

**STATE OF WISCONSIN
TAX APPEALS COMMISSION**

**JOSE SIGALA AND
FRANCISCA PAYAN-IBARRA,**

DOCKET NO. 07-I-103

Petitioners,

vs.

DECISION AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DAVID C. SWANSON, COMMISSIONER:

This matter comes before the Commission following a hearing held on October 9, 2008. Petitioners Jose Sigala and Francisca Payan-Ibarra, a married couple, represent themselves in this matter. Their son, Jose Sigala, Jr., represented and assisted the Petitioners at various stages of the proceedings in this matter before the Commission and acted as their interpreter at the hearing. Petitioners' primary language is Spanish, and Jose Sigala, Jr. is fluent in both English and Spanish. Respondent, the Wisconsin Department of Revenue (the "Department"), is represented by Attorney Sheree Robertson.

At the hearing, the Commission received and entered into evidence the Department's exhibits 1 through 4 and 6 through 8. Petitioner Jose Sigala, Jose Sigala, Jr., Oscar Solis and Department Resolution Officer Shirley Henika provided sworn testimony. Petitioner Francisca Payan-Ibarra was present at the hearing but did not

testify.

Following the hearing, the Department requested permission for both parties to file post-hearing briefs. The Commission granted that request and scheduled briefs from both parties by order dated October 15, 2008. The Department filed its brief on November 14, 2008. Petitioners' brief was due on December 15, 2008; however, they did not file a brief. Having considered the sworn testimony, the parties' exhibits and the Department's brief, the Commission finds, concludes, decides and orders as follows:

FINDINGS OF FACT

1. By a Notice of Amount Due dated January 10, 2007, the Department issued an income tax assessment to Petitioners for the years 2002 through 2004 (the "period at issue") in the total amount of \$38,481.95, including tax and interest (the "assessment"). (Dept. Ex. 1.) According to the Department's Office Audit Worksheet also dated January 10, 2007, the assessment is based primarily on the Department's disallowance of deductions claimed by Petitioners on Schedule C of their federal income tax returns for each year at issue for (1) unverified contract labor expenses and (2) unverified car and truck expenses. (Dept. Ex. 1.)

2. By letter received on February 5, 2007, Petitioners filed with the Department a petition for redetermination of the assessment. (Dept. Ex. 2.)

3. By Notice of Action dated April 16, 2007, the Department denied Petitioners' petition for redetermination of the assessment. (Dept. Ex. 3.)

4. On May 10, 2007, Petitioners filed a petition for review and attachments with the Commission. (Dept. Ex. 4.)

5. During the period at issue, Petitioners were full-time residents of the State of Wisconsin. Petitioners filed joint federal and Wisconsin individual income tax returns for each year of the period at issue. (Dept. Ex. 6, 7 and 8.)

6. During the period at issue, Petitioner Jose Sigala owned and operated a sole proprietorship that installed drywall (d/b/a Sigala Drywall). Mr. Sigala reported Sigala Drywall's income and expenses on Schedule C of Petitioners' federal income tax returns for the years at issue, including expenses claimed for payments to contractors and for a car and truck used for business purposes. (Dept. Ex. 6, 7 and 8.)

7. Prior to the hearing, the Department reversed the adjustment that added \$33,404.00 in unreported wage income to Petitioners' 2002 Wisconsin income that was included in the original assessment. (Dept. Br., p. 2.)

8. Based on additional substantiation provided by Petitioners prior to the hearing, the Department allowed Petitioners' claimed contractor expenses reported on Schedule C as paid by Sigala Drywall to Oscar Solis (a/k/a Oscar Solis Delgado) and Jose Sigala, Jr. in the following amounts: (1) for 2002, \$7,998 paid to Oscar Solis; (2) for 2003, \$15,105 paid to Oscar Solis and \$9,428 paid to Jose Sigala, Jr.; and (3) for 2004, \$12,350 paid to Oscar Solis and \$9,239 paid to Jose Sigala, Jr. (Dept. Br., p. 2.)

9. Petitioner Jose Sigala fully participated in the proceedings in this matter and testified at the hearing. Mr. Sigala provided additional information to the Department in response to its requests and to the Commission in his petition for review. At the hearing, Mr. Sigala appeared to understand the Department's claims and the

issues presented in this matter.

10. At the hearing, Petitioner Jose Sigala testified that Sigala Drywall issued IRS Forms 1099-MISC to contractors paid during the period at issue, but did not testify as to whether these forms were filed with the Internal Revenue Service ("IRS").

11. Attached to the petition for review, Petitioners submitted copies of the following documents: (1) 2002 IRS Form 1099-MISC issued by Sigala Drywall to Anselmo Luna reporting nonemployee compensation paid in the amount of \$17,300.00; (2) a page of a handwritten ledger showing payments made during 2002 to Mr. Luna also totaling \$17,300.00; (3) 2003 IRS Form 1099-MISC issued by Sigala Drywall to Oscar Solis reporting nonemployee compensation paid in the amount of \$15,105.00; (4) two pages of a handwritten ledger showing payments made during 2003 to Mr. Solis also totaling \$15,105.00; (5) 2004 IRS Form 1099-MISC issued by Sigala Drywall to Rogelio Diaz reporting nonemployee compensation paid in the amount of \$20,072.00; and (6) two pages of a handwritten ledger showing payments made during 2004 to Mr. Diaz also totaling \$20,072.00. Petitioners provided no testimony or evidence showing that the handwritten ledger pages were prepared contemporaneously with the payments indicated thereon. On the copies of the three Forms 1099-MISC submitted to the Commission by Petitioners, a different federal identification number was included for Sigala Drywall as the reporting payer on each respective form.

12. Petitioner Jose Sigala testified that he paid the contractor expenses at issue in cash. Jose Sigala, Jr. and Oscar Solis also testified that these payments were made in cash. Petitioners presented no receipts from any payee for any of the cash

payments at issue.

13. Petitioner Jose Sigala testified that he maintained a business or personal checking account during portions of the period at issue. However, no copies of bank statements or canceled checks were presented as evidence corroborating any of the claimed payments at issue.

14. Department Resolution Officer Shirley Henika testified that, based on her search of the IRS's database, the Department could not confirm whether the reported payees (except for Jose Sigala, Jr. and Oscar Solis) filed federal income tax returns, and therefore could not confirm whether the other payees had reported the payments at issue on their income tax returns. In addition, Ms. Henika testified that the Department could find no record in the IRS database that the Forms 1099-MISC submitted to the Commission by Petitioners had been filed with the IRS.

15. At the hearing, Petitioners did not present any testimony or documentary evidence to substantiate the car and truck expenses disallowed by the Department. Except for the claimed contractor expenses, Petitioners did not present any testimony or evidence at the hearing regarding any other adjustment made by the Department in connection with the assessment.

CONCLUSIONS OF LAW

1. Petitioners have failed to satisfy their burden of proof in this matter.

2. The assessment issued by the Department to Petitioners is presumptively correct.

DECISION

Assessments made by the Department are presumed to be correct, and the burden is on the Petitioners to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984); Wis. Stat. § 77.59(1). Tax exemptions, deductions, and privileges are matters of legislative grace and will be strictly construed against the taxpayer. *Fall River Canning Co. v. Dep't of Taxation*, 3 Wis. 2d 632, 637, 89 N.W.2d 203 (1958).

The dispute in this matter stems from the Department's disallowance of Petitioners' claimed deductions for certain payments to contractors and expenses for a car and truck used for business purposes for the years at issue. Petitioners claimed these deductions on Schedule C of their federal income tax returns for the years at issue, under the general rule of Section 162 of the Internal Revenue Code of 1986, as amended (the "Code"), applicable to the deduction of business expenses. In general, Wisconsin follows federal law with respect to income tax. Section 162(a) of the Code provides that there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. In this matter, the Department argues that the Schedule C expenses at issue were not deductible because Petitioners have failed to substantiate those expenses. We agree.

At the hearing, Mr. Sigala testified that he paid the claimed contractor expenses in cash, and Jose Sigala, Jr. and Oscar Solis also testified that the payments were made in cash. The only documentary evidence provided by Petitioners related to

payments made to Oscar Solis, Anselmo Luna and Rogelio Diaz and consisted of copies of IRS Forms 1099-MISC and certain pages from a handwritten ledger that reflected the claimed payments. The Department subsequently allowed deductions for payments made to Jose Sigala, Jr. and Oscar Solis during the period at issue.¹

The other contractors claimed as payees by Sigala Drywall during the period at issue did not testify at the hearing. With respect to the claimed payments to Anselmo Luna and Rogelio Diaz, the only documentary evidence provided was a copy of a Form 1099-MISC and accompanying copies of pages from a handwritten ledger for each contractor. As noted above, Petitioners provided no testimony or evidence indicating that the ledger was prepared contemporaneously with the payments, and the pages submitted do not state when they were prepared. Absent this information, the copies of the ledger pages provided by Petitioners do not substantiate the claimed payments. The copies of the relevant Forms 1099-MISC likewise do not substantiate the claimed payments, because (1) the forms were not filed with the IRS, and (2) the payees apparently did not report the claimed payments as income. Petitioners provided no additional documentation regarding payments to any other contractors, and provided no testimony or documentary evidence concerning the claimed car and truck expenses or other adjustments at issue.

As a matter of law, Petitioner Jose Sigala's uncorroborated testimony as to the undocumented expenses is insufficient to satisfy the Petitioners' burden of proof and overcome the presumption of correctness attached to the assessment. *See, Conrad*

¹ At the hearing, Petitioners did not dispute the specific amounts allowed by the Department for the payments made to Jose Sigala, Jr. and Oscar Solis. (*See, Findings of Fact, ¶ 8.*)

LeBeau v. Wis. Dep't of Revenue, Wis. Tax Rptr. (CCH) ¶202-383 (WTAC, June 22, 1984),
aff'd, 133 Wis. 2d 476, 394 N.W.2d 920 (Ct. App., August 7, 1986) (unpublished decision);
St. Charles Lockett v. Wis. Dep't of Revenue, Wis. Tax Rptr. (CCH) ¶ 202-807 (WTAC 1986).

The Commission must presume that the assessment is correct and affirm the Department's disallowance of the disputed Schedule C expenses. Therefore,

IT IS ORDERED

The Department's action on the Petitioners' petition for redetermination in this matter is affirmed, including the subsequent modifications to the assessment made by the Department.

Dated at Madison, Wisconsin, this 15th day of June, 2009.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger W. Le Grand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"