## BEFORE THE GEORGIA TAX TRIBUNAL STATE OF GEORGIA



BRIAN D. SWANSON,

JUN n 1 2021

Petitioner,

TAX TRIBUNAL DOCKET

NO.: TAX – IIT – 2033/16 (ax Tribunal Administrator

DAVID M. CURRY, in his official Capacity as Commissioner, GEORGIA DEPARTMENT OF REVENUE,

Respondent.

## **DECISION**

Brian D. Swanson ("Petitioner") challenged the Commissioner of the Georgia Department of Revenue's ("Respondent") Official Assessment and Demand for Payment (Letter ID No. L1345399792) for individual income tax for tax year 2018 and Statement of Taxpayer's Account(s) (Letter ID No. L1705817904). This case having been duly called for telephone hearing before the Georgia Tax Tribunal under regular tax case procedures on December 1, 2020, and the matter being heard telephonically on that date, judgment is hereby entered AFFIRMING Petitioner's liability to Georgia for income tax, penalty, and interest at the statutory rate.

Petitioner filed a Georgia Form 500 with a stated federal adjusted gross income ("AGI") of \$32,138.00. (Respondent's Exhibits, p. 25.) Petitioner did not report \$79,186.38 of wage payments from the McDuffie County Board of Education on his Federal Form 1040 or his Georgia Form 500 for tax year 2018. (Petitioner's Exhibits, p. 1; Testimony of Petitioner; Testimony of Keldric Robinson.) Respondent determined that the wage payments, as reported on Petitioner's Form W-2, ought to be included in Petitioner's total adjusted gross income. (Testimony of Keldric Robinson.) Petitioner freely admitted that he earned the reported wages; rather, Petitioner asserted

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.<sup>1</sup> (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).<sup>2</sup>

"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.

<sup>&</sup>lt;sup>1</sup> Petitioner raised additional constitutional questions; however, the Tribunal is not authorized to resolve constitutional challenges to statutes or rules. <u>See</u> 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. <u>Id.</u>

<sup>&</sup>lt;sup>2</sup> The <u>Glenshaw Glass</u> Court additionally urged a limited applicability of its decision in <u>Eisner v. Macomber</u>, 252 U.S. 189 (1920), relied upon by Petitioner, explaining that the distinction drawn by the <u>Eisner</u> Court was useful to determine whether gain was realized but cautioning that the <u>Eisner</u> decision "was not meant to provide a touchstone to all future gross income questions." <u>Id.</u> 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 1997 day of June, 2021.

LAWRENCE E. O'NEAL, JR.

**CHIEF JUDGE** 

GEORGIA TAX TRIBUNAL