Henry v. Dept. of Taxes, No. 653-10-06 Wncv (Teachout, J., May 3, 2007).

STATE OF VERMONT
WASHINGTON COUNTY

JAMES HENRY and JANET HENRY	)	
Appellants	)	
	)	
v.	)	**Washington Superior Court**
	)	**Docket No. 653-10-06 Wncv**
DEPARTMENT OF TAXES,	)	
Appellee	)	

DECISION

Appeal from Determination of the Department of Taxes

James and Janet Henry of Colchester appeal from the August 29, 2006 Determination of the Commissioner of Taxes that "[c]ompensation received by [Appellants] for services performed constitutes income subject to the state and federal income tax" for tax years 2001 and 2002. Appellants are representing themselves. Attorney Danforth Cardozo represents the Department of Taxes.

Appellants contend that the Department of Taxes has applied an incorrect definition of "income" to assess Appellants' Vermont income tax liability. Appellants argue (1) that the Vermont Legislature has incorporated the United States' definition of income; (2) that the controlling definition of income is given by the United States Supreme Court and is limited to "corporate gain"; and (3) that compensation received by Appellants for services rendered is not "corporate gain." From these premises, Appellants conclude that their taxable income is zero. Appellants also complain that Appellee's assessment of Vermont personal income taxes for the years 2001 and 2002, which was estimated using information received from the Internal Revenue Service, is based upon inadequate evidence.

Standard of Review

"[A]bsent compelling indication of error, the interpretation of a statute by the

administrative body responsible for its execution will be sustained on appeal." *Burlington Electric. Dept. v. Department of Taxes*, 154 Vt. 332, 337 (1990) (quoting *In re R.S. Audley, Inc*, 151 Vt. 513, 517 (1989)). This court affords deference to the Commissioner of Taxes and will not set aside findings unless they are clearly erroneous. *Morton Buildings, Inc. v. Vermont Department of Taxes*, 167 Vt. 371, 374 (1997). "Nonetheless, we recognize that when construing a statute imposing a tax, [a Court must] resolve any ambiguities in favor of the taxpayer." *Id*.

Vermont Personal Income Tax

Vermont, like many states, imposes a tax upon personal income. The Vermont personal income tax was enacted by the Legislature and codified at 32 V.S.A. § 5822. Taxpayers are required to file a Vermont personal income tax return for each taxable year. 32 V.S.A. § 5861.

For the tax years at issue, the Vermont income tax statute incorporated the United States' definition of "adjusted gross income"[1] in order to compute "Vermont income." See 32 V.S.A. § 5823.

Under federal law, "adjusted gross income" is defined as "gross income minus [certain enumerated] deductions." 26 U.S.C. §62. The definition of "gross income" is:

> (a) General definition.--Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:
>
> (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
> (2) Gross income derived from business;
> (3) Gains derived from dealings in property;
> (4) Interest;
> (5) Rents;
> (6) Royalties;
> (7) Dividends;
> (8) Alimony and separate maintenance payments;
> (9) Annuities;

[1] "Adjusted gross income" means, for any taxable year and for any individual, estate or trust, the adjusted gross income of the individual, estate or trust for the taxable year determined under the laws of the United States. Federal adjusted gross income shall be increased to the extent such income is exempted from taxation under the laws of the United States by the amount received by the taxpayer on and after July 1, 1987 as interest income from state and local obligations, other than obligations of Vermont and its political subdivisions, and any dividends or other distributions from any fund to the extent such dividend or distribution is attributable to such Vermont state or local obligations. 32 V.S.A. § 5811(1) (emphasis added).

(10) Income from life insurance and endowment contracts;
(11) Pensions;
(12) Income from discharge of indebtedness;
(13) Distributive share of partnership gross income;
(14) Income in respect of a decedent; and
(15) Income from an interest in an estate or trust.

26 U.S.C. § 61(a) (emphasis added).

"For any taxable year, the Vermont income of a resident individual . . . is the adjusted gross income of the taxpayer for that taxable year," less enumerated exceptions. 32 V.S.A. § 5823.

Appellants argue that federal income is "corporate gain," and therefore excludes personal income for services, such as those performed by Appellant James Henry in his work as a contractor. Appellant James Henry is not a corporation, they reason, so he cannot have corporate gain, and so he cannot have taxable income "under the laws of the United States." Appellants rely on *Eisner v. Macomber*, 252 U.S. 189 (1920), which addresses a somewhat different legal issue. When taken out of context, the statements Appellants use appear to have a meaning that supports Appellants' position, but this court has reviewed the applicable law on point.

The Supreme Court, in *Commissioner v. Glenshaw Glass Co*., 348 U.S. 426 (1955), recognized that the Congress has defined income by statute quite broadly, so as "to exert in this field 'the full measure of its taxing power." *Id.* at 429 (citation omitted). Payment for services rendered as a contractor fits clearly within the Congressional definition of gross income found in 26 U.S.C. § 61(a) and quoted above. There is no question that compensation received by Mr. Henry for his work as a contractor is taxable "under the laws of the United States," and thus as Vermont income.

Appellants' second argument is that the Department of Taxes rendered its assessment upon incompetent or incomplete evidence. In cases where taxpayers fail to file returns, the Legislature has granted the Department of Taxes authority to issue estimated assessments. 32 V.S.A. 5864(b). "Upon the failure of a taxpayer to file any return . . . the commissioner may compute the tax liability of the taxpayer with respect to which the return was required to be filed, according to the commissioner's best information and belief." *Id.* The Department, by letter to Appellants dated November 3, 2004, requested that Appellants file returns and gave a specific warning that a § 5864(b) assessment would be used in lieu of Appellants returns. Nonetheless, Appellants opted not to complete returns for the missing tax years.

The Department then computed and provided to Appellants an "Office Audit Summary," explaining in considerable detail the bases of the Department's calculations. These calculations were based substantially upon information available from the Internal Revenue Service. The Department's calculations were based on the Commissioner's best information and belief and were therefore within the Department's lawful authority under § 5864(b). To the extent the Department worked from incomplete or imperfect

information, it was forced to do so by Appellants' refusal to file returns.

Sufficiency of Evidence

The transcript of the Tax Appeal Hearing in this matter, held in Montpelier on June 28, 2006, reveals no factual dispute, but rather a dispute as to the legal definition of income, as applied to the Vermont personal income tax. The Commissioner's findings of fact are supported by the evidence, and the conclusions of law are correct. Appellants have not shown any errors of fact or law in the Determination of the Commissioner, which must therefore be affirmed.

Order

For the foregoing reasons,

The Determination of the Commissioner of Taxes is *affirmed*.

Dated at Montpelier, Vermont this 3rd day of May 2007.

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Mary Miles Teachout
Superior Court Judge