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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-269**

John W. Sytsma,
Appellant,

vs.

Commissioner of Revenue,
Respondent.

**Filed August 22, 2011
Affirmed
Klaphake, Judge**

Scott County District Court
File No. 70-CV-10-12842

John W. Sytsma, Shakopee, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Jeremy D. Eiden, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Wright, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant John W. Sytsma challenges the district court's summary judgment dismissing his claims that respondent Commissioner of Revenue improperly denied him a refund of state income taxes paid for tax year 2009 and rescinded tax refunds previously paid for tax years 2006-2008.

Because we find no merit to appellant's argument that, as a private employee, he is not subject to income taxation, we affirm.

D E C I S I O N

The district court may grant summary judgment when, based on the entire record before it, there are no genuine issues of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. We review the district court's decision de novo, to determine whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *STAR Ctrs, Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). The application of a statute to undisputed facts presents a legal conclusion subject to de novo review. *Weston v. McWilliams & Assocs., Inc.*, 716 N.W.2d 634, 638 (Minn. 2006).

Appellant filed personal state income tax returns for tax years 2006-2008 in a timely fashion and paid the tax due, but in April 2009, he filed amended returns, showing no income and no tax due and requesting a refund of tax withheld for those years. Appellant was issued refunds for those tax years. In January 2010, he filed his 2009 return, claiming no income and no tax due, although his employer had provided him with a W-2 form showing wages and tax withheld. Shortly thereafter, the commissioner audited the amended returns and the 2009 return, and sent appellant a notice of change, assessing taxes and penalties on the 2006-2008 returns, and directing appellant to pay the tax due for 2009. After his administrative appeal was denied, appellant filed a complaint in district court, contending that the money he received from his employer was not "wages" within the meaning of Minn. Stat. § 290.92 (2010), and that the commissioner

was making a frivolous claim for taxes. The district court found appellant's claims to be meritless.¹

Under Minn. Stat. § 290.014, subd. 1 (2010), "all net income of a resident individual is subject to tax" under the provisions of Minn. Stat. ch. 290. "Net income" is defined by referencing I.R.C. § 63 (2010), which defines federal taxable income as gross income less certain exclusions and deductions. "Gross income" is defined by referencing IRC § 61 (2010). Section 61(a)(1) includes as gross income "all income from whatever source" including "[c]ompensation for services, including fees, commissions, fringe benefits, and similar items." "Wages" are specifically defined as "all remuneration (other than fees paid to a public official) for services performed by an employee for his employer." This definition was adopted by Minn. Stat. § 290.92, subd. 1 (2010), which requires employers to withhold tax on wages. Appellant's employer withheld the appropriate amount of state income tax from appellant's wages.

Appellant argues that Article I, §§ 2, 8, and 9 of the United States Constitution permit only direct, apportioned taxation, and that the Sixteenth Amendment, which permits the levying of an income tax without apportionment, is irreconcilable with Article I unless it applies only to the taxation of "federally connected monies." Because he is not a public employee and receives wages from a private employer, appellant asserts

¹ The district court also concluded that it lacked jurisdiction to hear appellant's claims involving the 2006-2008 tax returns because the Tax Court has exclusive jurisdiction to hear cases arising under the tax laws of this state. This exclusive jurisdiction arises when a case is appealed to the tax court or transferred by the district court to the tax court. Minn. Stat. § 271.01, subd. 5 (2010). But the district court has original jurisdiction in all civil and criminal cases. Minn. Const. art. 6, § 3. Because appellant appealed directly to the district court, this matter was properly before that court.

that he is not subject to federal income taxation. Further, he argues that because Minnesota state income taxation is based on a taxpayer's federal taxable income, he has no income for purposes of state income taxation.

The Sixteenth Amendment to the United States Constitution provides that "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 validity of the Sixteenth Amendment has been conclusively upheld by the courts. *See, e.g., Brushabe v. Union Pac. R.R.*, 240 U.S. 1, 17-18, 36 S. Ct. 236, 241 (1916) ("It is clear on the face of this text that it does not purport to confer power to levy income taxes in a generic sense, -an authority already possessed and never questioned, -or to limit and distinguish between one kind of income taxes and another, but that the whole purpose of the Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived."); *Broughton v. United States*, 632 F.2d 706, 707 (8th Cir. 1980) ("The sixteenth amendment authorizes the imposition of an income tax without apportionment among the states."). Although appellant asserts that the language of the Sixteenth Amendment is in conflict with the Constitution and is therefore invalid, amendments to the Constitution supersede original language: for example, although U.S. Const. art. IV, § 2 clearly acknowledged the legality of slavery, the Thirteenth Amendment just as clearly ended the practice.

Appellant's alternative argument, that the pay he receives from his employer is not wages and is therefore not subject to taxation, derives from I.R.C. § 3401(a) and (c)

(2010). Section 3401(a) defines “wages” as remuneration received by an employee from his employer for services performed; section 3401(c) states that “the term ‘employee’ includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term ‘employee’ also includes an officer of a corporation.” Appellant contends that this means wages subject to taxation are those received by political or public employees, not those employed by private employers. He then asserts that because Minn. Stat. § 290.92, subd. 1, describes “wages” with reference to section 3401(a), the Minnesota income tax likewise can only be levied against political or public employees. Appellant glosses over the fact that Minn. Stat. § 290.92, subd. 3, defines “employee” as “any resident individual performing services for an employer, either within or without, or both within and without the state of Minnesota, . . . the performance of which services constitute, establish, and determine the relationship between the parties as that of employer and employee.” This subdivision includes the language defining an employee to include corporate officers and political and public employees, but the reference here is not limiting; rather, it expands the definition to specifically include those political and public employees.

Minnesota courts have rejected arguments similar to those that appellant makes here. In *Gonzales v. Comm’r of Revenue*, 706 N.W.2d 909, 910 (Minn. 2005), the supreme court dismissed appellant’s contention that the Sixteenth Amendment was unconstitutional and affirmed the tax court’s conclusion that “wages and salaries are income for purposes of Minnesota income tax.” In *Bond v. Comm’r of Revenue*, 691

N.W.2d 831, 839 (Minn. 2005), the supreme court noted that “[t]he tax laws are clear that all net income of a resident individual is taxable.”

We conclude that appellant’s arguments are meritless and that the district court’s grant of summary judgment was proper.

Affirmed.