

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Anonymous Taxpayer (Ed Patriot))	Docket No. 12-ALJ-34-XXXX-XX
Petitioner,)	
)	
V)	
)	
South Carolina Department of Revenue)	Motion for Re-Hearing
Respondent,)	

Petitioner above named hereby moves this court for Reconsideration of its Order dated August 23, 2007.

1. On August 3, 2007 this court handed down its order granting DOR everything it wanted.

Therefore, Petitioner files his motion for new trial.

2. The undisputed fact is taxpayer is currently under indictment in federal court in Greenville, SC for tax charges involving the same year's document and figures as this case. The IRS and DOR executed the Agreement on Coordination and an Implementation Agreement. Both the IRS and the DOR have statutory authority to exchange information or documents, as explain in some detail in the order of this court.

3. This places taxpayer in a terrible dilemma. Since a federal prosecution is much worse than losing a civil case, Atwell is forced to choose the lesser of two evils. He exercised his right against self-incrimination and he refuses to testify on the tax returns and refused to present documents and records to substantiate his business costs.

The state legislature authorizes the DOR to collect the taxes actually owed. Clearly, taxpayer had a business and had business expenses which probably reached 90% of the gross. Therefore, DOR is attempting to assess and collect taxes which are clearly not owed.

4. The indictment of the federal government claims that petitioner had income tax due of between \$4,000 and \$15,000 for related years. Therefore according to the IRS, Atwell owed at most \$15,000.

The DOR could exchange that information with the IRS.

5. On July 18, 2007 Petitioner filed correctly his Motion for Continuance based on the fact of the federal prosecution for tax evasion for related years. He had notified this court that he would exercise his Constitutional right against self-incrimination. He sought a continuance of this trial by only a few months which would not harm DOR at all.

At the hearing of this case on July 24, 2007, Atwell argued this Motion and stated very clearly he exercised his right not to be compelled to testify or furnished information to be used against him in a criminal case. After argument from both sides, the court denied this Motion.

6. Since records to substantiate his business expenses and deductions were protected by the Fifth Amendment, defendant relies on the Cohen case:

The Cohen v. CIR case shows that in tax disputes, the taxpayer can use reasonable figures, instead of figures conjured by the tax collectors that cannot be correct. The taxpayer can also reconstruct lost paperwork to substantiate his deductions and business expenses.

Further, the taxpayer can claim a percentage of business expenses and profit for a business enterprise, even if he has no records to substantiate business expenses. For example, a plumbing subcontractor could claim as expenses 60% of gross receipts from the form 1099s that the IRS received from the contractors.

The 9th Circuit Court ruled in Cohan v. CIR, 266 F 2d 5(1959):

“ We think our only proper course is to approach the problem indirectly by analysis of the record in the light of the principles established in Cohan v. Commissioner, 39 F.2d 540 (2d Cir. 1930). Our objective will be, after resolving any reasonable doubts against petitioner, to reconstruct his gross income as betting commissioner at a figure which in our judgment it would be unlikely to exceed in fact.”

The purpose of the DOR is to collect taxes, not to browbeat hard working citizens who are unable to produce records. Due to his federal problem, Taxpayer in this case was unable to produce all the records that DOR seeks. However, everyone knows that Atwell did incur large expenses for business. The government should figure out what the law says he owes-- not a tax imposed by lack of ability to produce records by a taxpayer working hard to make a living.

7. This order claims that IRS printouts are not hearsay. However, state law provides otherwise: The department is required to use the best information.

8. The best information is the 1099's submitted by the product providers. The employers in this state spend millions of dollars complying and mailing to DOR the wage statements of the employees.

DOR should use these rather than the grossly unreliable figures from the IRS.

9. IRS transcripts are notorious for being incorrect. The data entry staff at the IRS service centers is well known to be lazy, imaginative, and grossly inaccurate. DOR should have used the direct information from the companies that issued the 1099's.

10. The documentation this court allowed DOR at to submit at trial violates the hearsay rule. This court clearly favors DOR and has made no effort to give taxpayer a fair chance.

11. Taxpayer's company filed timely tax returns and did the best he could. The tax law is so complex and confusing that nobody knows what it says. Therefore, Petitioner is entitled some leeway and reduction in penalties.

12. DOR is using the overwhelming resources of the taxpayers to bully and overwhelm a bankrupt businessman. The high paid attorneys for the department used their knowledge of the complex tax laws and procedures against a taxpayer without a lawyer or resources to hire a lawyer. Shamefully, this court owed the tax collectors to take advantage of a loyal citizen of this state.

13. In conclusion, this court should withdraw its order and re-open its case so that the working man can receive credit for business costs, depreciation, etc and the true and correct tax be figured.

Certificate of Service: I hereby certify that I sent properly a copy of this pleading to opposing counsel.

August 31, 2007

Ed Patriot, Pro se
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