

STATE OF MICHIGAN
COURT OF APPEALS

COURTNEY MINION,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED
December 13, 2012

No. 305316
Tax Tribunal
LC No. 00-382988

Before: TALBOT, P.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

Petitioner Courtney Minion appeals by right the Tax Tribunal's final opinion and judgment, which found that petitioner failed to show that respondent Department of Treasury's state income tax assessments for 2003 and 2004 were erroneous. We affirm.

If the treasury department believes on the basis of a review of a tax return, a payment, or lawful audit that a taxpayer has not satisfied a tax liability, the department must determine the liability and notify the taxpayer. MCL 205.23(1). If a taxpayer refuses to complete a return or a payment lawfully required, or a return contains insufficient information, the department may obtain information on which to base an assessment. MCL 205.21(1). A taxpayer has a duty to maintain records necessary to determine the taxpayer's liability under the income tax act. MCL 206.455. Taxpayers, therefore, have the burden of disputing the treasury's assessment, which should be based on the best evidence available. *Kostyu v Dep't of Treasury*, 170 Mich App 123, 129-130; 427 NW2d 566 (1988).

Petitioner presented no evidence regarding his actual income during the tax years at issue to contradict the information provided to respondent by the Internal Revenue Service (IRS). He argues on appeal that he was not liable for any state income taxes. Petitioner contends that coding in his IRS electronic file indicated his file was frozen because of an invalid social security number, and he was not required to file a federal income tax return. Petitioner argues that it would have constituted perjury for him to use his social security number on a state tax return; however, he alleged no reason for believing the number was incorrect except the IRS' electronic file, which he first viewed several years after his 2003 and 2004 taxes were due. Further, petitioner offers no authority suggesting that a state resident owes no income taxes merely because of IRS confusion regarding his social security number. See *In re Temple Marital Trust*, 278 Mich App 122, 139; 748 NW2d 265 (2008) (An appellant's failure to cite authority to

support a position will result in its abandonment.). Moreover, the IRS may properly prepare a substitute for return (SFR) for a taxpayer who does not file a required return, and the SFR may form the lawful basis for a tax assessment. *Christensen v United States*, 733 F Supp 844, 852-853 (D NJ, 1990).

Petitioner also argues that he could not complete a state tax return without completing a federal return because the state defines taxable income based on adjusted gross income under the internal revenue code. MCL 206.30(1). Citing 26 USC 6001 and 26 CFR 1.6001-1(d), petitioner argues that he was not required to file a federal income tax return because he did not receive personal notice, and his IRS file contained a code indicating that a Form 1040 would not be mailed to him. The cited federal authority only requires personal notice of the need to keep non-routine tax records. *United States v Maczka*, 957 F Supp 988, 991 (WD Mich, 1996); *United States v Streett*, 791 F Supp 563, 568 (D Md, 1992).

Petitioner's belief that the IRS coding protected him from all federal and state income tax liability was also clearly erroneous. See *United States v Maga*, 475 Fed Appx 538, 541, 545 (CA 6, 2012), in which an IRS employee testified it was merely an internal code telling employees that they did not need to send certain forms to that individual. It is unknown whether the IRS coding resulted from petitioner's failure to file federal tax returns, but regardless it did not eliminate his liability to pay federal or state taxes on his income. See *id.*

Petitioner was required to pay state income taxes on his taxable income. The alleged irregularities in petitioner's electronic IRS file could have assisted him in raising questions about the accuracy of the IRS assessments; however, he offered no evidence that the income information was incorrect. Therefore, the tribunal did not err in requiring him to pay the assessed income taxes. See *Kostyu*, 170 Mich App at 129-130.

Petitioner also argues on appeal that the tribunal did not address his objection to a citation in the proposed opinion and judgment. Regardless of any erroneous citation, it is patent that respondent assessed petitioner for taxes on adjusted gross income in 2003 and 2004 pursuant to the authority of Michigan's income tax act, MCL 206.1, et seq.

We affirm.

/s/ /Michael J. Talbot
/s/ Jane E. Markey
/s/ Michael J. Riordan