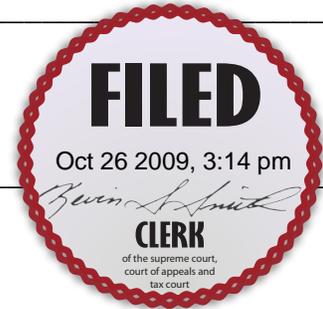


PETITIONER APPEARING PRO SE:
LYLE LACEY
Indianapolis, IN

ATTORNEYS FOR RESPONDENT:
GREGORY F. ZOELLER
ATTORNEY GENERAL OF INDIANA
JESSICA E. REAGAN
DEPUTY ATTORNEY GENERAL
Indianapolis, IN

**IN THE
INDIANA TAX COURT**



LYLE LACEY,)
)
Petitioner,)
)
v.)
)
INDIANA DEPARTMENT OF STATE)
REVENUE,)
)
Respondent.)

Cause No. 49T10-0906-TA-25

ORDER ON RESPONDENT'S MOTION TO DISMISS

NOT FOR PUBLICATION
October 26, 2009

FISHER, J.

On June 12, 2009, Lacey initiated an original tax appeal. On August 4, 2009, the Department moved to dismiss his complaint arguing that, under Indiana Trial Rule 12(B)(6), it failed to state a claim upon which relief can be granted. The Court conducted a hearing on the Department's motion on September 21, 2009.

DISCUSSION

A motion to dismiss made under Indiana Trial Rule 12(B)(6) tests the legal sufficiency of a claim, rather than the facts supporting that claim. *Meyers v. Meyers*,

861 N.E.2d 704, 705 (Ind. 2007). Thus, the Court will not grant a motion to dismiss under that rule unless it appears to a certainty on the face of the complaint that the petitioner is not entitled to any relief.¹ See *State v. Am. Family Voices, Inc.*, 898 N.E.2d 293, 296 (Ind. 2008) (citation omitted) (footnote added). In making that determination, the Court will look at the petitioner's complaint in the light most favorable to the petitioner and with every inference drawn in his favor. *Id.*

Lacey's complaint alleges, in relevant part, that:

1. The Department incorrectly calculated the taxes of [Lacey] for Tax Year 2007.
2. [Lacey] sent to the Department Form 4852 for Tax Year 2007.²
3. [Lacey] sent to the Department Form 4852 for Tax Year 2007. [sic]
4. The Department did not use Form 4852 to calculate [Lacey's] taxes for Tax Year 2007.
5. The Department has failed to provide [Lacey] with records used to calculate the tax for Tax Year 2007.

31. The Indiana Adjusted Gross Income tax "piggybacks" the Federal Income tax.
32. Indiana Adjusted Gross Income tax is bound to the United States Constitution taxing provisions.

¹ In other words, "[d]ismissals under T.R. 12(B)(6) are 'rarely appropriate.'" *State v. Am. Family Voices, Inc.*, 898 N.E.2d 293, 296 (Ind. 2008) (citation omitted).

² A Form 4852 "serves as a substitute for Forms W-2, W-2c, and 1099-R and is completed by taxpayers . . . when (a) their employer or payer does not give them a Form W-2 or Form 1099-R, or (b) when an employer or payer has issued an incorrect Form W-2 or Form 1099-R." I.R.S. Form 4852 (Rev. 1-2007).

33. Article 1 Section 8 of the United State Constitution states “The Congress shall have Power to lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.”

34. Article 1 Section 9 of the United States Constitution states “No capitation, or other direct tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken[.]”

35. The Federal Income tax is not a direct tax.

36. No Census or apportionment has occurred for a direct tax to be collected.

37. The Federal Income tax was part of the Underwood Tariff Act of 1913.

38. Tariffs fall under Article 1 Section 8 of the United States Constitution.

39. Tariffs are not applicable to compensation earned in exchange for work performed.

40. [Lacey] owes no Federal tax.

41. The Indiana Adjusted Gross Income tax “piggybacks” the Federal Income tax.

42. [Lacey] owes no Indiana Adjusted Gross Income tax.

WHEREFORE, the Petitioner, Lyle Lacey demands . . . an order requiring the Department to correct the Notice of Tax Due; [] an order requiring the Department to execute the IT-40 for 2007 as submitted by Lyle Lacey to the Department; [] a refund of the \$5034.98 withheld for Indiana State tax plus interest; [and] costs[] and all other proper relief.

(Pet’r Pet. ¶¶ 1-5, 31-42 (footnote added).) In addition to these allegations, Lacey’s complaint also sets forth three other general “claims.” First, it maintains that pursuant to both the 7th Amendment of the U.S. Constitution and Article 1 § 20 of the Indiana

Constitution, Lacey is entitled to have his original tax appeal heard by a jury. (Pet'r Pet. ¶¶ 7-14.) Second, it contends that although jurisdiction of the case properly rests with the Tax Court, the judge of said court cannot rule on the case because as "an agent of the state . . . [he] has an innate conflict of interest" therein. (Pet'r Pet. ¶¶ 6, 15-22 (asserting that because the judge's paycheck is issued by the State of Indiana, the judge cannot be impartial as required by Canon 1 of the Indiana Code of Judicial Conduct when he rules on cases that "bring[] money into the State of Indiana").) Finally, the complaint argues that the Department violated the separation of powers provision of Indiana's Constitution when its administrative law *judge* conducted an administrative hearing on Lacey's protest.³ (Pet'r Pet. ¶¶ 23-30 (claiming that the Indiana Constitution does not give judicial powers to the executive branch of government) (footnote added).)

I. Lacey's Substantive Claim

Lacey's complaint, in substance, alleges that he owes no Indiana adjusted gross income tax for the 2007 tax year. The Department believes that Lacey's complaint has advanced one primary argument to support that claim: he owes no state income tax because he owes no federal income tax. (See Resp't Mem. Supp. Mot. Dismiss at 3-6; Mot. Dismiss Hr'g Tr. at 3-4, 7.) The Department contends that Lacey's complaint must therefore be dismissed: there is no basis for claims regarding Lacey's federal income tax liability in this Court. (Resp't Mem. Supp. Mot. Dismiss at 6-7; Mot. Dismiss Hr'g Tr. at 7-9.)

The Department's contention is accurate in the sense that this Court does not enforce the collection of federal income tax nor does it adjudicate a taxpayer's liability

³ Lacey's complaint states the separation of powers provision is Article 1, § 3 of the Indiana Constitution. (Pet'r Pet. ¶¶ 26-28.) Actually, though, it is Article 3, § 1.

for that tax. Rather, this Court is charged with applying Indiana tax law as our legislature has pronounced it. Nevertheless, to the extent our legislature has referentially incorporated federal law in the Indiana Adjusted Gross Income Tax Act of 1963 (the Act),⁴ this Court must *necessarily* analyze that federal law when it adjudicates a taxpayer's Indiana income tax liability under the Act. Consequently, for purposes of determining a taxpayer's Indiana income tax liability under the Act, a taxpayer's federal adjusted gross income must first be determined.⁵ The Department's motion to dismiss, with respect to Lacey's substantive claim, is therefore DENIED.

II. Lacey's Other Arguments

With respect to Lacey's other claims, however, the Department's motion to dismiss is GRANTED. See, e.g., *State Line Elevator, Inc. v. State Bd. of Tax Comm'rs*, 526 N.E.2d 753, 753-54 (Ind. Tax Ct. 1988) (explaining why the 7th Amendment of the U.S. Constitution and Article 1 § 20 of the Indiana Constitution do not guarantee a trial by jury in the Tax Court); *In re Guardianship of Hickman*, 805 N.E.2d 808, 815 (Ind. Ct. App. 2004) (in order to overcome the presumption that a judge is unbiased and unprejudiced, litigant must show actual *personal* bias), *trans. denied*; *Lincoln v. Bd. of*

⁴ Indeed, under the Act, "adjusted gross income" is defined, in the case of individuals, as the term is defined in Section 62 of the Internal Revenue Code (I.R.C. § 62) with certain modifications. See IND. CODE ANN. § 6-3-1-3.5 (West 2007). Thus, "adjusted gross income" is, "in the case of an individual, gross income minus ... [certain] deductions[.]" I.R.C. § 62 (2007). Similarly, the Act incorporates the definition of "gross income" as found in Section 61(a) of the Internal Revenue Code. See IND. CODE ANN. § 6-3-1-8 (West 2007). Therefore, "gross income" is "all income from whatever source derived, including (but not limited to) . . . compensation for services[.]" I.R.C. § 61.

⁵ For purposes of calculating state tax liability under the Act, however, federal adjusted gross income is "as *defined* by Section 61(a) of the United States Code, not what a taxpayer *reports* on [his] federal tax form." *Eibeck v. Ind. Dep't of State Revenue*, 799 N.E.2d 1212, 1214 n.6 (Ind. Tax Ct. 2003).

Comm'rs, 510 N.E.2d 716, 718-21 (Ind. Ct. App. 1987) (explaining that when administrative agencies conduct administrative hearings, they exercise quasi-judicial powers which do not violate the separation of powers provision as contained in Indiana's Constitution), *abrogated on other grounds by McDillon v. N. Ind. Pub. Serv. Co.*, 841 N.E.2d 1148 (Ind. 2006).

CONCLUSION

For the reasons stated above, the Court DENIES the Respondent's motion to dismiss in part and GRANTS it in part. The Court will schedule a case management conference with the parties under separate cover.

SO DATED THIS 26th day of October, 2009.

Thomas G. Fisher, Judge
Indiana Tax Court

Distribution:

Lyle Lacey
9502 Thornwood Drive
Indianapolis, IN 46250

Gregory F. Zoeller
Attorney General of Indiana
By: Jessica E. Reagan, Deputy Attorney General
Indiana Government Center South, 5th Floor
302 W. Washington Street
Indianapolis, IN 46204-2770