

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL
NON-PROPERTY TAX APPEAL

Louis Daniel Swartz,
Petitioner,

MTT Docket No. 328736

v

Department of Treasury,
Respondent.

Tribunal Judge Presiding
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Louis Daniel Swartz, appeals Respondent's assessments for unpaid income tax, interest, and penalty for tax years 2000, 2001, 2002, 2003, and 2004. A hearing was held in the above-captioned matter on January 14, 2008. Petitioner represented himself. Respondent was represented by Bradley K. Morton, Assistant Attorney General.

BACKGROUND

Petitioner did not file annual individual income tax returns for tax years 2000 through 2004. Based on income information obtained the Internal Revenue Service under section 6103(d) of the internal revenue code, Respondent calculated the amount of Michigan individual income tax due by Petitioner and issued intents to assess N368120 and N368121 against Petitioner for tax, interest, and penalty for the 2000 and 2001 years. Petitioner requested an informal conference. The hearing referee recommended that the assessments be affirmed and the Department of Treasury's Decision and Order of Determination adopted the referee's recommendation. Based on income information obtained from the Internal Revenue Service under section 6103(d) of the

internal revenue code, Respondent calculated the amount of Michigan individual income tax due by Petitioner and issued intents to assess N565972, N565976, and N595974 against Petitioner for tax, interest, and penalty for the 2002, 2003, and 2004 years. Petitioner appealed the assessments and requested an informal conference. The hearing referee recommended that the assessments be affirmed and the Department of Treasury's Decision and Order of Determination adopted the referee's recommendation. Respondent issued a Bill for Taxes Due (Final Assessment) for each tax year. Petitioner timely appealed the final assessments to the Tribunal.

Petitioner originally filed an appeal in the residential and small claims division of the Tribunal. On March 22, 2007, the Tribunal entered an order removing the case to the Entire Tribunal as the amount in controversy exceeded the residential and small claims division jurisdiction limits. On April 10, 2007, Petitioner filed a petition in the Entire Tribunal asking "for an Order to the Michigan Department of Treasury to remove the . . . final bills for income taxes"¹ herein at issue. Respondent filed an answer on May 7, 2007.

The assessments herein appealed are as follows:

Assessment Number	Period ending	Income Tax Due	Interest*	Penalty
N368121	12/2000	\$ 2,838.00		\$ 908.50
N368120	12/2001	\$ 2,686.00		\$ 659.79
N565972	12/2002	\$ 2,540.00		\$ 635.00
N565973	12/2003	\$ 2,700.00		\$ 675.00
N565974	12/2004	\$ 2,577.00		\$ 644.25
TOTAL		\$13,341.00		\$3,522.54

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

¹ Petitioner's entire tribunal petition

PETITIONER'S CONTENTIONS

Petitioner submitted the following proposed exhibits:

- P-1 Declaration and Administrative Notice of Mail Fraud and Demand for Conference and Return of Anonymous Documents; to Jay Rising, State Treasurer, dated October 17, 2005
- P-2 Declaration and Administrative Notice of Mail Fraud and Demand for Conference and Return of Anonymous Documents; to Jay Rising, State Treasurer, dated December 28, 2005
- P-3 Administrative Notice to State of Michigan, Office of Hearings
- P-4 Notice of Default for Failure to Respond to Statement of Facts and Confirmation of Intent to Attend Informal Conferences; to Marie Martell and Daniel M. Greenberg; dated June 5, 2006
- P-5 Report of Documents Submitted for Consideration at Informal Hearing: June 20, 2006
- P-6 Copy of Transcript of Petitioner's statement, June 20, 2006
- P-7 Copies of "IMF MCC Transcript Specific" naming Petitioner and Karen Swartz for periods between October 10, 2003 and January 12, 2007 with notes
- P-8 Declaration and Administrative Notice to the Internal Revenue Service, dated May 10, 2005
- P-9 Letter from Petitioner to Area Manager, Department of Treasury, Internal Revenue Service demanding that the transcript provided by Petitioner be added as a permanent part of the file that the IRS is maintaining under Petitioner's name and account number
- P-10 Copies of IMF MCC Transcript Specific of Petitioner and Karen Swartz for periods between October 10, 2003 and January 12, 2007 with notes
- P-11 Copies of IMF MCC Transcript Specific of Petitioner for periods between October 10, 2003 and January 12, 2007 with notes
- P-12 Copies of IMF MCC Transcript Specific of Petitioner for periods between November 17, 2004 and January 12, 2007 with notes
- P-13 Copies of IMF MCC Transcript Specific of Petitioner for periods between July 21, 2005 and January 12, 2007 with notes
- P-14 Eight FOIA requests to the Internal Revenue Service for IMF Specific file from September 23, 2003 to January 1, 2007 with IRS Disclosure Department response letters and files.
- P-15 Notice of Fraud to All State and Federal Government Officials and to the Public by Charles F. Conces, dated November 13, 2007

Petitioner offered exhibit 1. Respondent objected to the exhibit as not relevant to the issues in controversy. The Tribunal sustained Respondent's objection and did not allow the exhibit as it related solely to assertions of misconduct by Internal Revenue Service agents, that Petitioner received no assessment for federal income tax, mail fraud, and a demand to the Department of

Treasury for a conference. Petitioner offered exhibit 15. Respondent objected to the admission of the exhibit based on the competency of the witness to prepare the document, the incompleteness of the document, relevance, and there had been no foundation laid. Petitioner asserted that the exhibit contained applicable references and definition of the term “income” as defined in the federal Corporation Tax Act of 1909. The Tribunal determined that the exhibit did not relate to the tax under which Petitioner was being assessed. Additionally, the document was incomplete and not relevant to the matters before the Tribunal in this case. The Tribunal admitted Petitioner’s exhibit 15 simply as a research document, prepared by a non-legal expert, purporting to provide information related to taxes that are not the relevant taxes in this issue.

Petitioner asserts that there was “no assessment by federal government. Michigan records in error.”² Petitioner asks the Tribunal “for an Order to the Michigan Department of Treasury to remove the . . . final bills for income taxes”³ herein at issue. In support of his petition, Petitioner further asserts that,

1. He received “from some unknown, unidentified, anonymous agent/s of Michigan Department of Treasury unsigned presentments and demand for payment of alleged taxes due. Any unsigned presentment and demand for payment constitutes an invalid presentment.” (Emphasis in original.)
2. Respondent did not provide any “verified evidence or proof that Petitioner has authorized anyone to file or furnish ‘*return information*’.” (Emphasis in original.)
3. “Any return information, entered by IRS employees into Petitioner’s IRS Individual Master File without a return signed by Petitioner, does not constitute ‘*return information*’.” (Emphasis in original.)

Petitioner contends claims of criminal harassment, threats, public humiliation, intimidation, slander, costs incurred, and unwarranted abuses, related to Respondent’s hearing officer presentment of proofs at the informal conference.

² Petitioner’s small claims division petition

³ Petitioner’s entire tribunal petition

At the beginning of the hearing, Petitioner questioned the Tribunal’s jurisdiction and asked if it was “possible for me to receive due process of law under these conditions.”⁴ The Tribunal reminded Petitioner that he filed his petition with the Tribunal to appeal the assessment from the Department of Treasury. “That was your choice. It was a voluntary appeal. . . . The determination . . . was yours to make at the time in which you decided whether or not”⁵ to file.

At hearing, Petitioner stated in his opening remarks that he understood “I would get a chance to speak first and to attest to proving that I am not subject to the income tax of Michigan and that the amounts assessed by Treasury are incorrect.”⁶ Petitioner further stated that “I have the burden of proof proving either that I am not subject to the income tax in Michigan or that the amounts assessed by Treasury are incorrect.”⁷ Petitioner asserted that he would present “several exhibits of IRS official documents that are the source documents for the assessment”⁸ that lack trustworthiness.

Petitioner offered the testimony of Mr. Charles Conces. Mr. Conces stated he has “a college education. I am trained in languages and I have taught various courses on pro se litigations. I have . . . nine—just about ten years almost now—experience researching the Supreme Court rulings in particular.”⁹ Mr. Conces wished to testify as to his research document entitled, “Notice

⁴ Transcript page 8, ll 15-16

⁵ Transcript page 8, ll 17-21

⁶ Transcript page 9, ll 13-16

⁷ Transcript page 9, l 24-page 10, l 2

⁸ Transcript page 13, ll 18-19

⁹ Transcript page 15, ll 16-23

of Fraud.”¹⁰ In response to Respondent’s voir dire, Mr. Conces stated that he had a bachelor of arts degree in Latin and French, “did a five-and-a-half-month study on the statutes at large by coming up to the Lansing law library,”¹¹ “garnered (sic) the information from the Internet on the statutes at large,”¹² took a philosophy and Latin language course the previous year offered by his parish, but as to his legal education, the following exchange occurred,

MR. MORTON: Do you have any legal training, sir?
THE WITNESS: No –
MR. MORTON: Do you have a law degree?
THE WITNESS: No.
MR. MORTON: Have you attended law school?
THE WITNESS: No.
MR. MORTON: Have you taken or passed any bar exam by any state?
THE WITNESS: No.

Petitioner argued that “based on Michigan State law . . . if I am exempt from federal income tax, I am exempt from Michigan income tax.”¹³ The Tribunal reminded Petitioner that he had the burden of proof to show that he was exempt from federal income tax and was, consequently, exempt from Michigan individual income tax. Petitioner asserted that “I have written 32 facts relating to the corporate income—direct tax income on personal property on labor and it has been ignored.”¹⁴ The Tribunal asked Petitioner for evidence of a determination by the Internal Revenue Service that he was exempt. Petitioner responded that he was not notified that he was liable for tax and “I have documents from the Federal Government that state my wages for these years and the exemption is zero.”¹⁵ Petitioner continued to insist upon questioning Mr. Conces and providing testimony on federal tax issues and not address the

¹⁰ Petitioner’s exhibit 15

¹¹ Transcript page 20, ll 9-10

¹² Transcript page 20, l 15

¹³ Transcript page 31, ll 5-7

¹⁴ Transcript page 32, l 23-page 33, l 1

¹⁵ Transcript page 34, ll 2-4

assessments for tax liability under the income tax act of 1967.¹⁶ The Tribunal stated that if Mr. Conces “can answer questions related to . . . and testify to facts, related to your income and lack thereof, your liability from his personal knowledge, he can continue.” Mr. Conces stated that he could not, Respondent stated that it had no questions of the witness, and he was excused.

Petitioner offered the testimony of Mr. Steve Caviness. Petitioner offered Mr. Caviness’ testimony as a person who was a witness at the informal conference held by Respondent who Petitioner requested to testify as to that appeal. Petitioner stated that Mr. Caviness had no personal knowledge of his income and dismissed him as a witness.

Petitioner testified to and offered into evidence Petitioner’s exhibit 1 entitled Declaration and Administrative Notice of Mail Fraud and Demand for Conference and Return of Anonymous Documents. In response to Respondent’s voir dire of the witness as to the substance of the document offered, Petitioner affirmed that “this document, it appears that it mostly is directed at what, the IRS determination that you have income.”¹⁷ Respondent objected to admission of the document “on the basis of relevance. Whether the IRS assessed him or not is really irrelevant as to whether or not the State of Michigan can assess him for state income tax.”¹⁸

Petitioner’s final argument was that his testimony was “based on the Supreme Court definition of ‘income,’ federal liability, which is the basis to Michigan's tag-on or piggyback law which says

¹⁶ Transcript page 34, ll 2-9

¹⁷ Transcript page 50, l 25-page 51, l 1

¹⁸ Transcript page 51, ll 8-12

they can assess me based on federal income tax. According to the Michigan definition of ‘income,’ I earned no income.”¹⁹

On cross examination, Petitioner’s answers to Respondent’s questions were unresponsive and refused to answer the direct questions put to him by Respondent. Petitioner avoided direct responses to simple questions in an attempt to obfuscate the truth and deflect the proceeding away from the issues he brought to the Tribunal for resolution.²⁰ Petitioner did, after much maneuvering, testify that he lived in the state of Michigan during the tax years to which the assessments at issue applied, he worked in the state of Michigan for the Detroit Free Press from 2000 through 2004, and that he received checks from the Free Press for all of those years. Petitioner asserted that he did not remember the amounts for which the checks were written. In response to Respondent’s question “[d]o you have any evidence that Treasury’s calculations regarding your compensation is incorrect?”²¹ Petitioner testified, “[n]o, I don’t have any evidence that it’s different than what the Department of Treasury is using as that amount.”²²

On redirect, Petitioner testified, reading from a document entitled status and situs affidavit, “I am not working for an ‘employer’ making ‘wages.’ ‘Employer’ and ‘wages’ are terms defined in the federal tax code.”²³ Petitioner further testified that “checks I may have received in your stated ‘taxable period’ were not ‘money’.”²⁴ Petitioner asserted that the checks were ultimately obligations of the federal government and that he suffered unquantifiable losses on the exchange

¹⁹ Transcript page 54, ll 20-25

²⁰ See transcript page 55, l 18-page

²¹ Transcript page 60, ll 17-19

²² Transcript page 61, ll 8-10

²³ Transcript page 62, ll 6-18

²⁴ Transcript page 63, ll 4-5

of these obligations. Petitioner was unable to apply this argument to the statutory provisions that apply to the determination of taxable income.²⁵

RESPONDENT'S CONTENTIONS

Respondent offered the following proposed exhibits:

- R-1 MAE Form 4549 for Petitioner for the period ending December 31, 2000
- R-2 MAE Form 4549 for Petitioner for the period ending December 31, 2001
- R-3 Wage and Interest (W-2, 1098, and 1099) reports from Petitioner's employer and banks for Tax Year 2002
- R-4 Wage and Interest (W-2, 1098, and 1099) reports from Petitioner's employer and banks for Tax Year 2003
- R-5 Wage and Interest (W-2, 1098, and 1099) reports from Petitioner's employer and banks for Tax Year 2004
- R-6 Michigan Department of Treasury Bill for Taxes Due (Final Assessment), Form C-4541F, for Tax Years 2000, 2001, 2002, 2003 and 2004

Respondent contends that "Petitioner is required by Michigan law to file his income tax return.

Since Petitioner has failed or refused to file his returns for the tax years at issue Treasury is

allowed to estimate and approximate Petitioner's income tax liability with the information

available."²⁶ Respondent contends that "Petitioner has raise no factual objections to support his

claim but is merely advancing discredited legal arguments typical of the tax-protestor type

rhetoric that have been universally rejected by this Tribunal and other courts."²⁷

Respondent declined to make an opening statement and did not call any witnesses at hearing. In

closing, Respondent argued that as Petitioner "has failed to present any evidence to represent

(sic) the prima facie of the validity of the Treasury assessments, at this time I move for directed

verdict of the Treasury assessments."

²⁵ MCL 206.1 et seq

²⁶ Respondent's prehearing brief, page 3

²⁷ Respondent's motion to dismiss

FINDINGS OF FACT

Based on the case file, evidence presented, and testimony given, the Tribunal finds that Petitioner is an individual and a person within the scope of the income tax act of 1967, 1967 PA 281315. Petitioner testified that he lived at 5695 Groveland Road, Holly, Michigan from 1979 to 2004. In 2004, Petitioner claims he slept in a chair at the Detroit Free Press, located in Detroit and Sterling Heights, both of which are in this state. And from time to time, Petitioner slept at his wife's house at 1034 Bluebell Lane, Davison, Michigan. The Tribunal finds that Petitioner, despite his arguments with the Tribunal over semantics, resided in Michigan during all tax years subject to the assessments herein appealed.

The Tribunal finds credible and reliable, Petitioner's testimony that he worked for the Detroit Free Press in the years 2000, 2001, 2002, 2003, and 2004.²⁸

The Tribunal finds that Petitioner failed to file Michigan Individual Income Tax Returns, as required under the income tax act of 1967, 1967 PA 281, MCL 206.351, for the tax years 2000, 2001, 2002, 2003 and 2004.

The Tribunal finds that the evidence and testimony support a determination that Petitioner received checks from the Detroit Free Press during the tax years at issue for services rendered which checks constitute income subject to taxation under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532.

²⁸ Transcript page 59, ll 2-12

The Tribunal finds that Petitioner did not dispute that he earned income between 2000 and 2004. Nor did Petitioner offer any reliable or credible evidence that his income for the tax years at issue was other than that used by Respondent to calculate the assessments at issue. Nor was Petitioner's continued assertion related to the corporate income tax act of 1909 and the reliability of Internal Revenue Service documents regularly accepted by the Tribunal and appellate courts, relevant or cogent. Petitioner never explained, or supported with statutory or case law authority, his argument that his compensation from the Detroit Free Press was not taxable income.

The Tribunal finds that Petitioner provided no support for his contention that Respondent subjected Petitioner to harassment, threats of levies, threats of property seizures, threats of liens, public humiliation, intimidation, interference with normal business transactions, slander, cost of preparing and sending Administrative Appeals to Michigan Department of Treasury, cost of fees paid to the Michigan Tax Tribunal, and other serious unwarranted abuses. Petitioner made these claims without citing to any authority or offering any evidence in support of the claims.

CONCLUSIONS OF LAW

The burden of proof is on the petitioner to establish by a preponderance or greater weight of the evidence that the assessment is in error. In that regard, the Michigan Court of Appeals held in *Kostyu v Michigan Department of Treasury*, 170 Mich App 123; 427 NW2d 566 (1988):

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 (1983). Although the revenue statute at issue here, M.C.L. § 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 also *Vomvolakis v Dep't of Treasury*, 145 Mich App 238 (1985), *lv den* 424 Mich. 887 (1986). *Id.* at 130.

Section 16 of the Income Tax Act of 1967, MCL 206.16, defines a person as “any individual, firm, association, corporation, receiver, estate, trust or any group or combination acting as a unit, and the plural as well as the singular member.”

MCL 205.21 provides:

(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.

MCL 205.23(1) provides, in pertinent part:

If the department believes, based upon either the examination of a tax return, a payment, or an audit authorized by this act, that a taxpayer has not satisfied a tax liability or that a claim was excessive, the department shall determine the tax liability and notify the taxpayer of that determination.

MCL 205.24 provides, in pertinent part:

(1) If 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. A liability for a tax administered under this act is subject to the interest and penalties prescribed in subsections (2) to (5).

(2) Except as provided in subsections (3) and (6), if a taxpayer fails or refuses to file a return or pay a tax within the time specified, a penalty of \$10.00 or 5% of the tax, whichever is greater, shall be added if the failure is for not more than 1 month, with an additional 5% penalty for each additional month or fraction of a month during which the failure continues or the tax and penalty is not paid, to a maximum of 50%. In addition to the penalty, interest at the rate provided in section 23 for deficiencies in tax payments shall be added on the tax from the time the tax was due, until paid.

Petitioner’s contention that, because he did not provide the Internal Revenue Service or Respondent with his income information, and the Internal Revenue Service did not issue an assessment against him, Respondent is required to determine taxable income of \$0.00, is

baseless. The plain language of the applicable statutes²⁹ give Respondent the authority to obtain information on which to base a tax assessment and determine the tax liability owed by a taxpayer who has not filed a return or satisfied a tax liability.³⁰

At the hearing, Petitioner asserted that, based on a United States Supreme Court definition of income, he had no income. However, Petitioner failed to offer any evidence that the income he received from the Detroit Free Press during the tax years at issue do not fall within the internal revenue code definition of income. Petitioner asserted that pursuant to the definition of income under income tax act of 1967, he earned no income. In support of this assertion, Petitioner offered a plethora of case law quotes which had no application to Petitioner's case. Petitioner's argument that the checks he received from the Free Press were not income subject to taxation, nor were the Federal Reserve notes he received in exchange for those checks, fails as it is well settled that Congress has declared Federal Reserve notes to be legal tender, and arguments to the contrary have consistently been rejected by the courts as frivolous.

Individuals, which Petitioner is, who receive, earn, or otherwise acquire income from any source whatsoever,³¹ which Petitioner did during the tax years at issue, are required to pay tax on that income, unless specifically exempt. Petitioner has not met the burden of proving that any statutory exemption applies to him and there is no special exemption for Petitioner.

At the conclusion of Petitioner's proofs, Respondent moved for directed verdict pursuant to MCR 2.515. The Tribunal finds that MCR 2.515 pertains to trials in which a jury is the decision

²⁹ MCL 205.21, 205.23, and 205.24

³⁰ See also *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004).

³¹ See MCL 206.51

maker. The party making the motion for a direct verdict is requesting that the court take the decision out of the hands of the jury and direct the verdict to be made. Those are not the circumstances here. Thus, procedurally the Tribunal erred in granting Respondent's motion for directed verdict. However, that error is strictly procedural and inconsequential as it does not effect or change the Tribunal's final determination in this matter as evidenced by this Final Opinion and Judgment.

Under MCL 600.2591(3)(a), a claim or defense is frivolous when at least one of the following conditions is met:

1. The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
2. The party had no reasonable basis to believe that the underlying facts were true.
3. The party's position was devoid of arguable legal merit. The determination whether a claim or defense was frivolous depends upon the particular facts and circumstances of each case at the time the claim was asserted. *Robert A Hansen Family Trust v FGH Industries, LLC*, 279 Mich App 468, 486; 760 NW2d 526 (2008).

This Final Order and Judgment provides notice to Petitioner that the Tribunal finds and concludes that Petitioner's arguments are without merit and frivolous. A person whose claims have been determined to be frivolous and who continues to advance such claims may be subject to payment of costs incurred as a result of the frivolous claims.

The Tribunal concludes that the assessments should be affirmed as follows,

Assessment Number	Period ending	Income Tax Due	Interest*	Penalty
N368120	12/2000	\$ 2,686.00		\$ 671.50
N368121	12/2001	\$ 2,838.00		\$ 709.50
N565972	12/2002	\$ 2,540.00		\$ 635.00
N565973	12/2003	\$ 2,700.00		\$ 675.00
N565974	12/2004	\$ 2,577.00		\$ 644.25
TOTAL		\$13,341.00	\$*	\$ 3,522.54

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

On March 17, 2008, the Tribunal granted Respondent's request for sanctions and ordered that Respondent file a bill of costs, furnishing a copy of that bill to Petitioner. On March 31, 2008, Respondent filed its "Statement and Bill for Costs." Respondent requests costs totaling \$200.00 for the preparation of its objection and response to Petitioner's protest and motion for reconsideration. Petitioner did not file a response to Respondent's Bill of Costs.

The Tribunal finds these costs to be reasonable and further finds that Petitioner shall pay these costs to Respondent.

JUDGMENT

IT IS ORDERED that the Assessment Nos. N368120, N368121, N565972, N565976, and N595974 as provided in the *Conclusions of Law* section of Final Opinion and Judgment are AFFIRMED.

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

IT IS FURTHER ORDERED that Petitioner shall remit payment in the amount of \$200.00 to Respondent within 28 days of entry of this Order.

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

MICHIGAN TAX TRIBUNAL

Entered: December 29, 2009
mdh/RJA

By: Rachel Asbury