



AUG 31 2023

Clara Davis
Clara Davis, Tax Tribunal Administrator

IN THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA

JOAN WESLEY USHER,

Petitioner,

v.

FRANK M. O'CONNELL, in his official
capacity as COMMISSIONER, GEORGIA
DEPARTMENT OF REVENUE,

Respondent.

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Docket No. 2220751

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

This matter is before the Georgia Tax Tribunal on Respondent's Motion for Summary Judgment. Joan Wesley Usher ("Petitioner") challenges Official Assessment and Demand for Payment Letter ID's L1577485616 and L1040614704 issued by the Georgia Department of Revenue ("Respondent" or "Department" or "Commissioner") for tax years 2016 and 2017. The issue in this case is whether Petitioner owes taxes to the State of Georgia for income received during tax years 2016 and 2017. Petitioner represented herself pro se. Respondent is represented by Graham Barron, Esq. For the reasons stated herein, Respondent's Motion for Summary Judgment is **GRANTED**.

Findings of Fact

1.

For the income tax year January 1, 2016, to December 31, 2016 ("tax year 2016"), and the income tax year January 1, 2017, to December 31, 2017 ("tax year 2017"), Petitioner was a resident of Georgia and did not file individual income tax returns with the State of Georgia during those tax years. See Statement of Material Facts ¶ 1; Affidavit of Hamilton Russ ¶ 4; Pet Resp. Br. at 4.

2.

The Department obtained Petitioner's Federal tax information from the Internal Revenue Service ("IRS") for income tax years 2016 and 2017. This information reflects that Petitioner received \$85,000.00 of income for tax year 2016 and \$75,010.00 of income for tax year 2017. The income for tax year 2016 was from normal distributions to Petitioner from retirement accounts. The income for tax year 2017 was from normal distributions to Petitioner from retirement accounts and interest. See Statement of Material Facts ¶ 2; Affidavit of Hamilton Russ ¶ 5; DOR Ex. B and C¹.

3.

On or about February 4, 2022, the Department issued an Official Assessment and Demand for Payment, Letter ID L1577485616, for tax year 2016. Because the Petitioner did not file a Georgia return, the Department estimated the Georgia tax due based on the Federal tax information. The assessment reflected tax due of \$2,510.00, penalties of \$733.75, and interest of \$895.59. See Statement of Material Facts ¶ 2; Affidavit of Hamilton Russ ¶ 6; DOR Ex. D.

4.

On or about February 4, 2022, the Department issued an Official Assessment and Demand for Payment, Letter ID L1040614704, for tax year 2017. Because the Petitioner did not file a Georgia return, the Department estimated the Georgia tax due based on the Federal tax information. The assessment reflected tax due of \$1,911.00, penalties of \$558.28, and interest of

¹ In Petitioner's Response Brief, Petitioner disputes paragraph 2 of Respondent's Statement Of Material Facts As To Which There Exists No Genuine Issue To Be Tried. Petitioner points out a discrepancy in dates regarding Respondent's Exhibits B through E. Specifically, the discrepancy relates to the fact that the "issue date" of the Official Assessments (DOR Exhibits D and E) occurred prior to the "request date" of the IRS Transcripts (DOR Exhibits B and C). Petitioner points out that if the IRS Transcripts request date is accurate, the Official Assessments could not have been based on those transcripts as stated in the Affidavit of Hamilton Russ. While Petitioner makes an astute observation, Petitioner does not dispute the veracity of the information contained within the IRS transcripts. Petitioner does not dispute that she received distributions during tax years 2016 and 2017 for \$85,000.00 and \$75,010.00 respectively. The manner in which the Department obtains the information it uses in preparing estimated returns is not a material fact in dispute before this Court.

\$549.46. See Statement of Material Facts ¶ 2; Affidavit of Hamilton Russ ¶ 7; DOR Ex. E.

Conclusions of Law

I. Burden of Proof

It is well-settled that a tax assessment by the Department is deemed prima facie correct, and the burden of persuasion in an appeal thereof is put on the taxpayer to show errors or unreasonableness in the assessment. Blackmon v. Ross, 123 Ga. App. 89 (1970); Hawes v. LeCraw, 121 Ga. App. 532 (1970); Hawes v. Foster, 118 Ga. App. 296 (1968). As the Court of Appeals explained in Undercofler v. White: [T]he burden of proof is on the taxpayer from the beginning ... and that burden remains on him to ... show clear and specific error or unreasonableness in the Commissioner's deficiency assessment. This placing of the burden is justified by the fact that the taxpayer is the moving party in contesting the validity of the assessment and has in his possession the information necessary for such contest. Undercofler v. White, 113 Ga. App. 853, 855 (1966) (citations omitted).

II. Standard of Review

Summary judgment is proper only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Norfolk S. Ry. v. Zeagler, 293 Ga. 582, 583 (2013) (quoting O.C.G.A. § 9-11-56).

III. Respondent Properly Issued Assessments for Tax Years 2016 and 2017

- a) Petitioner was required to file Georgia returns for tax years 2016 and 2017

All Georgia residents who must file Federal income tax returns, or those with taxable income in Georgia, are required to also file a state income tax return with the State of Georgia on

an annual basis. See O.C.G.A. §§ 48-7-50 and 48-7-56. Absent certain exceptions,² income from distributions from retirement plans or retirement accounts and interest are included in gross income. See 26 U.S.C. § 408(d); O.C.G.A. §§ 48-7-20 and 48-7-27.

In this case, it is an undisputed fact that Petitioner was a Georgia resident during tax years 2016 and 2017. It is also undisputed that Petitioner received income during those tax years, but did not file a Georgia return. Finally, Petitioner does not allege that any of the exceptions listed in 26 U.S.C. § 408(d) apply in this case. Rather, Petitioner has alleged that she is the victim of labor trafficking and states that the legal basis for her Petition “is found in state and federal laws criminalizing labor trafficking.” See Pet. Resp. Br. at 11. Petitioner further alleges that a ruling in favor of Respondent would violate the United States Constitution’s prohibition against coerced unpaid labor. Id. at 12.

Petitioner, however, has not provided a specific citation in either state or federal law that supports her contention that Respondent’s Official Assessments are incorrect. Further, as a threshold matter, the Georgia Tax Tribunal lacks the jurisdiction to rule upon constitutional challenges. See Ga. Tax Trib. R. 616-1-3-.21. As stated above, the burden of proof is on Petitioner to “show clear and specific error or unreasonableness in the Commissioner’s deficiency assessment.” Undercofler v. White, 113 Ga. App. 853, 855 (1966). The Tribunal finds that Petitioner’s burden has not been met in this case. Thus, Petitioner was not excused from filing Georgia returns for tax years 2016 and 2017.

b) Respondent properly exercised its authority to file a return on Petitioner’s behalf

² Under 26 U.S.C. § 408(d), a distribution from a retirement plan or account may be excluded from gross income under certain circumstances. These circumstances include rollover contributions, contributions that were received and then returned before the due date of that tax year’s tax return, excess rollover contributions attributable to erroneous information, transfers of interests due to divorce, distributions for charitable purposes, and distributions for health savings account funding. 26 U.S.C. § 408(d).

When a taxpayer is delinquent in filing a return when required by law, the Commissioner has the authority to prepare and file the return on the taxpayer's behalf. See O.C.G.A. § 48-2-37. Such a return prepared by the Commissioner is deemed to be prima facia correct, and sufficient for all legal purposes. Id.; see also 1954-56 Op. Att'y Gen. 757 (Commissioner has authority to file return for taxpayer when no return has been filed and may be based on the best information available to the Commissioner). The Commissioner also has the authority to examine a taxpayer's Federal tax information when necessary to make a determination as to the sufficiency or accuracy of a return. See O.C.G.A. § 48-7-59. If the Commissioner determines that taxes due were not timely paid, he must add interest and penalties for failure to pay on time to the amount of tax due. See O.C.G.A. §§ 48-2-48, 48-7-81, and 48-7-86.

Here, Petitioner received income during tax years 2016 and 2017; Petitioner received \$85,000.00 of income in 2016 and \$75,010.00 of income in 2017. This income was derived from normal distributions³ from a retirement plan or retirement account during tax year 2016 and normal distributions from a retirement plan or retirement account and interest during tax year 2017. See Russ Aff. 5; DOR Exs. B and C. Since Petitioner did not file Georgia returns for either of these tax years when she was required to, Respondent exercised its authority under O.C.G.A. § 48-2-37 and filed returns on behalf of Petitioner. In preparing estimated returns for Petitioner, Respondent included Petitioner's income and made adjustments allowable by law in her favor including deductions and exemptions to reduce her Georgia taxable income. See Russ Aff. ¶¶ 6, 7. Based on the filing of these estimated returns, official assessments and demands for payment were issued to Petitioner for both tax years.

³ A distribution is characterized as "normal" when a taxpayer receives the distribution from a retirement plan or retirement account after reaching the age of 59 and ½. This is in contrast to an "early" distribution, which occurs when a taxpayer receives a distribution from a retirement account before the taxpayer reaches the age of 59 and ½.

Petitioner does not dispute receipt of income during tax years 2016 and 2017 nor does Petitioner dispute that she has not filed Georgia returns for those years. Petitioner states that she has not filed returns for those years because she did not have the information she needs in order to file. Not having the information needed to file does not excuse Petitioner from filing or prevent the Commissioner from exercising its authority under O.C.G.A. § 48-2-37. Thus, the Tribunal finds that Respondent properly exercised its authority to file Georgia returns on Petitioner's behalf in this case.

Conclusion

For the foregoing reasons, Respondent's Motion for Summary Judgment is **GRANTED**, and the Department's 2016 and 2017 Official Assessment and Demand for Payment Letter ID's L1577485616 and L1040614704 are upheld.

SO ORDERED, this 31st day of August, 2023.



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