

STATE OF MICHIGAN
COURT OF APPEALS

PAUL JOSEPH STUMPO,

Petitioner-Appellant,

v

MICHIGAN DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED

August 4, 2009

No. 283991

Tax Tribunal

LC No. 00-331638

Before: Saad, C.J., and Sawyer and Borrello, JJ.

PER CURIAM.

Petitioner, Paul Stumpo, appeals an order of the Michigan Tax Tribunal that granted respondent, Michigan Department of Treasury's (MDT) motion for summary disposition, and dismissed Mr. Stumpo's challenge to MDT's income tax assessment of \$4,979, a penalty of \$1,244.75, and interest of \$1,987, for the 2000 tax year. For the reasons set forth in this opinion, we affirm.

Mr. Stumpo argues that because Michigan delegated its power to impose income taxes through the ratification of the Sixteenth Amendment of the United States Constitution, Michigan lacks the power to tax incomes.¹ The Sixteenth Amendment of the United States Constitution provides:

¹ "Absent fraud, this Court's review of a Tax Tribunal decision is limited to determining whether the tribunal made an error of law or adopted a wrong legal principle." *Meijer, Inc v Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). The Tax Tribunal's "factual findings are conclusive if supported by competent, material and substantial evidence on the whole record." *Michigan Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994). Issues involving the application of constitutional law, as well as questions regarding statutory construction, are questions of law that this Court reviews de novo. *Oakland Co Bd of Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998); *Mahaffey v Attorney General*, 222 Mich App 325, 334; 564 NW2d 104 (1997).

Our Supreme Court has articulated three rules that apply to the interpretation of constitutional provisions. *National Pride at Work, Inc v Governor of Michigan*, 274 Mich App (continued...)

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

The Michigan Constitution provides:

The Legislature shall impose taxes sufficient with other resources to pay the expenses of state government. [Const 1963, art IX, §1.]

The power of taxation shall never be surrendered, suspended or contracted away. [Const 1963, art IX, § 2.]

Mr. Stumpo maintains that the ratification of the Sixteenth Amendment delegated the power to lay and collect income taxes to the federal government. Mr. Stumpo further asserts that the State of Michigan thereby relinquished such power and is prohibited under the Tenth Amendment from concurrently imposing taxes on incomes. The Tenth Amendment of the United States Constitution provides:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

We observe that the Sixteenth Amendment does not contain any language specifically stating that the power to tax incomes is delegated to the United States. Further, the Sixteenth Amendment does not contain language indicating that the federal government acquired the exclusive power to lay and collect income taxes, the states were thereafter prohibited from imposing income taxes, or that, in exercising the power to lay and collect income taxes, the

(...continued)

147, 156; 732 NW2d 139 (2007). In *Wayne Co v Hathcock*, 471 Mich 445, 468-469; 684 NW2d 765 (2004), our Supreme Court stated that “[t]he primary objective in interpreting a constitutional provision is to determine the text’s original meaning to the ratifiers, the people, at the time of ratification.” *Id.* at 468. The *Hathcock* Court explained that, “[t]his Court typically discerns the common understanding of constitutional text by applying each term’s plain meaning at the time of ratification.” *Id.* at 468-469. However, technical terms or legal terms of art are construed “in their technical, legal sense.” *Id.* at 469.

The second rule of constitutional interpretation states that to clarify the meaning of a constitutional provision, if the meaning may be questioned, “the circumstances surrounding the adoption of a constitutional provision and the purpose sought to be accomplished may be considered.” *National Pride at Work, supra* at 157, quoting *Traverse City School Dist v Attorney General*, 384 Mich 390, 405; 185 NW2d 9 (1971). Where the language of constitutional text is plain and unambiguous, reliance on extrinsic evidence is improper. *National Pride at Work, supra* at 157. The third rule of constitutional interpretation states that, “whenever possible an interpretation that does not create constitutional invalidity is preferred to one that does.” *Traverse City School Dist, supra* at 406.

federal government was acting as an agent for, or for the benefit of, the states. US Const, Am XVI. Accordingly, Mr. Stumpo's argument fails.²

Moreover, Mr. Stumpo's argument that Michigan is prohibited from imposing an income tax fails to acknowledge the concept of dual sovereignty. The United States Supreme Court has long recognized the principle that "under our federal system, the States possess sovereignty concurrent with that of the Federal government, subject only to limitations imposed by the Supremacy Clause." *Gregory v Ashcroft*, 501 US 452, 457; 111 S Ct 2395; 115 L Ed 2d 410 (1991), quoting *Tafflin v Levitt*, 493 US 455, 458; 110 S Ct 792; 107 L Ed 2d 887 (1990). Under the concept of dual sovereignty, the State of Michigan and the federal government may concurrently exercise the power to impose and collect income taxes. Accordingly, we reject Mr. Stumpo's argument that Michigan relinquished its power to lay and collect income taxes.

Mr. Stumpo contends that because the amount of his personal exemption was not specifically set forth in the Internal Revenue Code, he was excused from filing his Michigan income tax return and paying his income taxes because he was unable to calculate his adjusted gross income for his 2000 federal and state income tax returns. 26 USC 151 provides, in pertinent part:

(d) Exemption amount. For purposes of this section—

(1) In general. Except as otherwise provided in this subsection, the term 'exemption amount' means \$2,000.

* * *

(4) Inflation adjustments.

(A) Adjustment to basic amount of exemption. In the case of any taxable year beginning in a calendar year after 1989, the dollar amount contained in paragraph (1) shall be increased by an amount equal to –

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting "calendar year 1988" for "calendar year 1992" in subparagraph (B) thereof.

² Further, even if Michigan delegated its power to lay and collect income taxes upon the ratification of the Sixteenth Amendment, contrary to the unambiguous language in the Michigan constitution stating that Michigan will never relinquish its power to tax, petitioner's reliance upon the Tenth Amendment to support his position that Michigan is forbidden to concurrently exercise a power delegated to the federal government fails. Const 1963, art IX, § 2. The Tenth Amendment speaks only to the "powers not delegated to the United States," and not the powers that are, in fact delegated to the federal government by the Constitution. Accordingly, Stumpo's reliance on the Tenth Amendment is misplaced.

In addition, Internal Revenue Procedure 1999-2 C.B. 568.09 provides, in relevant part:

(1) Exemption amount. For tax years beginning in 2000, the personal exemption amount under § 151(d) is \$2,800.

Mr. Stumpo cites 26 USC 151(d) and Internal Revenue Procedure 1999-2 C.B. 568.09 in his brief, and admits that “[t]he exemption amount for the year 2000, \$2[,]800, can be found on the backside of the Federal 1040 form and in the instruction booklet for the year 2000[.]” Thus, Mr. Stumpo was well aware of the fact that his personal exemption for the year 2000 was \$2,800. Mr. Stumpo fails to explain why he did not calculate his adjusted gross income using the amount of his personal exemption, \$2,800, set forth on the federal 1040 form, and then use this calculation for the purposes of his 2000 Michigan income tax return. Because he was aware of the amount of his personal deduction, and was aware of the method by which his personal exemption for the year 2000 was calculated or derived, the Tax Tribunal properly rejected Mr. Stumpo’s argument, and further, properly characterized this argument as frivolous.

Mr. Stumpo also says that the federal Paperwork Reduction Act of 1995 protects him from any penalty for his failure to file his federal and state income tax returns because form 1040 contained an invalid Office of Management and Budget (OMB) control number. 44 USC 3512 provides:

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter if –

(1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter; or

(2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.

(b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.

Although Michigan courts have not addressed Mr. Stumpo’s argument with regard to the degree of protection, if any, afforded by 44 UCS 3512 with respect to a taxpayer’s failure to file a Michigan tax return, federal cases have rejected claims relating to a taxpayer’s failure to file a federal 1040 form on the basis that the form allegedly contains an invalid OMB control number. Although we are not bound by these federal cases, we nonetheless find them persuasive. *Abela v GMC*, 469 Mich 603, 606-607; 677 NW2d 325 (2004).

Federal tax forms, such as the federal 1040 form, constitute information requests pursuant to the Paperwork Reduction Act. *Dole v United Steelworkers of America*, 494 US 26, 33; 110 S Ct 929; 108 L Ed 2d 23 (1990). However, the requirement that a taxpayer file federal income tax returns and the assessment of penalties for failing to file federal tax returns is premised upon statutory authority, and is not required by regulation. *United States v Wunder*, 919 F2d 34, 38

(CA 6, 1990). The use of the federal 1040 tax form is not mandatory. *United States v Patridge*, 507 F3d 1092, 1095 (CA 7, 2007). Accordingly, 44 USC 3512 affords a taxpayer no protection for penalties imposed for failure to file a federal tax return. *Wheeler v Commissioner*, 127 T. C. 200, 208 (2006), aff'd 521 F3d 1289 (CA 10, 2008). Further, federal courts have specifically held that because the OMB number displayed on the federal 1040 form is valid, the federal 1040 form does not violate 44 USC 3512. See *Lewis v Commissioner*, 523 F3d 1272, 1276 (CA 10, 2008). Accordingly, we hold that the Tax Tribunal correctly ruled that 44 USC 3512 does not protect Mr. Stumpo from penalties arising from his failure to file his 2000 Michigan income tax return.

Mr. Stumpo further argues that because he refused to file his federal 1040 form for the year 2000, and the Michigan 1040 form relies upon information provided by the taxpayer on the federal 1040 form, specifically the calculation of adjusted gross income, Mr. Stumpo is excused from filing his Michigan 1040 form because his adjusted gross income is incapable of calculation. We disagree.

MCL 206.2 states, in pertinent part:

(2) Any term used in this act shall have the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required. Any reference in this act to the internal revenue code shall include other provisions of the laws of the United States relating to federal income taxes.

(3) It is the intention of this act that the income subject to tax be the same as taxable income as defined and applicable to the subject taxpayer in the internal revenue code, except as otherwise provided in this act.

As previously discussed, the Internal Revenue Code provides that Mr. Stumpo's personal exemption, adjusted for inflation, is \$2,800, 26 USC 151(d), and he admitted that the specific amount of his personal exemption was provided on the 2000 federal 1040 form. Thus, Mr. Stumpo could have calculated his adjusted gross income for purposes of his Michigan 1040 by either referring directly to the amount of the deduction he admits was set forth in the federal 1040 form, or, if he wanted to calculate his personal exemption on his own, he could have referred to the formula set forth under 26 USC 151(d), and arrived at the same amount.

Further, Mr. Stumpo fails to cite any authority for the proposition that his refusal to file his federal income tax return for the year 2000 operates to excuse him from filing his 2000 Michigan income tax return. It is not sufficient for a party "simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority to either sustain or reject his position." *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Thus, we hold that Mr. Stumpo has abandoned this issue on appeal for want of sufficient briefing. *Wilson, supra* at 243.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Stephen L. Borrello