

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

Henry and Janet Marie Nino,
Petitioners,

MTT Docket No. 321692, 322292,
and 328884

v

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

INTRODUCTION

Petitioners appeal Respondent's assessments for unpaid income tax, interest, and penalty for tax years 1996 through 2003. A hearing was held in the above-captioned matter on November 7, 2007. Petitioners represented themselves. Respondent was represented by Amy M. Patterson, Assistant Attorney General.

BACKGROUND

Petitioners filed a Michigan individual income tax return for tax year 1996 with "0" on all lines, claiming no tax was due, except on lines 33-39, which indicated a request for refund of all "MICHIGAN TAX WITHHELD." Petitioners attached Mr. Nino's W-2 to the return which indicated that he had income for the tax year. Respondent considered this return invalid. For tax years 1997 through 2003, Petitioners did not file Michigan income tax returns. Respondent computed Petitioners' tax liability for each of the tax years at issue based on income information obtained from the Internal Revenue Service, and offered Petitioners an opportunity to provide additional information or file amended returns.

Respondent issued to Petitioners Intent to Assess M602777 for failure to pay income tax for the 1996 tax year. Petitioners appealed and an informal conference was held. Respondent issued a Final Recommendation and Order in that matter on September 22, 1998. Petitioners did not appeal. Subsequent to that Final Order, Respondent received information from the Internal Revenue Service indicating that Petitioners had more income than initially used to calculate the tax due. Respondent issued a corrected Intent to Assessment No. M602777 based on the difference between the income reported by the Internal Revenue Service and the income determined by Respondent plus a 100% fraud penalty. Petitioners appealed the corrected Assessment No. M602777, requested an Informal Conference which was held. Respondent issued a Decision and Order of Determination upholding Assessment No. M602777 on March 23, 2006. Petitioners appealed that Decision and Order to the Tribunal on April 20, 2006. (MTT Docket No. 322292) On December 28, 2006, the Tribunal issued an order consolidating Docket No. 328884 with Docket No. 321692.

Respondent issued to Petitioners Intent to Assess L406425 for failure to pay income tax for the 1997 tax year. The only evidence relating to this Assessment is a copy of Respondent's Final Bill for Taxes Due (Final Assessment) with an issue date of March 3, 2006. Petitioners appealed this Assessment to the Tribunal on April 4, 2006 (MTT Docket No. 321692).

Respondent issued to Petitioners Intent to Assess L406425, L406426, L406427, and L406428 for failure to pay income tax for the 1997, 1998, 1999, and 2000 tax years on September 27, 2002. Those Assessments became final on November 6, 2002. Petitioners did not appeal those

Final Assessments. Respondent issued to Petitioners Intents to Assess N210493, N210494, and N210495 for failure to pay income tax for the 2001, 2002, and 2003 tax years on August 29, 2005. Those Assessments became final on September 7, 2005. Petitioners did not request a conference regarding these Final Assessments. On October 24, 2005, Respondent issued “corrected”¹ Final Assessments for L406425, L406426, L406427, L406428, N210493, N210494, and N210495 that increased the penalty to a 100% fraud penalty. Petitioners timely requested an informal conference, which Respondent granted stating that the “subject of the conference was limited to the additional penalty assessed on the corrected Intents.”² Respondent’s Decision and Order of Determination upheld the Referee’s Informal Conference Recommendation to uphold the Final Assessments and 100% fraud penalties for all assessments. Petitioners appealed that Decision and Order to the Tribunal on September 7, 2006. That appeal was given Docket No. 328884. On January 23, 2007, the Tribunal issued an order consolidating Docket No. 328884 with Docket No. 321692. All of the Docket Nos. having been consolidated, all of the tax years therein were before the Tribunal in this hearing.

On April 4, 2007, Respondent filed a Motion for Protective Order and/or to Strike Petitioner’s Request for interrogatories and Production of Documents stating that “the requests are vague, incomprehensible, not reasonably calculated to lead to discovery of admissible evidence and that the requests are designed to harass Respondent.” Respondent further asserted that “what Petitioner is requesting . . . seek[s] information that would disclose audit selection and processing criteria in violation of MCL 205.28(1)(f).” On June 13, 2007, the Tribunal entered an Order partially granting and partially denying Respondent’s motion.

¹ Respondent’s exhibit 3

² Respondent’s exhibit 4, page 2

On July 31, 2007, Respondent filed a Motion for Summary Disposition and Brief in Support of that Motion. On September 12, 2007, Petitioners filed a response, which the Tribunal did not consider as it was untimely filed. On September 25, 2007, the Tribunal entered an Order Denying Respondent's Motion for Summary Disposition finding that "Respondent has not provided evidence of Petitioners' income for all the tax years at issue."

Petitioners did not pay the assessments and filed appeals of all the assessments, which the Tribunal consolidated into this one case. The final assessments for Michigan income taxes due are as follows,

Assessment	Tax Due	Interest*	Penalty
L406425 (1997)	\$ 4,027		\$ 2,013.50
L406426 (1998)	\$ 5,062		\$ 5,062.00
L406427 (1999)	\$ 6,363		\$ 6,363.00
L406428 (2000)	\$ 7,674		\$ 7,674.00
M602777 (1996)	\$15,820		\$15,820.00
N210493 (2001)	\$ 9,653		\$ 9,653.00
N210494 (2002)	\$11,830		\$11,830.00
N210495 (2003)	\$14,479		\$14,479.00
TOTAL	\$74,908	Amount to be determined*	\$72,894.50

*Interest accruing and to be computed in accordance with sections 23 and 24 of 1941 PA 122.

At the beginning of the hearing, Respondent requested a clarification of the issues to be litigated at the hearing. The Tribunal clarified on the record that Petitioners have the burden of proof to go forward and prove their assertions as to the issues outlined at the prehearing conference held September 12, 2007, which are:

. . . is the petitioner an individual to whom the Individual Income Tax Act applies? Did the petitioner earn or receive income upon which the rate under MCL 206.51 applies? Did the petitioner pay the tax liability as imposed under the Income Tax Act of 1967, if indeed he is an individual to whom the Income Tax

Act applies, and if so. . . does the amount of the assessment correctly reflect income earned by Mr. Nino?³

PETITIONERS' CONTENTIONS

Petitioners offered the following proposed exhibits:

- P-1 IMF MCC Transcript Complete, Feb 7, 2007, 40 pages⁴
- P-2 IMF/IRTF Extract Specification Book Document 6501-I Rev 7/2002, 2 pages
- P-3 FOIA Response, IRS SB/SE Compliance BIRSL SS-8 Unit, SS-8 Form, FOIA Response Internal Revenue Service, 5 pages
- P-4 FOIA Response IRS, IRPTR (Income Reporting) Transcripts, 16 pages⁵
- P-5 FOIA Response IRS, IR Manual section of 3.13.5 et seq, 7 pages
- P-6 FOIA Response IR of IR Manual 5.1.11.6.9 and Title 26 section 6001, 2 pages
- P-7 Respondent's answers to Petitioners' request for Interrogatories, Admissions, and Production of Documents, 5 pages

Petitioners' exhibit 1 is an individual master file which Mr. Nino asserted showed "all the transactions posted in this file are invalid."⁶ Respondent objected to the admission of the exhibit stating that it "is a federal document that was not relied upon by the department in making their assessments, plus it is inconsequential [and] prepared by the federal government and not by the Department of Treasury."⁷ Tribunal noted on the record that Petitioners' exhibit 1 contained the information that Internal Revenue Service received a return from Petitioners for tax year 1997 indicating that Petitioners earned \$387,000. Petitioners withdrew the exhibit.

Petitioners' exhibit 2 is "the government liaison data exchange program document. . . a document that was issued by the Department of Treasury, Internal Revenue Service."⁸

Respondent objected to the admission of Petitioners' exhibit 2 as not relevant. The Tribunal sustained Respondent's objection ruling that the proposed exhibit was not relevant to the

³ Transcript page 4, l 17-page 5, l 1

⁴ This exhibit was not admitted. See discussion on pages 5-6.

⁵ This exhibit was admitted. See discussion on page 7.

⁶ Transcript page 35, ll 2-3

⁷ Transcript page 33, ll 5-9

⁸ Transcript page 43, ll 17-24

Michigan assessments. Petitioners objected to the Tribunal's ruling and the objection was noted in the record.

Petitioners' exhibit 3 is a response to Petitioners' FOIA request of the Internal Revenue Service for documents "from the American employer known as Ford Motor Company for a determination if there was a work relationship between Ford Motor Company and Henry Nino."⁹ Respondent objected to the admission of the exhibit as totally irrelevant. The Tribunal sustained Respondent's objection and stated that the exhibit was not relevant as related to whether or not Ford Motor Company submitted something to the Internal Revenue Service. Mr. Nino objected to the ruling of the Tribunal.

Petitioners' exhibit 4 is a response to Petitioners' FOIA request of the Internal Revenue Service. Respondent objected on relevancy grounds except "for the sole purpose that Mr. Nino had income for the years that are in question in this exhibit." The Tribunal ruled that the exhibit was relevant as it contained evidence of Petitioners' "income for those years at issue."¹⁰

Petitioners' exhibit 5 is copies of the Internal Revenue Manual Section 3.13.5., IMF Account Numbers. Respondent objected on relevance grounds. The Tribunal noted that the document was a public document and admissible as such but that Petitioners were not the keepers or preparers of the documents and not experts competent to explain how the Manual, and the terms used in the Manual, are interpreted and used by the Internal Revenue Service.

⁹ Transcript page 55, ll 14-17

¹⁰ Transcript page 58, ll 8-10

Petitioners' exhibit 6 was a response to a FOIA request dated December 31, 2006, in which Petitioners requested of the Internal Revenue Service "certified copies of Notices issued by the Office of Secretary of the Treasury and/or its delegate to any American Employer and/or its Employees for the Taxable Calendar years for 1996, 1997, 1998, 1999, 2000, 2001, 2003, 2004, 2005, and 2006; contained within this Agency's system of records, determining the Employee/Employer relationship that pertains specifically to Henry Nino."¹¹ Respondent objected. The Tribunal overruled Respondent's objection and allowed the document for purposes of establishing that on a review of its records, the Internal Revenue Service found no documents responsive to Petitioners' request.

Petitioners' exhibit P-7, Respondent's answers to interrogatories, was admitted. In that document, Respondent admits that "there are no documents to produce with a signature on them."¹²

Petitioners contend the following as their defense to the assessments for unpaid individual income tax for tax years 1996 through 2003 that are the subject of this hearing:

1. The Notice of Final Bill for Taxes Due is incorrect.
2. The Department of Treasury Income Tax Unit has violated its statutory authority.
3. The Department of Treasury has no material fact to substantiate its claim.
4. The Department of Treasury is moving invalid return information secured from the Commissioner of Internal Revenue under the Standard State Agreement.
5. The Department of Treasury has no substantial evidence of proof of its fiscal allegation of a federal adjusted gross income as defined in Michigan Compiled Laws Chapter 206, MCL 206.510.
6. The Department of Treasury Income Tax Project Unit has no lawfully filed federal information return to legally substantiate its fiscal assertion of taxes due.

¹¹ Petitioners' exhibit 6, page 1

¹² Transcript page 14, ll 7-8

7. The Department of Treasury knows or should have known that the return information provided by the Federal Disclosure Officer in compliance to Title 26 USCA section 6103b, is derived from the invalid segment of the individual Master File.

Petitioners represented themselves and, because of this, the Tribunal allowed them latitude in the presentation of their case. Mr. Nino, on behalf of Petitioners, began with an opening statement asserting that Respondents have no assessments as “there can be no valid assessment unless it’s been signed and under seal and . . . the respondent has already admitted they have no assessment that is signed. . . We put it before the court . . . that anything they allege as an assessment is invalid on its face.”¹³

Mr. Nino object to placing the burden of proof on Petitioners. Mr. Nino asserted that based upon *Vomvolakis v Michigan Department of Treasury*, 145 Mich App 238, the income tax act “contains no . . . provisions regarding burden of proof or prima facie correctness of an assessment. . . there is no provision . . . specifically for the plaintiff to have the burden of proof.”¹⁴ *Vomvolakis v Michigan Department of Treasury*, 45 Mich App 238 (1985).

Mr. Nino argued further that Petitioners are not statutory individuals or statutory employees and that they have no statutory income, and thus are not subject to federal income tax. Therefore, because they *reported* no adjusted gross income they carry that zero AGI to their Michigan return and have no income subject to Michigan’s individual income tax. (emphasis added)

After completing his opening statement, Mr. Nino stated that in lieu of testifying, “I would like to reserve the right to submit evidence at a later time and allow her [Respondent] to go forward

¹³ Transcript page 15, ll 10-16

¹⁴ Transcript page 16, l 22-page 17, l 3

at this time”¹⁵ stating it was his intention “to rebut the respondent’s statement that we have income.”¹⁶ Respondent objected. The Tribunal reminded Mr. Nino,

when you have completed your case she [Respondent] will present her case and then she will present her evidence . . . but first, sir, you must present your case or rest your case, then she will present evidence, and then you may question her witnesses and evidence . . . and you may object to her evidence, her exhibits. After you have presented your case and rested, Ms. Patterson will present her case and rest and there will an opportunity for rebuttal if you need . . . but you may not reserve your case, sir. You must go forward with your case.¹⁷

After confirming that he had the right to cross-examine Respondent’s witnesses, Mr. Nino stated, “I rest my case.”¹⁸

The Tribunal, again because Petitioners were proceeding in pro per, reminded Mr. Nino that “you have the burden of proof of going forward and providing us with evidence to rebut these assessments.”¹⁹ In support of his contentions, Mr. Nino moved the admission of all of his exhibits.²⁰

Mr. Nino then offered himself as a witness. Mr. Nino testified that it was his “belief that the respondent is under some presumption that I am a statutory employee, which under that presumption they are proceeding that I possibly got some type of statutory income.”²¹

Mr. Nino testified that Petitioners were “never provided any notices pursuant to Title 205.28 of any requirement or any determination that we were a statutory individual or a statutory employee

¹⁵ Transcript page 30, ll 16-18

¹⁶ Transcript page 28, ll 5-6

¹⁷ Transcript page 29, l 24-page 30, l 12

¹⁸ Transcript page 32, l 16

¹⁹ Transcript page 32, ll 19-21

²⁰ See discussion on pp 4-5

²¹ Transcript page 46, ll 17-21

or involved in any type of tax, had any type of tax sourceable (sp) income.”²² Mr. Nino further testified that, pursuant to MCL 205.12, assessments must be signed and under seal.²³

On cross-examination Mr. Nino first testified that he did not work for Ford Motor Company in 1996 and that he did not receive a W-2 from Ford Motor Company in 1996. After the Tribunal reminded Mr. Nino that he was under oath and Respondent rephrased the questions, Mr. Nino testified that Petitioners’ exhibit 4, which Respondent asked him to read from, was a copy of a W-2 from Ford Motor Company, that he worked for Ford Motor Company, and that he received wages from Ford Motor Company. Mr. Nino testified that he did not recall how much he earned each year. Respondent asked Mr. Nino to read into the record from Petitioners’ exhibit 4 the amount of wages listed in that exhibit for each of the tax years at issue. Petitioners’ exhibit 4 included W-2 information showing wages in the amount of \$167,341 in 1996, \$167,341 in 2000, \$146,063 in 2001, \$135,854 in 2002, and \$101,438 in 2003. Mr. Nino testified that Ford Motor Company paid him wages in 1997, 1998, and 1999.²⁴ Mr. Nino testified that he made some money from other sources during 1996 but did not recall the amount. Mr. Nino testified that he didn’t receive money from any other source in 1997, 1998, 1999, 2000, 2001, 2002 or 2003. Mr. Nino testified that he lived in Michigan at least from 1996.²⁵ Mr. Nino did not recall if he filed an annual return for 1996 and testified that he did not file Michigan individual income tax returns for tax years 1997 through 2003.²⁶

²² Transcript page 66, ll 7-11

²³ Transcript page 9, ll 24-25

²⁴ Transcript page 73, l 14-page 83, l 2

²⁵ Transcript page 83, ll 10-21

²⁶ Transcript page 83, l 22-page 84, l 19

For purposes of redirect, Mr. Nino testified that the information in Petitioners' exhibit 4 was invalid and that Petitioners' exhibit 5 explains why. Mr. Nino testified that he did not receive *statutory wages or statutory income* in the state of Michigan.²⁷ (emphasis added) Mr. Nino testified that it is his contention that the information Respondent is relying upon was all invalid information and was issued improperly and unlawfully.

At this point, Petitioners rested their case.

At the completion of Petitioners' case, Respondent moved to dismiss "as the petitioner has not met his burden of proof in this case.

FINDINGS OF FACT

The Tribunal's factual findings must be supported by competent, material and substantial evidence. *Antisdale v Galesburg*, 420 Mich 265 (1984).

The Tribunal finds that it is well established that the burden of proof is Petitioners. Petitioners' interpretation of *Vomvolakis v Department of Treasury*, 145 Mich App 238, 377 NW2d 309 (1985), is incorrect and their reliance on that incorrect interpretation fails. The *Vomvolakis* Court held that MCL 205.21(1) authorizes the Department of Treasury to obtain information on which to base an assessment in cases where the taxpayer "fails or refuses to make a return or payment as required." The Department of Treasury may determine that a taxpayer has failed to accurately complete a return, and make the assessment based on the best available information. *Vomvolakis v Department of Treasury*, 145 Mich App 238; 377 NW2d 309 (1985), lv den 424

²⁷ Transcript page 95, ll 17-9

Mich 887 (1986). The Court continues,

The state's power to tax would be greatly eroded if the respondent could not make assessments on available information in situations where taxpayers do not maintain proper records. It is our opinion that respondent properly exercised its authority in making the assessments in this case. *Vomvolakis v Department of Treasury*, 145 Mich App 238, 245; 377 NW2d 309 (1985).

In *Kostyu v Department of Treasury*, 170 Mich App 123; 427 NW2d 566, (1988) the Court held,

Although the revenue statute at issue here, MCL 205.21, 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. See *Vomvolakis v. Dep't of Treasury*, 145 Mich App. 238, 377 NW2d 309 (1985), lv den 424 Mich. 887 (1986). Where, as here, the circumstances involve a taxpayer who failed to file a return or disclose information on the amount of his personal income, imposing the burden of proof on the taxpayer to come forward with positive proof of his income, as distinguished from the negative burden of disproving the Department's computation. . . is particularly appropriate.

The Tribunal finds that Petitioners were residents of this state and that Petitioners received, earned, or otherwise acquired income subject to the income tax act of 1967, 1967 PA 281, 206.1 to 206.532 for the tax years here at issue. The Tribunal finds that Mr. Nino refused to directly answer the Tribunal's question as to whether he received the Final Assessments at issue. His answers to Respondent's questions about income he received and W-2's that were issued to him for the tax years at issue were nonresponsive and evasive. Petitioners assert that they received no income that was taxable in this state during the tax years at issue but provided no credible, reliable evidence to support that assertion. That Petitioners put "0" on the line designated for the input of federal adjusted gross income raises clear and obvious doubts about the truth and veracity of the information they reported. This is especially true in light of Petitioners' exhibit 6, which included copies of W-2's issued to Mr. Nino by Ford Motor Company clearly indicating that he was paid wages during the years at issue.

The Tribunal finds that Respondent correctly states that the validity of using federally defined adjusted gross income as the starting point in the calculation of Michigan taxable income mandated by MCL 206.30(1)(a) has been recognized in *Grunewald v Mich Dep't of Treasury*, 104 Mich App 601, 605; 305 NW2d 269 (1981), lv den, 412 Mich 875 (1981). Further, the Tribunal finds that Petitioners have shown no constitutional, statutory, or case law that supports a finding that federal and state governments are prohibited from sharing tax information.

Petitioners stated that Respondent is in direct violation of 1984 PA 431, but failed to explain to the Tribunal in what way Respondent is in violation of the Management and Budget Act or how that impacts the case at hand.

It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Petitioners' position that Respondent failed to provide the statutorily required notice is also erroneous. Petitioners' assertion that the Final Bill for Tax Due (Final Assessment) must comply with section 12 of 1941 PA 122, MCL 205.12 is also incorrect. That section applies most specifically to jeopardy assessments, which is not an issue here, and other certificates, subpoenas and orders. Respondent complied with all applicable provisions of MCL 205.28 in issuing the Intents to Assess and the Final Bills for Taxes Due. Additionally, Petitioners were allowed an opportunity for an informal conference to protest those assessments, which they took advantage of, and were given instructions on how to appeal any adverse ruling by the Department of Treasury to the Michigan Tax Tribunal.

Petitioners are further mistaken in their argument that their status as “statutory employees” has any bearing on the issues in this case. That designation is a federal designation and relates only to whether or not withholding may be waived. Whether an individual is a statutory employee or not, he or she remains liable for taxes on income, wages, and other compensation. Further, Petitioners’ argument that they have no “statutory wages” is irrelevant. That term is not a defined term in the income tax act and not one on which liability for tax under that act is determined.

The Tribunal finds that Petitioners have understated income they received and that they knew at the time annual tax returns were due that tax was due on that income. Petitioners provided no documents, evidence, or records of income, or support for their assertion that they had “0” income for the tax years at issue. Further, Petitioners failed to file tax returns for tax years 1997 through 2003. Petitioners’ explanation for that failure is not based upon any reasonable interpretation of the relevant facts or law. Petitioners failed, repeatedly and systematically, to cooperate with the Michigan Department of Treasury and with the Michigan Tax Tribunal. And Petitioners’ behavior was repeated for eight years.²⁸ In addition to all of the above, Petitioners’ knowledge that they had wages or income for the tax years at issue, and that they had records to support that information uniquely available to them, leads the Tribunal to a finding of fraud on Petitioners’ part. Individuals in the State of Michigan who earn money or anything of value for their labor are required to pay tax on that income. There is no special exemption for Petitioner.

²⁸ See *Eaton and Centerfolds, Inc v Michigan Department of Treasury* unpublished per curiam opinion of the Court of Appeals, issued May 8, 1998 (Docket No. 202742) and *Barbara C v Michigan Department of Treasury*, MTT Docket No. 244697 (2000).

CONCLUSIONS OF LAW

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1); MSA 7.650(35)(1). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dept of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765 (1990). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." (Citations omitted) *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

For purposes of the Income Tax Act of 1967 and tax liabilities under that act, the definition of person is found at MCL 206.16, "'Person' includes 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."

Taxable income is defined in section 30 of the Income Tax Act of 1967, MCL 206.30, as "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." The rate applied to that income is determined pursuant to section 51 of the act, 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: . . .
 - (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 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%. . . .

Section 12. of 122 PA 1941, MCL 205.12 provides, “[a]ll orders, certificates, jeopardy assessments, and subpoenas made or issued by the department shall be signed by the state treasurer or the state treasurer's designee.”

Section 20 of 122 PA 1941, MCL 205.20, provides “[u]nless otherwise provided by specific authority in a taxing statute administered by the department, all taxes shall be subject to the procedures of administration, audit, assessment, interest, penalty, and appeal provided in sections 21 to 30.”

Respondent’s authority to obtain information on which to base an assessment is found at MCL 205.21(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.

The Department of Treasury’s authority to assess a tax against a taxpayer is found in section 24(1) of 1941 PA 122,

[i]f a taxpayer fails or refuses to file a return or pay a tax administered under this act within the time specified, the department, as soon as possible, shall assess the tax against the taxpayer and notify the taxpayer of the amount of the tax. MCL 205.24

MCL 205.23(5) allows the Department of Treasury to assess a penalty equal to the amount of tax liability “[i]f any part of the deficiency or an excessive claim for credit is due to fraudulent intent to evade a tax, or to obtain a refund for a fraudulent claim. . . .”

Based upon the evidence and testimony presented, the case file, and brief, the Tribunal concludes all of the following:

1. Petitioners are persons as that term is defined in MCL 206.16.
2. Petitioners received, earned, or otherwise acquired income during the tax years at issue and it is subject to the rate levied and imposed upon the taxable income of every person other than a corporation pursuant to MCL 206.51.
3. That Petitioners put "0" on line 10 of their MI-1040, Michigan Income Tax Return for 1996, is not dispositive as to the determination of the amount of income, or wages, Petitioners earned or received for that tax year. Respondent had the authority under MCL 205.21 to go beyond that document to determine Petitioners income for that year.
4. That Petitioners did not file a MI-1040, Michigan Income Tax Return for tax years 1997 through 2003, is not dispositive as to the determination of the amount of income, or wages, Petitioners earned or received for those tax years. Respondent had the authority under MCL 205.21 to take necessary steps to determine Petitioners' income for those years.
5. The Final Bills for Taxes Due (Final Assessments) are valid. Petitioners received them in a timely manner and were given information as to their rights to appeal.
6. The Final Bills for Taxes Due (Final Assessments) are not required by section 12 of 1941 PA 122, MCL 205.12 to be signed or under seal.
7. Petitioners did not provide any evidence of income to refute the amounts asserted by Respondent for the tax years at issue.
8. Petitioners failed to provide any reliable or credible evidence that the documentation used by Respondent to support the assessments at issue was not valid or was inaccurate.
9. Petitioners' status as "statutory employees" is irrelevant to the determination of their tax liability under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532.
10. A determination of whether or not Petitioners' income is "statutory income" is irrelevant to the determination of their tax liability under the income tax act of 1967 as that term is not applicable to that determination under Michigan law.
11. Petitioners provided no credible or reliable testimony or evidence from any expert in the interpretation of Internal Revenue Service documents offered into evidence. Further, Petitioners reliance on those Internal Revenue Service documents is misplaced in this appeal of an assessment for tax due pursuant to Michigan's income tax act.
12. Respondent's application of a 100% fraud penalty against Petitioners for each tax year at issue, except for tax year 1997, is supported by reliable and credible evidence.

The Tribunal concludes that Petitioners have not met their burden of proof to establish that they did not earn wages, income, or other compensation for the tax years at issue or that such wages, income, or compensation were not subject to tax pursuant to the income tax act of 1967. The income tax liabilities as assessed are affirmed as follows:

Assessment	Tax Due	Interest*	Penalty
L406425 (1997)	\$ 4,027		\$ 2,013.50
L406426 (1998)	\$ 5,062		\$ 5,062.00
L406427 (1999)	\$ 6,363		\$ 6,363.00
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N210495 (2003)	\$14,479		\$14,479.00
TOTAL	\$74,908	Amount to be determined*	\$72,894.50

*Interest accruing and to be computed in accordance with sections 23 and 24 of 1941 PA 122.

JUDGMENT

IT IS ORDERED that Respondent's Final Bill for Taxes Due (Final Assessment) M602777, and corrected Final Bills for Taxes Due (Final Assessments) L406425, L406426, L406427, L406428, N210493, N210494, and N210495 are AFFIRMED.

IT IS FURTHER ORDERED that Respondent's Motion to Dismiss is GRANTED.

IT IS FURTHER ORDER that the fraud penalty as applied to the above assessments is AFFIRMED.

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

MICHIGAN TAX TRIBUNAL

By: Rachel J. Asbury

Entered: October 23, 2009