

OHIO BOARD OF TAX APPEALS

Terry J. Persun,)
)
 Appellant,) (CASE NO. 2002-R-1080
) (PERSONAL INCOME TAX)
)
 vs.) (DECISION AND ORDER
) (UPON RECONSIDERATION)
 Thomas M. Zaino,)
 Tax Commissioner of Ohio,)
)
 Appellee.)

APPEARANCES:

For the Appellant - Terry J. Persun, pro se
P.O. Box 23171
Chagrin Falls, Ohio 44023

For the Appellee - Jim Petro
Attorney General of Ohio
Janyce C. Katz
Assistant Attorney General, Taxation Section
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Entered: Feb 14, 2003

Mr. Johnson, Ms. Jackson, and Ms. Margulies concur.

This matter is before the Board of Tax Appeals upon a motion filed by the Tax Commissioner requesting that the board reconsider its decision and order issued in the above-captioned matter on January 17, 2003. Based upon a further review of the existing facts contained in the record and the law, the board finds the commissioner’s motion to the effect that Mr. Persun had properly established jurisdiction before him is

well taken. We hereby vacate our January 17, 2003 decision and order, and issue the following decision and order determining the merits of the appeal.

Mr. Persun appeals from a final determination of the Tax Commissioner, in which the commissioner affirmed, as modified, a previously issued assessment, No. 201289-0087, concerning the appellant's personal income tax for tax year 2000.¹

The following facts are uncontested. Mr. Persun received a W-2 from his employer showing that he had received wages, tips, or other compensation in the amount of \$29,786.65 for 2000. (S.T. 78.) On his 2000 U.S. Individual Income Tax Return Form 1040, Mr. Persun entered zero on Line 1 for wages and salaries, resulting in a zero adjusted gross income. (S.T. 86) Mr. Persun timely filed an Ohio Income Tax Return, Form IT-1040 EZ, showing a zero federal adjusted gross income on Line 1. (S.T. 76)

After inquiry, the Ohio Department of Taxation issued an assessment against Mr. Persun for tax, interest, and penalties in the amount of \$1,181.35. (S.T. 71) Mr. Persun filed a petition for reassessment. (S.T. 68) Following a hearing, the Tax Commissioner issued his final determination, from which Mr. Persun now appeals.

As to the merits of his appeal, Mr. Persun argues that the Tax Commissioner erred in finding that the wages reported to him on Form W-2 were taxable and thus properly part of appellant's federal adjusted gross income, reportable on his Ohio income tax return, and taxable by the state of Ohio. In addition, Mr. Persun claims that the filing of his resident Ohio income tax return, reporting no income and indicating that his federal

¹ The original assessment included taxes, a late payment penalty, a penalty for filing a frivolous return, and interest. The Tax Commissioner abated the late payment penalty in full.

adjusted gross income was zero, is not frivolous. Therefore, it is Mr. Persun's contention that the \$500 frivolous filing penalty should be abated in full.

The board does not find Mr. Persun's legal arguments persuasive. The tax base for Ohio income tax purposes is adjusted gross income as defined by the Internal Revenue Code. Specifically, R.C. 5747.02 states that:

“*** [T]here is hereby levied on every individual and every estate residing in or earning or receiving income in this state *** an annual tax measured in the case of individuals by adjusted gross income ***.”

“Adjusted gross income” is then defined in R.C. 5747.01(A) as having the same meaning as in the Internal Revenue Code, subject to various adjustments that are not at issue here. The Internal Revenue Code defines “adjusted gross income” at Section 62(a), Title 26, U.S. Code as gross income less various enumerated deductions. The term “gross income” is defined in Section 61, Title 26, U.S. Code as:

“***, gross income means all income from whatever source derived, including (but not limited to) the following items:

“(1) Compensation for services ***.”

Additionally, the Board of Tax Appeals has consistently held that wages or compensation for services and labor constitute gross income. See *Welch v. Zaino* (July 20, 2001), BTA No. 2000-T-960, unreported; *McKinley v. Tracy* (Sept. 10, 1993), BTA No. 1991-M-1185, unreported.

We can find no explanation of the nature of the payment received by Mr. Persun as reflected on his W-2, and we must presume that it constituted a wage, tip, or

other compensation. It is, therefore, taxable for Ohio purposes. The Tax Commissioner is applying Ohio law, not federal, and had the authority to assess.

The findings of the Tax Commissioner are presumptively valid, and the burden rests with Mr. Persun to demonstrate that the commissioner's determination is in error. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. Mr. Persun did not appear at the hearing before this board. Having declined his opportunity to further develop the factual record in this matter, we are compelled to find that Mr. Persun failed to prove by competent and probative evidence that the final determination of the commissioner is in error.

Based upon the foregoing, the Board of Tax Appeals finds that Mr. Persun failed to provide any evidence to show that the Tax Commissioner acted unreasonably, arbitrarily, or unconscionably in finding that the wages reported to him on Form W-2 were taxable and that the filing of an Ohio income tax return reporting no income was frivolous.

Accordingly, it is the decision and order of the Board of Tax Appeals that the final determination of the Tax Commissioner must be, and hereby is, affirmed.