

STATE OF WISCONSIN
TAX APPEALS COMMISSION

BENNETT C. FORMANACK

DOCKET NO. 20-I-127

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

ELIZABETH KESSLER, CHAIR:

Respondent filed a Motion for Summary Judgment alleging that there is no genuine issue of material fact and that the Respondent is entitled to judgment as a matter of law. In response to that Motion, Petitioner also moved for Summary Judgment. The Petitioner, Bennett C. Formanack, appears *pro se*. The Respondent, the Wisconsin Department of Revenue (the "Department"), is represented by Attorney Sheree Robertson. For the reasons stated below, the Department's Motion for Summary Judgment is granted, and the Petitioner's Motion for Summary Judgment is denied.

JURISDICTIONAL FACTS

1. The Department issued Petitioner two Notices of Amount Due - Individual Income Tax dated June 13, 2019, one for the tax year 2016 and one for tax year 2017. (Affidavit of Mary E. Nelson ("Nelson Aff.") ¶ 7, Exs. 7 and 8.)

2. Petitioner filed two Petitions for Redetermination, one for tax year 2016 and one for tax year 2017, claiming that he is considered a nonresident alien for federal tax purposes. For tax year 2016, he claimed to have only \$375 in interest income and no other earnings or income. For tax year 2017, he claimed to have only \$442 in interest income and no other earnings or income. (Nelson Aff. ¶¶ 8 and 9, Exs. 9 and 10.)

3. By Notice of Action dated February 26, 2020, the Department notified Petitioner of the denial of his Petitions for Redetermination. (Nelson Aff. ¶ 11, Ex. 12.)

4. Petitioner sent, by Certified Mail date-stamped April 24, 2020, a Petition for Review to the Tax Appeals Commission. The Commission received the Petitioner on April 27, 2020. (Commission file.)

MATERIAL FACTS

5. For tax years 2016 and 2017, Petitioner filed federal income tax returns using Forms 1040NR (US Nonresident Alien Income Tax Return). On those returns, Petitioner listed his filing status as "married nonresident alien." (Nelson Aff. Exs 5 and 6.)

6. The U.S. Internal Revenue Service (the "IRS") transcripts do not show that the IRS audited Petitioner's federal 2016 or 2017 Form 1040NR returns. (Supplemental Affidavit of Mary E. Nelson ("Nelson Supp. Aff.") ¶ 5.)

7. On March 25, 2019, Petitioner filed 2016 and 2017 1NPR (Nonresident and Part Year Resident) Wisconsin income tax returns. He reported receiving zero dollars in wages on those forms. Those tax returns listed Petitioner's

address as being in Hudson, Wisconsin. (Nelson Aff. ¶¶ 6, Exs. 5 and 6.)

8. On his 2016 and 2017 1NPR Wisconsin income tax returns, Petitioner left blank the section of the form where he was to indicate his state of residence other than Wisconsin. (Nelson Aff. Exs. 5 and 6.)

9. On his 2016 and 2017 1040NR forms, Petitioner left blank the section of the form where he was to indicate his foreign country of residence. (Nelson Aff. Exs. 5 and 6.)

10. The IRS provided the Department with information indicating that Petitioner was employed by the 3M Company in 2016 and 2017. This federal tax information shows that for the year 2016, the 3M Company paid Petitioner wages in the amount of \$87,513, and in the year 2017, it paid him wages of \$87,529. The W-2 transcripts list Payee's (Petitioner's) address as Elmwood, Wisconsin. (Nelson Aff. ¶ 3, Exs. 1 and 2.)

11. The Department reviewed its database and found, in the 2016 tax year, Petitioner was also paid \$4,301 in pension income from State Street Retiree Service. (Nelson Supp. Aff. ¶ 9.)

12. The Department adjusted Petitioner's 2016 return to include the unreported \$87,513 wages from the 3M Company as well as unreported pension/annuity distributions in the amount of \$4,301. The Department also adjusted Petitioner's 2017 return to include the unreported \$87,529 wages from the 3M Company. (Nelson Aff. ¶ 7.)

13. In 2016 and 2017, Petitioner held a valid Wisconsin driver's license, listing an address in Elmwood, Wisconsin. (Nelson Aff. ¶ 2.)

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).

The effect of counter-motions for summary judgment is an assertion by the parties that the facts are undisputed, that in effect the facts are stipulated, and that only issues of law remain. *Eichenseer v. Madison-Dane County Tavern League, Inc.*, 2008 WI 38, ¶ 4, 308 Wis. 2d 684, 748 N.W.2d 154. The cross filing of summary judgment motions citing undisputed facts leaves only questions of law to decide. *Healthcare Services Group, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-086 (WTAC 2016).

Under Wisconsin law, "there shall be assessed, levied, collected and paid a tax on all net incomes of individuals...residing in the state." Wis. Stat. § 71.02(1). "Wisconsin taxable income," defined under Wis. Stat. § 71.01(16), is gross income reduced by various statutory deductions and exemptions. In turn, "gross income" is defined in relevant part 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. 'Gross income' includes, but is not limited to, the following items: compensation for services, including salaries, wages and fees...." Wis. Stat. § 71.03(1).

DECISION

For Wisconsin tax purposes, Petitioner claims status as a nonresident for the tax years in question. His assertion is undermined by the fact that Petitioner held a

Wisconsin driver's license, and, per the Department's filings, he had Wisconsin earnings during those tax years. Moreover, Petitioner has offered nothing to show that he resided anywhere other than Wisconsin for the years in question.

The IRS records show that Petitioner was an employee of the 3M Company, who performed services for 3M and who was paid wages by 3M for the services performed, in both 2016 and 2017, and the address listed for the Petitioner on the W-2 information during that period is a Wisconsin address. Although Petitioner claimed that the evidence was "unverified," he offered nothing to refute that he was an employee of the 3M Company or that he was a resident of Wisconsin during 2016 and 2017.

Petitioner argues that he must be considered a nonresident of the State of Wisconsin during 2016 and 2017. His support for this claim is that he filed his federal and state taxes for those years as a nonresident. He argues that, because he considers himself a nonresident alien, he must be treated as a nonresident by the State of Wisconsin. Petitioner has shown no basis for his assertion. In fact, Petitioner failed to claim residence in any state or country other than Wisconsin on his returns. Furthermore, he was in possession of a valid Wisconsin driver's license during the entirety of 2016 and 2017, with a home address listed in Wisconsin.

Petitioner also argues that he was considered a nonresident alien for federal tax purposes in 2016 and 2017, and, because the IRS accepted the tax form he filed as a nonresident alien, the Department must do the same, and this Commission has no jurisdiction to find otherwise. Neither the Department, nor this Commission, is obligated to accept clearly erroneous unaudited filings with the IRS.

Petitioner also argues, with no supporting evidence, that wages paid to him by the 3M Company in 2016 and 2017 should not be considered Wisconsin income. As there is no evidence to refute that Petitioner received these wages from the 3M Company while a Wisconsin resident, such wages meet the definition of gross income under Wis. Stat. § 71.03(1).

Finally, Petitioner argues that the income taxes assessed by the Department were arbitrary as a matter of law. Given the detailed Notices of Amount Due - Individual Income Tax supplied by the Department, we find no evidence to support the allegation that these assessments were arbitrary.

CONCLUSIONS OF LAW


1. The Department has shown conclusively that Petitioner had taxable Wisconsin income for 2016 and 2017, which Petitioner did not report.
2. Petitioner has failed to show the Department was in error in assessing tax on Petitioner's Wisconsin income for 2016 and 2017.
3. The Department is entitled to judgment as matter of law.

ORDER

The Department's Motion for Summary Judgment is granted and the Department's action on the Petitioner's Request for Redetermination is, therefore, affirmed. Petitioner's Motion for Summary Judgment is denied.

Dated at Madison, Wisconsin, this 10th day of February, 2021.

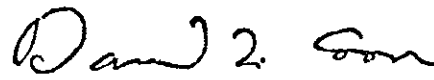
WISCONSIN TAX APPEALS COMMISSION



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.