

income of \$649.92 and a Pennsylvania tax liability of \$18.20. The return also listed \$46.20 as total Pennsylvania tax withheld and a Pennsylvania tax liability of \$28.00.

The three returns were not timely filed. All were filed in 2005. In April 2005, the Pennsylvania Department of Revenue (Department) issued assessments against Taxpayer and Mrs. Basile for 2001, 2002, and 2003. For Tax year 2001, the Department assessed gross taxable income of \$72,681.00³ and tax due of \$2,035.00. For Tax year 2002, the Department assessed gross taxable income of \$73,178 and tax liability of \$2,048.00. For Tax year 2003, the Department assessed gross taxable income of \$73,330.00, tax liability of \$2,053.00, and estimated tax and extension payments of \$1,717 for tax due of \$336.00. The Department also assessed penalties and interest.

Taxpayer appealed the assessments to the BOA which denied all three appeals. Taxpayer appealed to the Board. With respect to Tax year 2001, the Board reassessed Taxpayer \$474.28 plus appropriate penalty and interest:

The evidence mailed by Petitioner [Taxpayer] on February 9, 2006, shows that the Internal Revenue Service reported that [sic] Petitioner's [Taxpayer] adjusted gross income as \$72,681 for the 2001 tax year. However, Petitioner [Taxpayer] does not admit such income and protests assessment of any tax by this Commonwealth on such income. In the absence of identification of the income and a legal basis to avoid tax, the assessment shall not be struck.

³ Apparently, the Department did not add the \$72,681 to the \$161.00 already claimed as income by Taxpayer.

Petitioner's [Taxpayer] objections to the Board of Appeals' Decision and Order addresses the weight given to Petitioner's [Taxpayer] tax return, filed under penalty of perjury. In any tax appeal, the taxpayer has the burden of proof. In the instant appeal, Petitioner [Taxpayer] has the burden of proving that the income reported by the Internal Revenue Service was reported in error or that the income was received but is not subject to tax in this Commonwealth. A sworn statement that that [sic] the income is not taxable in this Commonwealth is not sufficient proof to overcome the IRS evidence that Petitioner [Taxpayer] received income.

Petitioner [Taxpayer] also objects to the Board of Appeals' statement that withholdings evidence an obligation to withhold tax on income earned by an individual. The very purpose of withholdings is to set aside a portion of income to satisfy tax obligations. Without income, there is nothing to withhold. As the arguments presented by Petitioner [Taxpayer] do not show that income was not earned during the tax year or is not subject to tax in Pennsylvania, the income reported by the IRS shall not be removed from taxable income.

The assessed tax does not allow any offset for payments or credits. Petitioner's [Taxpayer] tax shall be reassessed to allow credit for Pennsylvania State Tax withholdings of \$1,560.72 remitted by Hamilton Health Management for the 2001 tax year.

Board of Finance and Revenue, Order, March 31, 2006, at 2.

The Board resolved the 2002 appeal in a similar fashion and determined that Taxpayer owed \$586.40 plus interest and penalties. The Board used the same rationale to resolve the 2003 appeal and determined that Taxpayer owed \$313.60 plus penalties and interest.

Taxpayer petitioned for review with this Court. This Court consolidated the three appeals on May 3, 2007. On July 31, 2007, Taxpayer moved for summary judgment which this Court denied the next day. The parties were unable to stipulate to any facts.

Taxpayer contends that the Board incorrectly determined the amount of his lawfully taxable income.⁴

The Internal Revenue Service (IRS) provided the Department with Form 4549 Income Tax Examination Changes for the year 2001. The Form indicated the following adjustments to income:

FORM 1099-MISC- AMERIHEALTH ADMINISTRATORS	1,154.00
FORM 1099-MISC- KEYSTONE HEALTH PLAN CENTER	6,726.00
FORM 1099-MISC- PENNSYLVANIA BLUE SHIELD	9,061.00
WAGES-W-2- HAMILTON HEALTH MANAGEMENT INC	55,740.00

Form 4549 Income Tax Examination Changes, June 13, 2003, at 1.

The Department added these amounts and arrived at a total of \$72,681.00. Based on this information, the Department assessed compensation income to Taxpayer in the amount of \$72,681.00 and added that to the reported taxable income for 2001. The Department also used the information to estimate compensation for 2002 and 2003 and added it to the interest income claimed by

⁴ In appeals from the Board of Finance and Revenue, this Court's review is broad because this Court functions as a trial court, even though such cases are heard in our appellate jurisdiction. Solar Turbines, Inc. v. Commonwealth, 816 A.2d 362 (Pa. Cmwlth. 2003). Questions raised in the petition for review are determined on the record made before this Court; parties may stipulate to facts upon which they agree and issues that remain to be tried. Pa.R.A.P. 1571(f), (h).

Taxpayer. The Department did not allow the amounts allegedly withheld as credits. The Board did, and the Department did not appeal the Board's order.

In a tax appeal case, the party appealing the Board's decision has the burden of proof in a *de novo* proceeding before this Court. Armco, Inc. v. Commonwealth, 654 A.2d 1191 (Pa. Cmwlth. 1993).

Taxpayer asserts that Form 4549 is “**not** an IRS ‘report’ [and] is **not** a Form with legal sufficiency absent a penalty of perjury clause and a signature under same.” (Emphasis in original). Taxpayer's Brief at 7. While it is not a tax return and is not signed by the Taxpayer, Form 4549 is entitled Income Tax Examination Changes and is used by the IRS to reflect adjustments to reported income. Further, Taxpayer has failed to provide any evidence to contradict the amounts listed on the Form. While he attacks the language of the Board's decision, he does not provide any evidence of income for the tax years in question with the exception of his returns. For example, his 2001 return listed interest income of \$161.00 but an amount withheld of \$2,820.72. It does not make sense that he received no income, other than a relatively small amount of interest income, and had such a large amount withheld. Withholding is designed to pay to the taxing body an amount earned as income by a taxpayer to totally or partially satisfy the tax obligations of the taxpayer.

Taxpayer argues that he and Mrs. Basile “filed their Federal taxes for the three (3) [years] in question, and the IRS agreed with those filings, and claimed the proper amounts on their state PA-40 forms and paid them.” Taxpayer's Brief

at 14. However, Taxpayer has failed to present any substantial evidence of record to establish his challenge. In fact, Taxpayer inserted a letter from the IRS dated August 29, 2007, which was a request that Taxpayer consent to extend the period for assessment for the 2001 federal income tax return.

Taxpayer further asserts that the Department has no witnesses because Department's counsel informed him that two Department employees "did not qualify to be witnesses for the Commonwealth. Of course such an assertion is not only preposterous, but is also frivolous, nonsensical and without any merit whatsoever." Taxpayer's Brief at 8. This argument is immaterial.

This Court finds that Taxpayer has failed to shoulder his burden. The Department's calculation of Taxpayer's 2001 Pennsylvania Income Tax as modified by the Board is accepted as accurate by this Court. With respect to the 2002 and 2003 tax returns, the Department based its calculations on the information received from the IRS on Form 4549 for 2001. The 2002 and 2003 returns filed by Taxpayer contain similar assertions as made in the 2001 return, in terms of interest income and withholding. This Court also accepts the Department's calculation of the 2002 and 2003 returns as modified by the Board as accurate for tax purposes.⁵

⁵ Taxpayer also makes the following assertion:
It is apparent that **the DOR** [Department] **is engaged in strong-arm collection tactics** to extract more in taxes than is authorized by existing laws. (Petitioner [Taxpayer] believes that there is a very convincing argument to be made in favor of an organized employee component of the DOR [Department] in collusion with employees of the BF&R [Board], and possibly even certain legal

(Footnote continued on next page...)

Accordingly, this Court affirms.

(continued...)

counsel(s) for the Commonwealth, to use the U.S. mail service (and the wires) in attempts and threats to extract more in state income taxes than are authorized under existing laws. (Emphasis in original).

Taxpayer's Brief at 14.

Taxpayer also states that state employees are engaged in "sanctioned *extortion*" and are engaged in a "criminal *racketeering enterprise*" in violation of federal law. Taxpayer's Brief at 14.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Paul F. Basile,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 258 F.R. 2006
	:	No. 259 F.R. 2006
Commonwealth of Pennsylvania,	:	No. 260 F.R. 2006
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 20th day of September, 2010, the orders of the Board of Finance and Revenue in the above-captioned matters are affirmed.

Unless exceptions are filed within 30 days pursuant to Pa. R.A.P. 1571(i), this order shall become final.