



BEFORE THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA

JUN 12 2025

PATRICK G. MALLOY,

Petitioner,

v.

FRANK M. O'CONNELL, in his
Official Capacity as Commissioner of
the GEORGIA DEPARTMENT OF
REVENUE,

Respondent.

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DOCKET No.: 2226757


Clara Davis, Tax Tribunal Administrator

DECISION

I. Introduction

This case is an appeal brought by Petitioner Patrick G. Malloy ("Petitioner") challenging a Tax Year 2015 Official Assessment and Demand for Payment, Letter No. L1677288240, issued by Respondent, Frank M. O'Connell, in his Official Capacity as Commissioner of the Georgia Department of Revenue ("Respondent" or "the Department"). A hearing was held before the Georgia Tax Tribunal on June 3, 2025. Frances Mulderig, Esq. appeared on behalf of the Department, and Petitioner represented himself *pro se*. For the reasons stated herein, Respondent's Assessment, Letter No. L1677288240, is **AFFIRMED**.

II. Conclusions of Law

A tax assessment by the Department of Revenue 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. See Blackmon v. Ross, 123 Ga. App. 89 (1970); Hawes v. LeCraw, 121 Ga. App. 532 (1970). As explained by the Georgia Court of Appeals:

[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). To prevail, Petitioner must demonstrate by a preponderance of the evidence that the assessed taxes in dispute are in error or unreasonable.

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). "Georgia taxable 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. The IRC specifically lists compensation for services as an item included in gross income. 26 U.S.C. § 61(a)(1). Further, the Georgia Court of Appeals has clearly defined what is included as income by holding, "as a subject of taxation, income is the gain derived from capital or labor, or both combined[.]" Brandon v. State Revenue Com., 54 Ga. App. 62, 65 (1936).

At the hearing, Petitioner argued that the Internal Revenue Service (IRS) sent Respondent IRS Account and Wage and Income Transcripts in violation of I.R.C. 6103(d). This code section allows the IRS to disclose federal tax return information to state tax agencies after the state makes a written request for such information. Respondent witness Elizabeth Diaz, who is employed as an auditor with the Georgia Department of Revenue, testified that the Department receives transcripts from the IRS pursuant to a written agreement between them. Ms. Diaz stated further that the written requests are made electronically and that the Department made a specific request for Petitioner's transcripts for Tax Year 2015. Petitioner did not provide any evidence to rebut Ms. Diaz's sworn testimony. Based on the evidence presented, the Court finds that Petitioner has not met his burden of

proof to support his argument that I.R.C. 6103(d) was violated in this case.

Petitioner also argued that the income he received from his employer is not taxable. Petitioner attached a Form 4852¹ to his Georgia return, showing “0” for wages. When asked on cross examination if Petitioner had any evidence to show that the income he earned from his employer was not taxable, Petitioner stated only that “wages are not taxable.” As noted previously, the I.R.C. specifically lists compensation for services as an item included in gross income. 26 U.S.C. § 61(a)(1). Petitioner did not provide any other evidence to support his claim that his income is not subject to taxation. Thus, the Court finds that Petitioner has failed to meet his burden of persuasion in this case. Respondent’s Assessment, Letter No. L1677288240, is **AFFIRMED**.

SO ORDERED, this 12th day of June 2025.



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

¹ A Form 4852 is a substitute W2 that may be completed by a taxpayer if their employer does not issue a W2 or issues an incorrect W2.