MINNESOTA·REVENUE

September 30, 2014

ID:
Letter ID: L1528121216

ORDER
Notice of Determination on Appeal
Notice Date: October 2, 2014

This Notice is issued pursuant to Minnesota Statutes Section 270C.35, Subd. 8 and is an Official Order of the Commissioner of Revenue. The change in tax, credit, penalty, interest, and/or other stated in this order results from the review of your administrative appeal of a prior notice. The changes are summarized below and explained in the attached schedules(s).

This order supersedes the prior notice from which you appealed.

Summary of Changes

Period	Tax Type	Tax	Credits	Penalty	Interest	Other	Total
2013	Income Tax	$7,856	$0	$1,964.00	$1.68	$0.00	$9,821.68

Net Change from above or attached schedule:	$9,821.68
Less: Offset of prior debt:	($7,736.00)
Balance Due:	**$2,085.68**

COMMISSIONER OF REVENUE

Loretta Nunn, Supervisor
Appeals and Legal Services Division

JKH

If you agree with this determination; you must pay the Total Balance Due within 60 days of the Notice Date. Otherwise, you will also owe a late payment penalty and additional interest. Pay electronically at www.revenue.state.mn.us or make your check payable to Minnesota Revenue and include it with the payment voucher enclosed. For more details on making payments, please see the enclosed "Payment Instructions."

If you disagree with this determination; please see the enclosed "Your Appeal Rights from a Notice of Determination on Appeal."

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600 North Robert St, 4th Floor
St Paul, MN 55146-5110
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www.revenue.state.mn.us

Tel: (651) 556-6748
Fax: (651) 296-8229
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Your appeal Rights from a Notice of Determination on Appeal

If you disagree with this order, either in whole or part, you have 60 days from the Notice Date to appeal to the Minnesota Tax Court. The information provided below may be used to assist you. Always refer to applicable Minnesota Statues and Rules as primary legal authority governing your appeal rights.

To Appeal to the Minnesota Tax Court

Within 60 days after the Notice Date, the Minnesota Tax Court must receive your written appeal. You may request a 30-day extension from the Minnesota Tax Court if you believe you have a good cause for extension.

You may choose to have your case heard in the Regular Division or appeal to the less formal Small Claims Division (if the total of the tax, penalty and interest in dispute does not exceed $5,000). All decisions in the Small Claims Division are final, neither you nor the department may appeal the decision.

More information and Minnesota Tax Court appeal forms are available on the web at www.taxcourt.state.mn.us or from:

Minnesota Tax Court
Minnesota Judicial Center, Suite 245
25 Rev Dr Martin Luther King Jr Blvd
Saint Paul, MN 55155

or at the office of the Clerk of the District Court in your county. Submit a copy of this order when filing your appeal with the Minnesota Tax Court.

If the changes on this order are to a claim for refund, you may either appeal to the Minnesota Tax Court within 60 days from the Notice Date or bring an action in the District Court to recover the denied refund amount within 18 months from the Notice Date.

Right to pay and file for a refund

If the changes on this order are for an additional amount due and you have paid the full amount shown as due, you can file a written claim for refund within (1) 3 1/2 years after the due date of the tax return to which this order relates, or (2) one year after the Notice Date, whichever is later. The refund claim must identify the taxpayer, the type of tax (and the tax period) or the type of other liability paid, the amount of the overpayment, and the grounds on which the refund is being claimed.

Explanation/Schedule of adjustments

We reviewed the administrative appeal (the "Appeal") you filed from the Notice of Change to your Individual Income Tax (the "Notice") dated August 21, 2014. Our determination is based on available information and applicable law(s).

Facts

The Minnesota Department of Revenue (the "Department") reviewed your state individual income tax return for tax year 2013, which the Department received on April 16, 2014. You entered the number zero on all lines of the Minnesota individual income tax return, Form M1, except line 23 reporting your Minnesota income tax withheld, line 29 for total payments, line 30 indicating your requested refund, and line 31 indicating the bank account into which you request the refund to be deposited. You requested a refund of $7,736.

You attached your U.S. individual income tax return, Form 1040, with the Minnesota filing. The federal return reported the number zero on line 7 for wages, salaries, tips, etc. You requested a full refund of your federal income

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tax withheld from your wages by your employers.

You attached a Form 4852- Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., for your respective employers, , Inc. ( ) and (" "). On the Forms 4852, in item 7, you listed the amounts for the various taxes withheld, and entered zero in part 7a for wages, tips, and other compensation.

The Department adjusted your Minnesota individual income tax return, and determined your Minnesota taxable income based on the wages, as reported to the Department by your employers. As a result, the Department assessed additional tax, and a 25% penalty for filing a frivolous return under Minnesota Statute § 289A.60, subd. 7.

Appeal

Your Appeal and Forms 4852 contend that you did not earn "wages" as defined in the Internal Revenue Code ("IRC") § 3401(a) and 3121(a), and your employer incorrectly classified your compensation for services as wages. Therefore, you submitted IRS Form(s) 4852- Substitute for Form W-2, Wage and Tax Statement, indicating that you did not receive wages, tips, or other compensation, but both federal and state taxes were withheld. The Appeal argued your employers are non-governmental, private-sector corporations, and your services are not related to any Federal functions.

Furthermore, you dispute the assessment of a frivolous return penalty because you never contended that "wages are not subject to Minnesota income tax".

Law and Analysis

First, the commissioner is granted the authority to issue an order of assessment if the commissioner determines that the correct amount of tax is different than that assessed on a return filed with the commissioner. Minnesota Statute ("M.S.") § 270C.33, subd. 4(1). Second, a return or assessment of tax made by the commissioner is presumed to be correct and valid, and the taxpayer has the burden of establishing its incorrectness or invalidity. M.S. § 270C.33, subd. 6.

Under M.S. § 290.014, subd. 1, all net income of a resident individual is subject to tax, and "net income" is defined by reference to IRC § 63, which defines federal taxable income as gross income less certain exclusions and deductions. "Gross income" is defined by reference to IRC § 61, which includes "all income from whatever source". Furthermore, M.S. § 290.92, subd. 3, defines "employee" as "any resident individual performing services for an employer, either within or without the state of Minnesota…the performance of which services constitute, establish, and determine the relationship as that of employer and employee."

Your Appeal makes claim that you did not receive reportable wages because you provide services in the private sector to "non-governmental, private sector corporations". Your identification as individuals receiving "private sector payments" presumably alludes to the position that only Federal employees or elected government officials are subject to income tax. However, you mistakenly infer the meaning of "includes" as it is used in section 3401(c). Rather, IRC §7701(c) states that the use of the word "includes" shall not be deemed to exclude other things otherwise within the meaning of the term defined. Thus, the word "includes" as used in the definition of "employee" is a term of enlargement, not limitation, and "employee" generally includes private citizens.

Your tax position is a frivolous argument used by taxpayers to avoid or evade tax. The IRS listed your present position as a "Common Frivolous Argument" in its Notice 2006-3, 2006-1 CB 751, and specifically in Revenue

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Ruling 2006-18, 2006-1 CB 743 (attached for your reference). This tax position has been litigated in both federal and state courts, and ruled in favor of the government. See *Lindberg v. Comm'r*, TC Memo 2010-67; *Montero v. Comm'r*, 104 AFTR 2d 2009-7380 (CA5); *Sytsma v. Comm'r of Revenue*, A11-269, (Minn. 2011); *Dorschner v. Comm'r of Revenue*, 7700-R (Minn. Tax Ct. Reg. Div., 06/02/05)

It well established that under both Federal and Minnesota law, that wages are taxable. For those reasons, the Department properly included your compensation in wages from in your income.

While you point out that the IRS refunded the amount you requested on Form 1040, the Department has the authority to make an independent assessment of your state tax liability regardless of any IRS determination, and the commissioner is not bound by the IRS's determinations. *Busch v. Comm'r of Revenue*, 713 NW2d 337 (Minn. 2006); *Bond v. Comm'r of Revenue*, 691 N.W.2d 831, 2005 WL 310802 (Minn., 02/10/05).

The penalty for filing a frivolous return has been assessed on your 2013 tax return as allowed under M.S. § 289A.60, subd. 7. The burden of proof is on the Commissioner to prove that your return was frivolous. M.S. § 289A.60, subd. 7. Your claim for refund is substantially incorrect, has no basis in law or fact, and it is due to a position that has been consistently held to be frivolous.

Determination

Your Appeal is hereby respectfully denied in full.

Your appeal rights are detailed in the attached instructions.

Any questions concerning this Notice should be directed to:
Jonathan Haugen, Appeals Officer
(651) 556-6748

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