

OHIO BOARD OF TAX APPEALS

Robert L. Gibbs and Rachel K. Gibbs,)	
)	CASE NO. 2004-G-204
Appellants,)	
)	(PERSONAL INCOME TAX)
vs.)	
)	DECISION AND ORDER
J. Patrick McAndrew, Tax Commissioner)	
of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellants - Robert L. Gibbs and Rachel K. Gibbs
3139 County Road 247
Fremont, Ohio 43420

Notice of Appeal - Jerry Arthur Jewett¹
Filed By Attorney at Law
317 South Park Avenue, Suite D
P.O. Box 1085
Fremont, Ohio 43420

For the Appellee - Jim Petro
Attorney General of Ohio
Barton A. Hubbard
Assistant Attorney General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

Entered October 1, 2004

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

This cause and matter came on to be considered upon a notice of appeal filed on behalf of the appellants with the Board of Tax Appeals on February 18, 2004. The notice of appeal is from a final determination of the Tax Commissioner dated

¹Subsequent to the hearing for this matter, Mr. Jewett notified this board that pursuant to an order of the Supreme Court of Ohio, he is suspended from the practice of law for three years. We have not received any notification of new representation for the appellants.

December 22, 2003, wherein that official affirmed the personal income tax assessments levied against appellants relating to tax years 2000 and 2001.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the Tax Commissioner, and the testimony and evidence submitted at the hearing before this board.

The facts are set forth in the Tax Commissioner's final determination. "For both tax years, the petitioners submitted their IT-104s reporting '-0-' as their Federal Adjusted Gross Income ('FAGI'), Ohio Adjusted Gross Income ([']OAGI[']), and Ohio income tax due. Refunds were requested by the petitioners for both years for all Ohio income tax withheld by Rachel Gibbs' employer, the Clyde-Green Springs Schools, even though her attached W-2 forms showed that she had wages. Upon review of the returns, the tax agent recalculated the Ohio income tax owed for each year, based on the W-2s. This resulted in the assessments referenced above." S.T. at 1.

At the hearing before this board, both Robert L. Gibbs and Rachel K. Gibbs invoked their Fifth Amendment right not to be compelled to testify against themselves. H.R. at 8-12. The appellants have made a number of challenges to the assessments. The arguments are not new. Our recent pronouncement on the issues regarding the taxability of personal wages/income is *McCracken v. Zaino* (July 9, 2004), BTA No. 2003-A-1756, unreported. The board will not fully reiterate its holding in this case, except to say that our ruling on each of the identical issues in this appeal remains the same.

The board 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. It is unnecessary to restate our findings at this time. The same holds true of our prior discussions regarding the manner in which the Tax Commissioner issues assessments to zero-income filers.

Considering the foregoing, 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.

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