

HARRY A. AND LAURA T. ROTH
3505 Randolph Road
Janesville, WI 53546,

DOCKET NO. 04-I-47

vs. Petitioners,

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8907
Madison, WI 53708-8907,

GRANTING SUMMARY

JUDGMENT

Respondent.

This matter comes before the Commission on a motion for summary judgment¹ filed by respondent, Wisconsin Department of Revenue (Department).

Petitioners, Harry A. and Laura T. Roth, appear *pro se*. The Department is represented by Attorney Donald J. Goldsworthy, who has submitted affidavits and exhibits with the motion.

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

UNDISPUTED MATERIAL FACTS

1. Petitioners filed a 2002 Wisconsin income tax return which was received by the Department on June 26, 2003.

¹The Department's motion is captioned, "Notice of Motion for Summary Judgment." However, the text of the motion states that the Department "moves . . . for an order granting summary judgment." In light of this language, and the fact that there is no other motion accompanying the document, the Commission treats the document as a Notice of Motion *and* Motion for Summary Judgment.

2. On lines 39 and 46 of the 2002 return, petitioners claimed Wisconsin income tax withheld in the amount of \$26,329.00.

3. Line 17 of Mr. Roth's 2002 W-2 form from General Motors Corporation indicates "State income tax" withholding in the sum of \$3,719.51.

4. By notice dated July 14, 2003, the Department issued petitioners an income tax assessment in the amount of \$3,053.76 for 2002. The assessment stated a net income tax for 2002 of \$6,068.00 and credited the sum of \$3,719.51 against petitioners' 2002 Wisconsin income tax liability.

5. Under date of August 27, 2003, petitioners filed a petition for redetermination with the Department.

6. Under date of January 19, 2004, the Department issued its Notice of Action denying the petition for redetermination.

7. Petitioners filed a timely petition for review with the Commission on February 17, 2004.

8. The Department filed a motion for summary judgment on October 20, 2004, which included affidavits by the Department's attorney and by Steven R. Gorton, the Section Chief of the Department's Central Collection Section, as well as exhibits in support of the affidavits and motion.

9. A Briefing Order was issued by the Commission on October 21, 2004, ordering petitioners to respond to the motion no later than November 22, 2004. Petitioners failed to submit any response.

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). Moreover, an adverse party to summary judgment may not rest upon the mere allegations or denials of the pleadings but, by affidavits or as otherwise provided in Wis. Stat. § 802.08(3), must set forth specific facts showing that there is a genuine issue for trial. Wis. Stat. § 802.08(3).

Assessments made by the Department are presumed to be correct, and the burden is upon the petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *See e.g., Puissant v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶202-401 (WTAC 1984).

In the affidavits submitted with its summary judgment motion, the Department states that, with the exception of the amount of \$3,719.51 in Box 17 of Mr. Roth's W-2 form, none of the other amounts claimed by petitioners to have been withheld were attributable to petitioners' 2002 Wisconsin income tax withholding payments. Rather, all other amounts claimed were payments for petitioners' Wisconsin delinquent tax liabilities for years other than 2002. The Department relies on its exhibits to support the assertions contained in its affidavits.

Petitioners have not filed any response to the Department's motion for summary judgment, nor can the Commission rely on petitioners' petition for review to discern petitioners' arguments in opposition to the Department's motion. *See* Wis. Stat. § 802.08(3). Thus, petitioners have failed to challenge the Department's assessment in

any way, much less meet their burden of establishing by clear and satisfactory evidence that the assessment was in error. Accordingly, there is no genuine issue of material fact in this case, and the Department is entitled to a judgment as a matter of law.

ORDER

The Department's motion for summary judgment is granted, and its action on petitioners' petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 11th day of May, 2005.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"