

NO CV 05 4003769S : SUPERIOR COURT
LAURA A. GAVIGAN, ET AL. : TAX SESSION
v. : NEW BRITAIN
COMMISSIONER OF REVENUE :
SERVICES : JANUARY 27, 2006

MEMORANDUM OF DECISION

The plaintiffs, Laura A. Gavigan and Dennis M. Gavigan, bring this tax appeal, pursuant to General Statutes § 12-730, challenging deficiency assessments imposed by the commissioner of revenue services (commissioner) against Mrs. Gavigan for the income tax years of 1998, 1999, 2000 and 2001. The Gavigans, during all relevant times, were married to each other and resided at 658 Bear Hill Road, Middletown, Connecticut.

For taxable years 1998 and 1999, the Gavigans jointly filed Form CT-1040, the Connecticut resident income tax return, along with copies of the plaintiffs' Form 1040EZ (the Internal Revenue Service (IRS) income tax return for single and joint filers with no dependents). These returns were dated May 25, 2000 and listed zero income for each taxable year. However, Mrs. Gavigan earned \$36,440 in 1998 and \$38,470 in 1999 as a prep cook for Lenny and Joe's Fish Tale, Inc.¹ The Gavigans were also issued Forms

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"Lenny and Joe's Fish Tale, Inc. issued the Plaintiff, Laura A. Gavigan, a Form W-2, IRS Wage and Tax Statement, a copy of which is attached hereto as Exhibit A, reporting that it

1099-INT and 1099-G for taxable years 1998 and 1999. See Stipulation of Facts, ¶¶ 8-12 and 15-16.

The IRS thereafter contacted the commissioner regarding changes it made to the plaintiffs' 1998 and 1999 tax returns. The IRS changed Mrs. Gavigan's federal adjusted gross income for 1998 and 1999 from zero to \$36,582 and \$38,470, respectively. The IRS also changed Mrs. Gavigan's filing status for 1998 and 1999 from married filing jointly to married filing separately.

General Statutes § 12-727 (b) (1)² requires a taxpayer, upon receiving changes or corrections to his or her federal adjusted gross income amount from the IRS, to timely notify the commissioner and file an amended return that concedes the accuracy of the determination or state how it is erroneous. However, Mrs. Gavigan neither amended her 1998 or 1999 returns nor claimed any error. Because Mrs. Gavigan failed to perform any

paid the Plaintiff wages, tips or other compensation in the amount of \$36,440 for the taxable year 1998." (Emphasis omitted.) (Stipulation of Facts, ¶ 7.) "Fish Tale, Inc. issued the Plaintiff, Laura A. Gavigan, a Form W-2, IRS Wage and Tax Statement, a copy of which is attached hereto as Exhibit E, reporting that it paid the Plaintiff wages, tips or other compensation in the amount of \$38,470 for the taxable year 1999." (Emphasis omitted.) (Stipulation of Facts, ¶ 14.)

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General Statutes § 12-727 (b) (1) provides, in relevant part: "If the amount of a taxpayer's federal adjusted gross income, in the case of an individual . . . for any taxable year is changed or corrected by the United States Internal Revenue Service . . . the taxpayer shall provide notice of such change or correction in federal adjusted gross income . . . to the commissioner by filing, on or before the date that is ninety days after the final determination of such change, correction . . . or as otherwise required by the commissioner, an amended return . . . and shall concede the accuracy of such determination or state wherein it is erroneous. . . . The commissioner may redetermine and the taxpayer shall be required to pay the tax for any taxable year affected, regardless of any otherwise applicable statute of limitations."

of the requirements of § 12-727 (b) (1), General Statutes § 12-733 (d) (1)³ authorized the commissioner to issue notices of deficiency assessments against Mrs. Gavigan.

In addition, Mrs. Gavigan was issued Form W-2 for the receipt of wages, tips and other compensation during the taxable years 2000 and 2001. The Gavigans were also issued Forms 1099-INT and 1099-G. See Stipulation of Facts, ¶¶ 17 and 20-26. However, the Gavigans failed to file any tax return forms for taxable years 2000 and 2001. As a result, pursuant to General Statutes § 12-735 (b)⁴, the commissioner made returns for Mrs. Gavigan and issued deficiency assessments against her.

In their amended complaint, the Gavigans claim that Mrs. Gavigan:

- was not an employee;
- did not perform any services for an employer;
- did not receive any wages and

3

General Statutes § 12-733 (d) (1) provides, in relevant part: “If a taxpayer fails to comply with the requirements of section 12-727 by not reporting a change or correction by the United States Internal Revenue Service or other competent authority increasing, in the case of an individual, the individual’s federal adjusted gross income . . . or by not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, or by not filing an amended return, a notice of a proposed deficiency assessment may be mailed to the taxpayer at any time.”

4

General Statutes § 12-735 (b) provides, in relevant part: “If any person has not made a return within three months after the time specified under the provisions of this chapter, the commissioner may make such return at any time thereafter, according to the best information obtainable. . . . To the tax imposed upon the basis of such return, there shall be added an amount equal to ten per cent of such tax or fifty dollars, whichever is greater. The tax shall bear interest at the rate of one per cent per month or fraction thereof, from the due date of such tax until the date of payment. . . .”

- did not earn taxable income in 1998, 1999, 2000 and 2001.⁵

While the plaintiffs argue that it is the commissioner's burden to prove the merits of the deficiency assessments imposed by the commissioner for 1998, 1999, 2000 and 2001 and that the commissioner failed to sustain this burden, this argument is contrary to law. See Leonard v. Commissioner of Revenue Services, 264 Conn. 286, 302, 823 A.2d 1184 (2003) (“[i]t is well established that the burden of proving an error in a deficiency assessment is on the plaintiff . . .”). (Internal quotation marks omitted.) Moreover, “[t]he plaintiff must present clear and convincing evidence that the assessment is incorrect or that the method of audit or amount of tax assessed was erroneous or unreasonable.” (Internal quotation marks omitted.) Id.

The Gavigans further claim that “[t]he defendant . . . has perpetrated a fraud . . .” (Plaintiffs’ Motion for Judicial Notice, p. 2.) The basis of the plaintiffs’ argument appears to be as follows: because Congress repealed 26 U.S.C. §§ 6361-6365, relating to the collection of state individual income taxes by the federal government, the commissioner

5

The Gavigans also appear to claim in their amended complaint and post-trial brief that they are answering the assessment pursuant to General Statutes § 4-183. However, the plaintiffs erroneously rely upon this section of the Uniform Administrative Procedure Act (UAPA) because that statute “expressly excludes tax appeals.” Kimberly-Clark Corp. v. Dubno, 204 Conn. 137, 145, 527 A.2d 679 (1987).

no longer has the authority to assess and collect taxes and causes the court to lack jurisdiction to hear this appeal.⁶ See Plaintiffs' Motion for Judicial Notice, p. 3.

While Congress repealed §§ 6361-6365, effective November 5, 1990, the repeal did not affect the commissioner's ability to impose deficiency assessments pursuant to § 12-733 (d) (1) for several reasons.

First, Connecticut's state income tax statutes, General Statutes § 12-700 et seq., became effective for the taxable years commencing on or after January 1, 1991, which is subsequent to the repeal of §§ 6361-6365.

Second, the plaintiffs have not introduced into evidence an agreement between the state of Connecticut and the federal government for the collection and administration of qualified state income taxes. The court is also not aware of the existence of this type of agreement.

Finally, this court has previously held that "[a]lthough Connecticut recognizes federal tax concepts, the power of the federal government to tax and the state's power to tax are two separate and independent taxing powers." Gavigan v. Commissioner of Revenue Services, Superior Court, judicial district of New Britain, Docket Nos. CV 03 0519616/CV 03 0519924 (February 20, 2004, *Aronson, JTR*), aff'd, 89 Conn. App. 111, 871 A.2d 1101 (2005). "In Connecticut, the power to levy taxes is vested in the General

6

26 U.S.C. § 6361 (a) provided, in relevant part: "In the case of any state which has in effect an agreement with the Secretary entered into under section 6363, the Secretary shall collect and administer the qualified State individual income taxes of such State."

Assembly. . . . Unlike the federal constitutional limitation which existed prior to adoption of the sixteenth amendment, it appears that this state's power of taxation has never been constitutionally limited except by the constitutional requirements of equal protection and due process." (Citation omitted.) Kellems v. Brown, 163 Conn. 478, 487, 313 A.2d 53 (1972), appeal dismissed, 409 U.S. 1099, 93 S. Ct. 911, 34 L. Ed. 2d 678 (1973).

The plaintiffs have failed to sustain their burden of proof in this action to show that the commissioner was in error. Accordingly, judgment may enter in favor of the defendant dismissing this appeal without costs to either party.

Arnold W. Aronson
Judge Trial Referee