

that the wage payments are non-taxable “capital,” rather than taxable income. (Testimony of Petitioner.) Petitioner also contended that Georgia may not adjust his income, in part because the Internal Revenue Service (“IRS”) issued a refund to him for tax year 2018.¹ (Testimony of Petitioner.)

The burden of proof in this matter is on Petitioner. Ga. Comp. R. & Regs. 616-1-3-.11. Pursuant to the United States Internal Revenue Code (“IRC”), gross income includes “all income from whatever source derived, including (but not limited to) . . . compensation for services.” 26 U.S.C. § 61; see also Commissioner v. Glenshaw Glass Co. 348 U.S. 426, 431 (1955) (finding that “instances of undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion” constitute gross income).²


“Georgia taxable net income of an individual shall be the taxpayer’s federal adjusted gross income, as defined by the [IRC]” O.C.G.A. § 48-7-27. As noted, the IRC specifically lists compensation for services as an item included in gross income. 26 U.S.C. § 61(a)(1). Although the calculation of a taxpayer’s Georgia income tax liability starts with adjusted federal gross income, there is no reason to think that only the IRS may make a determination of that amount. Rather, Georgia law authorizes the Commissioner to investigate information contained in a taxpayer’s return. See O.C.G.A. § 48-2-5, -7, and -8. Accordingly, and in line with the IRC definition of gross income regardless of action taken by the IRS, the wage payments should have been disclosed on Petitioner’s 2018 Form 500.

¹ Petitioner raised additional constitutional questions; however, the Tribunal is not authorized to resolve constitutional challenges to statutes or rules. See Ga. Comp. R. & Regs. 616-1-3-.21. Although the Tribunal has discretion to take evidence and make findings of fact relating to such challenges, the undersigned declines to do so in the present instance. Id.

² The Glenshaw Glass Court additionally urged a limited applicability of its decision in Eisner v. Macomber, 252 U.S. 189 (1920), relied upon by Petitioner, explaining that the distinction drawn by the Eisner Court was useful to determine whether gain was realized but cautioning that the Eisner decision “was not meant to provide a touchstone to all future gross income questions.” Id. at 430-31.

Petitioner failed to meet his burden to establish that Georgia improperly assessed income tax, penalties, and interest. Therefore, Respondent's determination in this matter is hereby **AFFIRMED**.

SO ORDERED, this 1st day of June, 2021.



LAWRENCE E. O'NEAL, JR.
CHIEF JUDGE
GEORGIA TAX TRIBUNAL