STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Douglas J Callahan,
Petitioner,

v

MTT Docket No. 16-005461

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment ("POJ") on August 14, 2017. The POJ states, in pertinent part, "[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available,** if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions)."

Neither party has filed exceptions to the POJ.

The Administrative Law Judge ("ALJ") considered the testimony and evidence submitted and made specific findings of fact and conclusions of law. The ALJ's determination is supported by the testimony and evidence and applicable statutory and case law. Specifically, Petitioner's reliance on constitutional claims is not appropriate because the Tribunal does not have jurisdiction over constitutional questions, and Petitioner failed to present any evidence to rebut the validity of Respondent's adjustments.[1]

Given the above, the Tribunal adopts the POJ as the Tribunal's final decision in this case and incorporates the POJ in this Final Opinion and Judgment.[2] As a result:

a. The taxes, interest, and penalties, as levied by Respondent, are:

Assessment Number: UP51681

Taxes	Penalties	Interest
$2,928.00	$293.00	$545.42

Assessment Number: UP51682

Taxes	Penalties	Interest
$4,122.00	$412.00	$943.35

[1] *WPW Acquisition Co v City of Troy*, 254 Mich App 6, 8; 656 NW2d 881 (2003).
[2] See MCL 205.726.

b. The taxes, interest, and penalties, as determined by the Tribunal, are:

Assessment Number: UP51681

Taxes	Penalties	Interest[3]
$2,928.00	$293.00	$545.42

Assessment Number: UP51682

Taxes	Penalties	Interest[4]
$4,122.00	$412.00	$943.35

Therefore,

IT IS ORDERED that Respondent's Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED that Respondent shall cause its records to be corrected to reflect the taxes, interest, and penalties as indicated herein within 20 days of entry of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that Respondent shall collect the affected taxes, interest and penalties or issue a refund as required by this Order within 28 days of entry of this Final Opinion and Judgment.

This Final Opinion and Judgment resolves the last pending claim and closes this case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[5] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[6] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service

[3] Interest continues to accrue per 1941 PA 122. Interest shown above is current as of the date of the assessment.
[4] Interest continues to accrue per 1941 PA 122. Interest shown above is current as of the date of the assessment.
[5] See TTR 261 and 257.
[6] See TTR 217 and 267.

must be submitted with the motion.[7] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[8]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[9] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[10] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[11]

By Steven H. Lasher

Entered: September 28, 2017
bw

[7] See TTR 261 and 225.
[8] See TTR 261 and 257.
[9] See MCL 205.753 and MCR 7.204.
[10] See TTR 213.
[11] See TTR 217 and 267.

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Douglas J Callahan,
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MTT Docket No. 16-005461

Michigan Department of Treasury,
Respondent.

Administrative Law Judge Presiding
Peter M. Kopke

PROPOSED ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

Petitioner filed this appeal disputing Final Assessment Nos. UP51681 and UP51682 on September 22, 2016. The assessments, which reflect additional tax, penalty and interest due under the Michigan Income Tax Act as a result of adjustments made to Petitioner's income tax returns for the 2010 and 2011 tax years, were issued on September 9, 2016.

On July 14, 2017, Respondent filed a motion requesting that the Tribunal enter summary disposition in its favor and dismiss the above-captioned case. In the Motion, which was filed pursuant to MCR 2.116(10), Respondent contends that there are no genuine issues of material fact with respect to the validity of its adjustments, and as such it is entitled to judgment as a matter of law.

Petitioner has not filed a formal response, but indicated during the prehearing conference that his prehearing statement should be considered his response to the motion. In the statement, Petitioner contends that Respondent's assessments violate due process because they allow his mistaken, double declaration of income on his 2010 return to stand and disallow all Schedule C deductions without giving notice of an audit.

RESPONDENT'S CONTENTIONS

The Internal Revenue Service conducted an audit and made adjustments to Petitioner's federal income tax for the 2010 and 2011 tax years. Petitioner failed to file amended Michigan returns showing the alterations to federal income tax, as required by MCL 205.325(2), and where a taxpayer fails to file an amended return, Treasury properly relies on IRS statements showing adjusted gross income as a basis for adjusting Michigan income tax liability.[1] Petitioner's due

[1] *Polasky v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued July 29, 2003 (Docket No. 238249).

process rights have not been violated. Treasury complied with the notice requirements set forth in the Revenue Act, and aside from arguing that Treasury's adjustments were improper, Petitioner does not explain how it violates substantive due process. Further, Petitioner argues that he incorrectly reported income twice and that the IRS incorrectly eliminated his Schedule C expenses, but has provided no documentation to support this position. Instead, he states that he can "categorically" say lawyers in private practice make similar deductions. Petitioner also failed to provide an explanation regarding IRS adjustments related to IRA distributions that were not originally included on his federal returns. Petitioner's conclusory statements are insufficient to establish his entitlement to take the Schedule C expenses as deductions from income and he has offered no evidence to suggest that adjustments related to his IRA distributions were improper. Treasury's adjustments to Petitioner's Michigan returns mirror the IRS adjustments to Adjusted Gross Income. To establish these adjustments were incorrect, Petitioner must have documentation or records showing the adjustments were incorrect and that he properly claimed the deductions. Because he does not, Petitioner is not entitled to the relief he seeks in this action, and Treasury's assessments should be affirmed.

PETITIONER'S CONTENTIONS

The IRS audited Petitioner's tax returns for the 2010 and 2011 tax years. Petitioner was not present for the audits because he did not get notice of the audit, and Treasury simply used the audit of the IRS and did not complete an independent audit or give notice to Petitioner if it did perform an audit. Petitioner mistakenly reported his business income twice on his 2010 returns, and the IRS zeroed out of his Schedule C deductions for both years. Petitioner believes this is because he did not get notice of the audit and was not present to show his tax deduction records. Failure to provide notice violates procedural and substantive due process of the Constitution of the United States and Michigan Constitution, as does Treasury's failure to correct Petitioner's mistaken 2010 Michigan Individual Income Tax Return MI-1040. It is also a violation of the Fifth Amendment of the constitution and applicable parts of the Michigan constitution.

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition; thus the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.[2]

A. Motions for Summary Disposition under MCR 2.116(C)(10).

MCR 2.116(C)(10) provides for summary disposition when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."[3] The Michigan Supreme Court, in *Quinto v Cross and Peters Co*,[4] provided the following explanation of MCR 2.116(C)(10):

[2] See TTR 215.
[3] *Id*.
[4] *Quinto v Cross and Peters Co*, 451 Mich 358; 547 NW2d 314 (1996).

> MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . .[T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.
>
> First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law. In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).
>
> In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[5]

In the event it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied.[6]

CONCLUSIONS OF LAW

Having given due consideration to Respondent's motion under the criteria for MCR 2.116(C)(10), the Tribunal finds that granting the motion is warranted. Michigan and federal income tax returns are, as noted by Respondent "inextricably intertwined."[7] The stated intent of the Michigan Income Tax Act ("ITA") is "that the income subject to tax be the same as taxable income as defined and applicable to the subject taxpayer in the internal revenue code . . . ."[8] In tandem with this stated intent, "taxable income" is defined in the ITA as "adjusted gross income as defined in the internal revenue code . . . ."[9] "A taxpayer required to file a return under [the

[5] *Id*. at 361-363. (Citations omitted.)
[6] *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).
[7] *Maxitrol Co v Dep't of Treasury*, 217 Mich App 366, 372 (1996).
[8] MCL 206.2(3).
[9] MCL 206.30(1).

ITA] may be required to furnish a true and correct copy of any tax return or portion of any tax return and supporting schedules that the taxpayer has filed under the provisions of the internal revenue code."[10] Further, "A taxpayer shall file an amended return with the department showing any final alteration in, or modification of, the taxpayer's federal income tax return that affects the taxpayer's taxable income under this part and of any similarly related recomputation of tax or determination of deficiency under the internal revenue code . . . . within 120 days after the final alteration, modification, recomputation, or determination of deficiency."[11] "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."[12] The Court of Appeals has recognized as much, and Respondent correctly contends that it was within its authority to rely on information from the IRS to adjust his Michigan income tax liability.[13]

Petitioner, in disputing Respondent's adjustments and the assessments at issue in this appeal, relies primarily on due process and other constitutional arguments, presenting the legal issues in this matter as follows: (1) Does it violate procedural and substantive due process of the Constitution of the United States and the Constitution of 1963 of the State of Michigan for the Michigan Department of Treasury to allow to stand a mistaken declaration of income twice on Petitioner's 2010 Michigan Individual Income Tax Return? (2) Does it violate the Fifth Amendment of the Constitution of the United States and the applicable parts of the Constitution of 1963 of the State of Michigan to allow to stand a mistaken declaration of income twice on Petitioner's 2010 Michigan Income Tax Return? (3) Does it violate procedural and substantive due process of law for the Michigan Department of Treasury to disallow all Schedule C Deductions without giving notice of an audit to your Petitioner? Based on Petitioner's responses to Respondent's interrogatories, Issue No. 2 appears to relate to a claim of taking without just compensation. Petitioner failed to explain or otherwise support this claim, however, and it is not enough for him "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."[14] Petitioner similarly failed to explain or otherwise support his substantive due process claim, effectively raising only the procedural issue of notice. More importantly, the "Tribunal does not have jurisdiction over constitutional questions . . . ."[15] Such matters are properly heard before the circuit court.[16] Even ignoring, however, that Petitioner's responses to Respondent's interrogatories do suggest, as it contends, that Petitioner did have actual notice of the federal audit, the documentation provided by Respondent establishes that the IRS issued a Notice of Deficiency on March 19, 2014, and reported the results of its audit to the Michigan Department of Treasury pursuant to 26 USC 6103(d).[17] The notice, which was sent to Petitioner at the same

[10] MCL 206.325(1).
[11] MCL 206.325(2).
[12] MCL 205.21(1).
[13] *Maxitrol Co v Dep't of Treasury*, 217 Mich App 366, 372; 551 NW2d 471 (1996).
[14] *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).
[15] *WPW Acquisition Co v City of Troy*, 254 Mich App 6, 8; 656 NW2d 881 (2003) (citations omitted).
[16] *Id*.
[17] Petitioner states as follows: "This is because, and at trial Petitioner will testify, that he had Audit Defense (please see page 3 of the federal return). The accountant assigned to the duty to represent your Petitioner, because of the

addressed utilized for the purpose of filing his returns, and coincidentally the filing of this appeal, indicated that Petitioner had 90 days from the date of the letter to file a petition with the United States Tax Court to reconsider the deficiency. Consequently, it would appear that Petitioner had notice of the agency's determination and of his right to appeal that determination, regardless of whether he had notice of the audit.

As for Respondent's audit, MCL 205.21, which governs failure or refusal to make a return or payment, states that "the department shall send to the taxpayer a letter of inquiry stating, in a courteous and nonintimidating 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."[18] Further,

> If the dispute is not resolved within 30 days after the department sends the taxpayer a letter of inquiry . . . the department, after determining the amount of tax due from a taxpayer, shall give notice to the taxpayer of its intent to assess the tax. The notice shall include the amount of the tax the department believes the taxpayer owes, the reason for that deficiency, and a statement advising the taxpayer of a right to an informal conference, the requirement of a written request by the taxpayer for the informal conference that includes the taxpayer's statement of the contested amounts and an explanation of the dispute, and the 60-day time limit for that request.[19]

Finally, the statute provides that "if the taxpayer does not protest the notice of intent to assess within the time provided in subdivision (c), the department may assess the tax and the interest and penalty on the tax that the department believes are due and payable. An assessment under this subdivision or subdivision (e) is final and subject to appeal as provided in section 22. The final notice of assessment shall include a statement advising the person of a right to appeal."[20]

Respondent issued a "Notice of Proposed Income Tax Adjustment – Amended Return" for each tax year to Petitioner at his address of record on May 2, 2016. The notices stated the department's opinion that Petitioner owed taxes to the state, and the reason for that opinion—namely the IRS audit information. The notices also explained the procedure by which Petitioner initiate communication with the department to resolve any dispute:

> The tax due was computed using the best information available. You should always compare your actual tax return and/or supporting documents using the proposed changes to verify any amounts due . . . . Correspondence should be sent

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Turbo Tax Insurance, took the position that because 2011 was added to the Audit of our IRS that he would not have anything to do with the Audit and Petitioner did not receive notice of the Audit." It is unclear to the Tribunal how Petitioner had representation, but no notice of the audit, given that some kind of notice would have to have occurred for representation to become involved in the matter.

[18] MCL 205.21(2)(a)

[19] MCL 205.21(2)(b).

[20] MCL 205.21(2)(f).

> to Special Projects Unit, Discovery and Tax Enforcement Division, Michigan Department of Treasury, P.O. Box 30429, Lansing, MI 48909.
>
> If you determine a different tax amount or disagree with the adjustments, provide any documents (federal redetermination, amended return, accounting transcripts, etc.) that support your claim. You may contact the IRS at 1-800-829-1040 for a copy of the adjustments that were made to your account to substantiate your calculated tax due amount.

Respondent failed to submit any documentation establishing that it issued intents to assess in compliance with MCL 205.21(2)(b), but this failure is de minimis because the final assessments were issued to Petitioner at his address of record on September 9, 2016. Petitioner timely filed his appeal within the 60-day timeframe provided by MCL 205.22, and as noted by the Court of Appeals, "the availability of a remedy for an error, such as subsequent review by another entity or an opportunity for rehearing, may satisfy due process . . . . A proceeding before the MTT 'is original and independent and is considered de novo.' Further, hearings before the MTT are conducted in such a manner—allowing for the presentation of evidence and arguments—so as to ensure that a petitioner is afforded due process."[21] Consequently, any due process violation committed by Respondent is cured by the instant proceeding.

Despite this, and despite the fact that Respondent's adjustments are supported by the documentation filed with its motion for summary disposition, Petitioner has failed to come forward with any evidence to rebut the validity of those adjustments. Petitioner also raises an issue that is outside the scope of this appeal, as Respondent made no determination on his purported duplicative declaration of business income on his 2010 returns. Petitioner's remedy for this error was to file amended returns, as the elimination of his schedule C expenses and inclusion of IRA distributions not reported as income, among other adjustments to taxable income, provide the sole basis of its assessments. As such, and inasmuch as the Tribunal's authority is limited to a direct review of the specific determination at issue, it has no jurisdiction over this claim.[22] And "where a court is without jurisdiction in the particular case, its acts and proceedings can be of no force or validity, and are a mere nullity and void."[23] "Courts are bound to take notice of the limits of their authority, and a court may, and should, on its own motion, though the question is not raised by the pleadings or by counsel, recognize its lack of jurisdiction and act accordingly by staying proceedings, dismissing the action, or otherwise disposing thereof, at any stage of the proceeding."[24] Therefore,

IT IS ORDERED that Respondent's Motion for Summary Disposition is GRANTED.

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[21] *Wise v City of Holland*, unpublished opinion per curiam of the Court of Appeals, issued May 12, 2016 (Docket No. 327450) (citations and footnotes omitted).
[22] See MCL 205.731 and MCL 201.22. See also MCL 205.732.
[23] *Fox v Bd of Regents of Univ of Mich*, 375 Mich 238, 242; 134 NW2d 146 (1965) (citation and quotation marks omitted).
[24] *Id.* (citation and quotation marks omitted). See also *Yee v Shiawassee Cnty Bd of Comm'rs*, 251 Mich App 379; 651 NW2d 756, 768 (2002), wherein the Court of Appeals recognized that "a court is continually obliged to question sua sponte its own jurisdiction over a person, the subject matter of an action, or the limits of the relief it may afford . . . ." *Id.* at 399.

IT IS FURTHER ORDERED that Final Assessment Nos. UP51681 and UP51682 are AFFIRMED.

JUDGMENT

This is a proposed decision ("POJ") prepared by the Michigan Administrative Hearings System. It is not a final decision.[25] As such, no action should be taken based on this decision. In that regard, the Tribunal will, after the expiration of the time period for the opposing party to file a response to exceptions, will review the case file, including the POJ and all exceptions and responses, if any, and:

a. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.
b. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.
c. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

EXCEPTIONS

The parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing**, if available, that they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions). Exceptions are **limited** to the evidence submitted with the Motion, the Response, and any matter addressed in the POJ. There is no fee for filing exceptions and the opposing party has 14 days from the date the exceptions were mailed to or electronically served on that party (i.e., email), **if** the parties agree to service by email, to file a written response to the exceptions.[26]

Exceptions and responses filed by *e-mail or facsimile* will **not** be considered in the rendering of the Final Opinion and Judgment.

A copy of a party's written exceptions or response **must** be sent to the opposing party **by mail or email, if** email service is agreed upon by the parties**,** and proof **must** be submitted to the Tribunal demonstrating that the exceptions or response were served on the opposing party.

By Peter M. Kopke

Entered: August 14, 2017
ejg

[25] See MCL 205.726.
[26] See MCL 205.726 and TTR 289(1) and (2).