

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

David L. Goding,
Petitioner,

MTT Docket Nos. 368819 and 370995
Assessment Nos. P551396 and Q511298
Case Type: Income Tax

v

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Cynthia J Knoll

ORDER OF CONSOLIDATION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

Petitioner appeals Respondent's assessments for unpaid income tax, interest, and penalty for tax years 1998 and 2004. Petitioner offers a variety of reasons for his appeal, as discussed in detail herein. The appeals relate to Final Bills for Taxes Due, Assessment Nos. P551396 and Q511298, issued on May 4, 2009 and May 14, 2009, respectively; which were based on Respondent's Decision and Order of Determination in response to an informal conference held March 10, 2009.

On March 8, 2010, Respondent filed Motions for Summary Disposition in these cases following a Small Claims hearing on March 2, 2010, regarding Petitioner's appeals of different assessments but based on the virtually identical issues raised in these cases.

Petitioner did not file a response to the Motions.

The Tribunal, having given due consideration to the Motions and the case files, finds no material issue of fact and, as also discussed herein, Petitioner has failed to state a claim on which relief can be granted. Therefore, the Motions brought under MCR 2.116(C)(8) must be granted. Further, the assessments at issue present common issues of fact and law and the consolidation of these cases will facilitate the efficient administration of justice. See TTR 111 and 220.

BACKGROUND

On November 14, 2007, Respondent issued Intent to Assess P551396 against Petitioner. On October 28, 2008, Respondent issued Intent to Assess Q511298 against Petitioner. The assessments at issue are as follows:

Assessment	Year	Tax	Interest	Penalty
P551396	1998	\$1,180.00	Statutory	\$295.00
Q511298	2004	\$4,445.00	Statutory	\$1,111.25

Petitioner requested an informal conference with Respondent's Hearing Division and a conference was held on March 10, 2009. The Hearing Referee issued his recommendation and Respondent accepted the recommendation, issuing a Decision and Order of Determination affirming the assessments. Respondent issued the Final Bills for Taxes Due, assessments P551396 and Q511298, on May 4, 2009 and May 14, 2009, respectively. The reasons stated were as follows:

No MI-1040 return was filed for the...year [at issue]. Tax due [is] computed based on IRS audit information, provided by IRS under authority of IRC.6103(D).
File a return to adjust this bill or submit proof that no return was required.

Penalty and interest for failure to file.

25% Penalty (minimum 25%) for frivolous protest of tax due.

Petitioner filed the subject appeals with the Tribunal on June 4, 2009 and June 18, 2009, respectively.

On March 8, 2010, Respondent filed Motions for Summary Disposition pursuant to MCR 2.116(C)(8). Petitioner did not file responses to Respondent's Motions.

PETITIONER'S CONTENTIONS

Petitioner contends that he owes no tax, interest or penalties for the tax years at issue. In his petition, Petitioner argues a variety of reasons in support of his contentions including, but not limited to, the following:

1. Petitioner does not admit liability for the taxes, penalty or interest claimed by the Michigan Dept of Treasury, Collections Division (hereby known as the "Dept").
2. Petitioner is a Pro-Se litigant with no formal tax law training.
3. The assessment made against Petitioner was done in total violation of Michigan law and taxpayer's rights.
4. Until assessment is calculated legally according to Michigan law, there is no tax owed by the Petitioner.
5. Petitioner never received a "proposed tax due letter" or a "letter of inquire" for the amount and years in question as required by law. (MCL 205.21)
6. Petitioner, in his correspondence to the dept, has never argued nor stated that, "Wages are not income."
7. The Dept accepts unsigned, unverified information, from unknown IRS personnel, pertaining to the Petitioner.
8. The Dept rejects and ignores sworn information from Petitioner in favor of unsigned and unverified information from unknown IRS personnel.
9. The alleged audit information the Dept received from the IRS under authority of IRC 6103(d), is erroneous and untrue.
10. IRS documents in the Dept's possession list a US 1040 return existing.

11. The Dept's position, in its notices, that a US 1040 return exists and was audited is incorrect.
12. Petitioner suggested to the Dept, as evidence that no federal returns exist (for years 1998 and 2004) and that the head of Dept would only need to request, from the IRS, the alleged audited federal 1040 return under the authority of IRC 6103(d).
13. Alleged/disputed audit information from IRS should not have been given to Dept until litigation with IRS was completed.
14. Unknown IRS employee illegally disclosed disputed information to Dept in violation of IRC sec. 7213A
15. The disputed audit information from the IRS was acquired illegally by the Dept in complete violation of IRC Sect. 6103(d).
16. State of Michigan tax agreements with IRS do not trump tax laws passed by Congress.
17. Under 6103(d), **NO required** written request exists from the head of the Dept. Therefore, there were no named individuals within the Dept designated to receive/inspect said return information in required written request, in violation of federal law. [Emphasis in original.]
18. Not one condition of 6103(d) was fulfilled by the Dept in receiving disputed IRS information on the Petitioner.
19. A federal return must exist in order to file a Michigan return.
20. Petitioner did not file a federal return for 1998 and 2004.
21. Since Petitioner filed no federal returns Petitioner is unable under Michigan law to file a 1998 and 2004 Michigan return.
22. Petitioner would be committing perjury by filing a fraudulent return under Michigan law (MCL 205.27), if he filed and signed a 1998 and 2004 Michigan return knowing no federal return was filed.
23. The Dept, for over 12 years and up to this day, has continued to refuse to answer Petitioner's numerous inquiries as to how Petitioner would file a Mi income tax return when no federal income tax return exist.
24. MCL 206.315 lists the requirements to file a Michigan return which Petitioner cannot meet:

206.315 Tax return of person, other than corporation, whose adjusted gross income exceeds personal exemptions; due date; contents; composite income tax return.

Sec. 315.

*(a) Every person, other than a corporation, **required** to make a return for any taxable period under the internal revenue code, except as otherwise specifically provided in this act, if his or her adjusted gross income is in excess of the personal exemptions allowed by this act shall render on or before the fifteenth day of the fourth month following the close of that taxable period to the department a return setting forth all of the following:*

*(a) **The amount of adjusted gross income on the return made to the United States internal revenue service for federal income tax purposes and as provided in the definitions contained in this act and the rules issued under this act.*** [emphasis added by Petitioner]

25. The Dept has no lawful authority to determine if Petitioner is required to file federal tax returns.
26. Petitioner is not required under State law or federal law, to prove to the State/Dept, that he is not required to file federal returns for years 1998 and 2004.
27. Michigan is a sovereign State.
28. The Supreme Court defined Constitutional (federal) income as “A corporate profit or gain.”
29. Petitioner should not be held to federal statutes “first” in order to file a Michigan return for State taxes he may be liable for.
30. Michigan income tax laws are unconstitutional by transferring the power to tax Michigan residents to federal statutes and federal returns FIRST, in violation of the State Constitution.
31. The Dept has repeatedly refused for over 12 years, to help Petitioner comply with Michigan tax laws as guaranteed by the Michigan taxpayers’ rights (*Michigan taxpayers’ rights handbook page 16*).
32. Petitioner’s taxpayer rights have been repeatedly violated by the Dept.
33. Petitioner was unreasonably denied a face to face hearing at a location convenient to both parties. Dept’s most recent taxpayers’ rights brochure, (Form 2123, revised 4-08) still deceitfully implies a hearing will be held at a mutual agreed location, despite the FACT the Dept has a long standing blanket policy of denying all face to face hearings except in Dimondale, MI.
34. Petitioner requested a copy of the audit information the Dept claims it received from the IRS under authority of IRC 6103(d), and was repeatedly ignored.
35. Petitioner’s due process rights and Michigan taxpayer rights to receive the information the Dept claims it used to determine tax was denied.
36. Given the above repeated blatant violations for laws, rights (*taxpayer and due process rights*), and stone-walling by the Dept, Petitioner requests the Michigan Tax Tribunal void the Dept’s final bill for taxes due, penalties and interest and award cost to Petitioner.
37. In the event the petitioner is unable to attend the hearing scheduled in this matter due to medical problems, this petition and other possible evidence, is submitted in lieu of a personal appearance.

RESPONDENT’S CONTENTIONS

Respondent claims that the basis of the subject assessment is a Decision and Order of Determination issued by the Respondent as the result of an informal conference held on March 10, 2009 before a Departmental hearing referee. Petitioner brings this appeal before the Michigan Tax Tribunal pursuant to section 22 of 1941 P.A. 122, Michigan Compiled Laws (MCL) 205.22.

Respondent contends:

Under the Michigan Income Tax Act (ITA), at MCL 206.16, 206.26, 206.30, 206.51, 206.110, 206.311, and 206.315, an individual with sufficient adjusted gross income as defined in section 62 of the Internal Revenue Code is required to

file a Michigan income tax return and pay any resulting income tax liability. The contention that wages and other related monetary compensation are not income under the Internal Revenue Code has been repeatedly rejected by the federal courts. See *Perkins v. Commissioner*, 746 F2d 1187, 1188 (6th Cir. 1984,) *Simanonok v. Commissioner*, 731 F2d 743, 744 (11th Cir. 1984.) Also see *Internal Revenue Service (IRS) Notice 2007-30* that states that the position taken by taxpayers using arguments similar to those advanced by this Petitioner are frivolous and without merit.

In this case, the Petitioner did not file federal or Michigan income tax returns for the years at issue, and the Department has based an assessment of the taxes owed on the best information available as allowed under MCL 205.21, that being information received from the Internal Revenue Service under the disclosure provision of section 6103(d) of the Internal Revenue Code. The Departmental Hearing Referee's Recommendation from the Petitioner's informal conference summarizes in detail the Department's position with respect to the arguments raised by the Petitioner regarding his requirement to file a Michigan income tax return for the year at issue. The Respondent requests the Tribunal uphold the subject assessments unless the Petitioner provides the Tribunal with actual 1997, 1999, 2001, 2002, and 2003 Michigan income tax returns prepared in accordance with the Michigan Income Tax Act that supports a different tax due.

In addition, Respondent requests the Tribunal award costs as allowed under the Tribunal's Practice and Procedure administrative rules, R 205.1145 of the Michigan Administrative Code, because of the frivolous nature of the Petitioner's legal arguments and because there is an accurate factual basis for the tax assessed by the Department. Respondent asserts that Petitioner has deliberately failed to file Michigan income tax returns despite having a clear and compelling legal requirement to do so.

APPLICABLE LAW

In the instant case, Respondent filed a Motion for Summary Disposition under MCR 2.116(C)(8). MCR 2.116(C)(8) provides the following ground upon which a summary disposition motion may be based: "The opposing party has failed to state a claim on which relief can be granted." A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone. The purpose of such a motion is to determine whether the plaintiff has stated a claim upon which relief can be granted. The motion should be granted if no factual development could possibly justify recovery. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). "Under MCR 2.116(C)(8), we accept all well-pleaded factual allegations as true and construe them in a light most favorable to the nonmoving party." *Johnson v City of Detroit*, 457 Mich 695, 701; 579 NW2d 895 (1998). Only if no factual development could justify the plaintiff's claim for relief can the motion be granted. *Koenig v City of South Haven*, 460 Mich 667, 674; 597 NW2d 99 (1999).

In *Kostyu v Michigan Department of Treasury*, 170 Mich App 123; 427 NW2d 566 (1988), the Michigan Court of Appeals held that the Tax Tribunal has authority to allocate the burden of proof in a manner consistent with the legislative scheme. *Zenith Industrial Corp v Dep't of Treasury*, 130 Mich App 464; 343 NW2d 495 (1983). Although the statute at issue, being MCL 205.21 et seq, does not state which party has the burden of proof, imposing the burden on the taxpayer is consistent with the overall scheme of the tax statutes and the Legislature's intent to give the Department a means of basing an assessment on the best information available to it under the circumstances. *Id.* at 130. See also *Vomvolakis v Dep't of Treasury*, 145 Mich App 238; 377 NW2d 309 (1985), *lv den* 424 Mich 887 (1986).

Under MCL 206.16, a person is “any individual, firm, association, corporation, receiver, estate, trust or any other group or combination acting as a unit, and the plural as well as the singular number.”

Under MCL 206.30(a):

“Taxable income” means, for a person other than a corporation, estate, or trust, adjusted gross income as defined in the internal revenue code subject to the following adjustments under this section:

- (a) Add gross interest income and dividends derived from obligations or securities of states other than Michigan, in the same amount that has been excluded from adjusted gross income less related expenses not deducted in computing adjusted gross income because of section 265(a)(1) of the internal revenue code.

Under MCL 206.51:

- (1) For receiving, earning, or otherwise acquiring income from any source whatsoever, there is levied and imposed upon the taxable income of every person other than a corporation a tax at the following rates in the following circumstances:
 - a. Before May 1, 1994, 4.6%.
 - b. After April 30, 1994 and before January 1, 2000, 4.4%.
 - c. For tax years that begin on and after January 1, 2000 and before January 1, 2002, 4.2%.
 - d. For the tax years that begin on and after January 1, 2002 and before January 1, 2003, 4.1%.
 - e. On and after January 1, 2003 and before July 1, 2004, 4.0%.
 - f. On and after July 1, 2004 and before October 1, 2007, 3.9%.

Under MCL 205.21(1):

- (1) If a taxpayer fails or refuses to make a return or payment as required, in whole or in part, or if the department has reason to believe that a return made or payment does not supply sufficient information for an accurate determination of the amount of tax due, the department may obtain information on which to base an assessment of the tax. By its duly authorized agents, the department may examine the books, records, and papers and audit the accounts of a person or any other records pertaining to the tax.

Under IRC 6103(d), the IRS can disclose information to any “any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws.”

Under 205.21(2):

- (2) In carrying out this section, the department and the taxpayer shall comply with the following procedure:
 - (a) The department shall send to the taxpayer a letter of inquiry stating, in a courteous and non-intimidating manner, the department's opinion that the taxpayer needs to furnish further information or owes taxes to the state, and the reason for that opinion. A letter of inquiry shall also explain the procedure by which the person may initiate communication with the department to resolve any dispute. This subdivision does not apply in any of the following circumstances:
 - (i) The taxpayer files a return showing a tax due and fails to pay that tax.
 - (ii) The deficiency resulted from an audit of the taxpayer's books and records by this state.
 - (iii) The taxpayer otherwise affirmatively admits that a tax is due and owing.

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence:

1. The 1998 Michigan income tax return and payment were due April 15, 1999.
2. The 2004 Michigan income tax return and payment were due April 15, 2005.
3. Petitioner failed to file and pay income tax for years 1998 and 2004.

CONCLUSIONS OF LAW

First, Petitioner contends that he owes no taxes for the years 1998 and 2004, or that Respondent cannot collect those taxes because Respondent failed to send him a letter of inquiry, as required by MCL 205.21(2)(a).

Petitioner argues that he never received a “proposed tax due letter” or a “letter of inquire” for the amount and year in question as required by law. Even though Respondent failed to send him an inquiry letter, Petitioner was given sufficient notice and an opportunity to be heard at a meaningful time and in a meaningful manner at Respondent’s informal conference. *See By Lo Oil*, 267 Mich App 19, 703 NW2d 822, 2005, at 29; *Hinky Dinky Supermarket*, 261 Mich App 604, 683 NW2d 759, 2004, at 666. Further, Petitioner also failed to provide any evidence or legal authority to support his claim that because Respondent failed to send Petitioner a letter of inquiry, Respondent was prohibited from collecting taxes.

Second, Petitioner contends that Respondent has no lawful authority to determine if Petitioner is required to file state tax returns. Under MCL 206.51(1), if a person earns or receives income, there is levied and imposed upon a taxable income, a tax. Further, Respondent has the authority to examine Petitioner’s records to determine if Petitioner has taxable income pursuant to MCL 206.51(1). More importantly, Respondent can make its assessment with the best information available under the circumstance. *Zenith Industrial v Dep’t Treasury*, 130 Mich App 464; 343 NW2d 495 (1983). Here, the best information available was received from the IRS. The IRS has the authority to disclose Petitioner’s tax information to Respondent, pursuant to IRC 6103(d), because Respondent uses the information to determine Petitioner’s state tax obligations. According to the documents that Respondent received from the IRS, Petitioner had taxable income for the years at issue, pursuant to MCL 206.51(1). Since Petitioner had taxable income for the years in dispute, he was required to file state tax returns. As such, Respondent not only had lawful authority to determine Petitioner’s tax obligations, but also properly determined that obligation.

Third, Petitioner contends that since he filed no federal return for the years in dispute he would commit perjury if he filed and signed a Michigan return knowing no federal return was filed. Even though Petitioner did not file a federal tax return for years at issue, this does not negate his liability or, more appropriately, his responsibility to file state tax returns. Petitioner is an individual and meets the definition of a person under MCL 206.16. Petitioner had adjusted gross income in years 1998 and 2004, which is taxable pursuant to MCL 206.30a. Petitioner was required to and should have filed state tax returns. Therefore, Petitioner is liable for any state taxes owed for the years in dispute.

Fourth, Petitioner contends that his assessments were calculated incorrectly and Petitioner owes no tax, under Michigan law, until the corrections are made. Respondent is, as indicated above, authorized to use the best information it receives to determine Petitioner’s tax liability and Respondent relied on the best information available (i.e., information on Petitioner’s taxes from the IRS pursuant to IRC 6103(d)).

As a result, Petitioner has failed to prove that the assessments are in error. Respondent correctly assessed Petitioner’s assessments pursuant to the formulas under MCL 205.23 and 24.

Finally, Petitioner makes other contentions for which he offers no legal authority or evidence that support his claims. For example, Petitioner contends that Michigan income tax laws are unconstitutional by transferring the power to tax Michigan residents to federal statutes and federal returns first, in violation of State Constitution. The Tribunal does not have time to deal with “cases of this sort [that] needlessly disrupt [its] consideration of those genuine controversies.” *Hatfield v Commissioner*, 68 TC 895, 899 (1977). In addition, the Tribunal does not have to hear Petitioner’s claims that “are designed to delay, obstruct, or incapacitate the operations of the courts or any other governmental authority.” *Crain v C.I.R.*, 737 F2d 1417, 1418 (1984). Petitioner contends that he does not have to file a return nor pay taxes. Respondent has provided sufficient evidence, such as Petitioner’s IRS records, to rebut Petitioner’s contention. Again, Petitioner provides no legal authority or evidence to support his claim. Even though Petitioner knows that he must file a return and pay taxes if owed, he refuses. Petitioner uses meritless arguments to avoid paying his taxes. These types of claims are unacceptable. Therefore, Petitioner’s remaining contentions are found meritless and frivolous.

The Tribunal finds that there are no material issues of fact and that Petitioner has failed to state a claim on which relief can be granted. Therefore, Respondent’s Motion is granted.

SUMMARY OF JUDGMENT

The tax, interest, and penalties for the tax years at issue as established by Respondent are **AFFIRMED**.

JUDGMENT

IT IS ORDERED that the above-captioned cases are **CONSOLIDATED**.

IT IS FURTHER ORDERED that any future pleadings and documents filed in these cases shall refer to both docket numbers.

IT IS FURTHER ORDERED that the taxes, interest, and penalties shall be as set forth in the *Summary of Judgment* section of this Final Opinion and Judgment.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: May 5, 2010
CJK/pmk

By: Cynthia J Knoll