN") in California, but not in Wisconsin. (*Id.*)

4. Mary Onukwugha worked for Level One Medical Staffing, Inc., in California ("Level One"), an agency that provides temporary workers in the medical profession. (*Id.*)

5. Mary Onukwugha worked for Level One from January 29, 2006, until June 12, 2006. During that time, Level One sent her to various hospitals to work as an RN, sometimes in the Intensive Care Unit. (Ex. 4; *Id.*)

6. In March 2006, Level One informed its employees that it would no longer withhold income taxes from their checks; the employees would have to pay their own income taxes from that point on. (*Id.*)

7. According to the timesheets, payroll detail, and check stubs provided by the Petitioners in their Petition for Review, Level One withheld income taxes from Mary Onukwugha's checks only for the pay periods of 2/5/06 - 2/11/06, 2/12/06 - 2/18/06, and 3/5/06 - 3/11/06 on year-to-date earnings of \$8,178.91. (Ex. 4, pp. 7, 10, and 14.)

8. Level One issued a 1099-MISC to Mary Onukwugha in 2006 reporting her remaining earnings as nonemployee compensation in the amount of \$41,754. (Exs. 4 and 10.)

9. Felix and Mary Onukwugha testified that they never received the 1099-MISC from Level One, and that maybe it was sent to their accountants.

10. On their 2006 Wisconsin income tax return, Petitioners reported only \$48,504 in federal adjusted gross income on line 1. The \$48,504 was comprised entirely of Mary Onukwugha's W-2 wage income, \$8,179 of which was from Level One. (Ex. 5; Testimony of Felix and Mary Onukwugha.)

11. The Internal Revenue Service ("IRS") made an adjustment to Petitioners' 2006 federal income tax return first, assessing the Petitioners for additional unreported income in the amount of \$41,754 in nonemployee compensation from Level One and \$7,300 from a U.S. Bank distribution. The IRS reported this adjustment to Respondent Wisconsin Department of Revenue ("Department"). (Ex. 6; Testimony of Auditor Mary Nelson.)

12. Based on the report from the IRS, the Department issued a Notice of Amount Due on November 5, 2010, to the Petitioners, assessing them for the same additional unreported income as the IRS. (Exs. 1 and 6; *Id.*)

13. The Petitioners appealed the Department's Notice of Amount Due by filing a timely Petition for Redetermination with the Department on November 10, 2010. (Ex. 2.)

14. By Notice of Action, the Department denied the Petitioners' Petition for Redetermination on January 31, 2011. (Ex. 3.)

15. The Petitioners timely filed a Petition for Review with the Tax Appeals Commission on April 14, 2011. (Ex. 4.)

16. Following the IRS's assessment, the Petitioners filed a 2006 amended federal income tax return admitting there was "self employed income of \$41,754 for the spouse of the taxpayer's traveling nurse business." The amended return was filed, according to the taxpayers, to include Schedule C "deductions for additional business expenses related to this income" that would result in a reduction of the IRS's assessment. (Ex. 7, p. 3. Trial Testimony.)

17. The Petitioners signed their 2006 amended federal income tax return under penalty of perjury, swearing that the return was "true, correct, and complete." (Ex. 7.)

18. The IRS accepted the Petitioners' 2006 amended federal return as filed. (Ex. 8; Testimony of Mary Nelson.)

19. The Petitioners did not file a 2006 amended Wisconsin income tax return with the Department. (Testimony of Felix Onukwugha.)

20. The Department was not made aware of Petitioners' 2006 amended federal income tax return until it requested documentation regarding the Petitioners' 2006 tax year from the IRS. (Testimony of Mary Nelson.)

21. Once the Department received Petitioners' 2006 amended federal income tax return, the Department accepted it as the IRS had and made a corresponding reduction to Petitioners' 2006 Wisconsin income tax assessment. The revised amount, with interest calculated to 5/22/12, was \$3,087.47. (Ex. 9; Testimony of Mary Nelson.)

22. Felix Onukwugha testified that the Petitioners had already satisfied a Wisconsin state tax lien in the amount of \$10,020 for the liability at issue. According

to his TransUnion credit report, a state tax lien in the amount of \$10,020 was paid in 09/2008 in Milwaukee County Circuit Court case, Docket No. 2007TW004635. (Ex. 11; Testimony of Felix Onukwugha.)

23. According to Wisconsin Circuit Court Access records, there was a full satisfaction of Wisconsin delinquent Tax Warrant No. 40-11176004 in the amount of \$10,020.69 in 09/2008. (Ex. 12; Testimony of Mary Nelson.)

24. Tax Warrant No. 40-11176004 in the amount of \$10,020.69 was issued via Notice of Warrant Filing to the Petitioners on November 2, 2007, to collect a liability from tax year 2005, not 2006. (Ex. 13; Testimony of Mary Nelson.)

25. Felix Onukwugha testified that the Petitioners are paying 2006 taxes to California and produced documentation indicating that California similarly assessed the Petitioners for 2006 unreported income and issued a tax lien for the amount assessed. (Testimony of Felix Onukwugha.)

26. Pursuant to the Commissioner's Order, the Petitioners produced additional documentation to the Department post-trial substantiating that they qualify for an additional 2006 credit for taxes paid to California in the amount of \$1,403.00, thus reducing the assessment at issue to \$477.70, with interest calculated to June 25, 2012. (See Revised Assessment marked as Ex. 14.)

DECISION

The facts relevant to the Commission's decision can be summarized briefly. In 2005, Mary Onukwugha went to California to work as a nurse until she could become licensed in Wisconsin. Her husband, Felix Onukwugha, remained in

Milwaukee. During the first few months of the year, Mary Onukwugha was paid by her California employer as an employee, but after those months her employer began to pay her as an independent contractor. Not aware of the distinction, the Onukwughas did not report the income from the latter portion of the year on their federal or Wisconsin returns. Eventually, the Onukwughas' accountant filed amended federal returns reflecting additional income of approximately \$41,000, but for reasons that are not clear amended returns were not filed in Wisconsin.

At the hearing, the Onukwughas testified that the State of California had proceeded against them for income taxes on the unreported income, and that they had the documentation of that fact at their home. After the hearing, the Onukwughas submitted documentary proof of the proceedings against them in California and the Department then adjusted the amount due to Wisconsin, based on a credit for the taxes paid to the State of California.

The Commission has listened to this case and reviewed the exhibits and therefore grants the Department's motion to modify the assessment to \$477.70 to conform to the proof at trial. In brief, it was undisputed at the hearing that Mary Onukwugha worked in California in 2006 and that the Onukwughas eventually filed amended federal returns reflecting receipt of income from the period Mary Onukwugha was an independent contractor. While the Petitioners' post-trial brief argues that the employer's nonpayment of the taxes for Mary Onukwugha is "fishy" and that the taxes have subsequently been paid, those claims are not supported by the undisputed documentary evidence now before the Commission. Thus, based on the proof

submitted during and after the hearing, we find that the Department has shown that the Onukwughas do, in fact, owe \$477.70 to the State of Wisconsin.²

ORDER

1. The Commission finds for the Department based on the proof adduced during and after the trial.

2. The Department's motion to modify the assessment to \$477.70 to conform to the proof is granted.

Dated at Madison, Wisconsin, this 16th day of August, 2012.

WISCONSIN TAX APPEALS COMMISSION

Lorna Hemp Boll, Chair

Roger W. LeGrand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"

² Of course, we are aware that in this type of appeal the burden of proof is, in fact, on the Petitioners.