

STATE OF WISCONSIN
TAX APPEALS COMMISSION

NEAL AND JENNIFER FRANZ,

DOCKET NO. 18-I-163

Petitioners,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING & ORDER

LORNA HEMP BOLL, COMMISSIONER:

This case comes before the Commission for decision on Respondent's Motion for Summary Judgment. The Petitioners, Neal and Jennifer Franz, Wisconsin Rapids, Wisconsin, appear *pro se* in this matter. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Sheree Robertson. The Department filed a brief along with a Stipulation of Facts signed by both parties. For the reasons stated below, we find for the Department.

FACTS

1. Petitioners were residents of the State of Wisconsin for the entire year of 2014. (Stip. ¶ 4.)
2. On March 30, 2015, Petitioners jointly filed their 2014 Wisconsin income tax return with the Department as full-time residents. (Stip. ¶ 6.)

3. On their jointly filed 2014 Wisconsin income tax return, Petitioners did not report as taxable income the \$40,638.19 pension/annuity income Mr. Franz had withdrawn in 2014. They also not report \$50 of interest income and did not report \$236 of medical savings distributions. (Stip. ¶ 7.)

4. When Mr. Franz withdrew the \$40,038.19 from his pension/annuity account, he was issued a 1099-R which shows that amount and which also shows that no Wisconsin state income tax was withheld from the amount distributed. (Stip. ¶ 10.)

5. The Department received a federal abstract from the Internal Revenue Service (IRS) showing adjustments made to Petitioners' 2014 federal income tax return. (Stip. ¶ 8.)

6. Petitioners did not notify the Wisconsin Department of Revenue within 90 days after the IRS adjusted their 2014 federal income tax return. (Stip. ¶ 8.)

7. The federal abstract has not been submitted to the Commission. (Commission file.)

8. After the Department received the federal abstract, it did a partial audit of Petitioners' 2014 Wisconsin income tax return and adjusted the Wisconsin taxable income to include the unreported pension/annuity income of \$40,638, the medical savings distributions of \$236, and interest income of \$50. (Stip. ¶ 9.)

9. The pension/annuity distribution amount is supported by a 1099-R issued by the Trust Company where the account was held. (Stip. ¶ 10, Ex. 4.)

10. The pension/annuity distribution was an early distribution. (Stip. ¶ 10.)

11. On October 17, 2017, the Department issued a Notice of Office Audit Amount Due - Individual Income Tax ("Notice"), adjusted Petitioners' 2014 Wisconsin income to include pension/annuity income received by Mr. Franz in 2014 in the amount of \$40,638.19, which had not been reported on Petitioners' 2014 Wisconsin income tax return. (Stip. ¶ 1, Ex. 1.)

12. The Notice assessed Petitioners additional individual income tax for tax period ending December 31, 2014, in a total amount of \$4,851.14, which included tax, early withdrawal penalty, and interest computed to December 18, 2017. (Stip. ¶ 1, Ex. 1.)

13. Petitioners filed a timely Petition for Redetermination, which the Department denied in a Notice of Action dated May 15, 2016. (Stip. ¶¶ 2-3, Exs. 2 and 3).

14. On July 12, 2018, Petitioners filed a timely Petition for Review with the Commission. (Commission file.)

15. On July 12, 2019, the Department filed a Motion for Summary Judgment. The Department has also filed a Stipulation of Facts signed by both parties. (Commission file.) The Department filed a brief in support of its Motion. Petitioners have filed no response.

APPLICABLE LAW

A motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2).

Under Wis. Stat. § 71.03(1),

Definition. In this section, "gross income" means 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. "Gross income" includes, but is not limited to, the following items: compensation for services, including salaries, wages and fees, commissions and similar items; gross income derived from business; interest; rents; royalties; dividends; alimony and separate maintenance payments; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive shares of partnership gross income except distributive shares of the income of publicly traded partnerships treated as corporations under s. 71.22 (1k); distributive shares of limited liability company gross income except distributive shares of the income of limited liability companies treated as corporations under s. 71.22 (1k); income in respect of a decedent; and income from an interest in an estate or trust. "Gross income" from a business or farm consists of the total gross receipts without reduction for cost of goods sold, expenses or any other amounts. The gross rental amounts received from rental properties are included in gross income without reduction for expenses or any other amounts. "Gross income" from the sale of securities, property or other assets consists of the gross selling price without reduction for the cost of the assets, expenses of sale or any other amounts. "Gross income" from an annuity, retirement plan or profit-sharing plan consists of the gross amount received without reduction for the employee's contribution to the annuity or plan. (emphasis added)

Specifically, the Wisconsin Administrative Code clarifies: Wis. Admin. Code § Tax 3.085(2) Residents. Employee annuity, pension, profit-sharing or stock bonus plan distributions, including self-employed retirement plan distributions, and distributions from qualified deferred compensation plans under ss. 401 (k), 403 (b) and 457 of the internal revenue code received by a person while a resident of Wisconsin shall be subject to the Wisconsin income tax, regardless of whether any of these distributions may be attributable to personal services performed outside of Wisconsin. (emphasis added)

DECISION

For Wisconsin tax purposes, gross income includes income from interest income, medical savings account distributions not shown to be exempt, and income derived from pensions/annuities. Petitioners withdrew funds from a pension/annuity, earned interest, and took distributions from a medical savings account. Petitioners failed to report these items of income on their 2014 Wisconsin tax return, nor were any funds withheld for Wisconsin tax purposes. Petitioners have made no showing that any of these items are exempt from taxation. Accordingly, we find that the Department of Revenue properly adjusted Petitioners' Wisconsin gross income for 2014 to include the unreported income.

CONCLUSIONS OF LAW

1. The Department's adjustments to include Petitioners' unreported pension/annuity distribution, medical savings distributions, and interest income as items of taxable Wisconsin income are affirmed.
2. The pension/annuity¹ is described on the financial institution's record as an early withdrawal, for which an early withdrawal penalty applies. The Department's adjustment to include an early withdrawal penalty is affirmed.
3. Other related penalties and interest are affirmed.

¹ Petitioners refers to this as a "sale of stock" in their Petition for Redetermination. (Stip. Ex. 2.)

ORDER

Based on the foregoing, it is the order of this Commission that the Department's Motion for Summary Judgment is granted and Petitioners' petition is dismissed.

Dated at Madison, Wisconsin, this 14th day of January, 2020.

WISCONSIN TAX APPEALS COMMISSION


Elizabeth Kessler, Chair


Lorna Hemp Boll, Commissioner


David L. Coon, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION
5005 University Avenue - Suite 110
Madison, Wisconsin 53705

NOTICE OF APPEAL INFORMATION

NOTICE OF RIGHTS FOR REHEARING, OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternately, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, within 30 days of this decision if there has been no petition for rehearing or, within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service, or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or, the Wisconsin Statutes. The website for the courts is <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.