



**In the
Missouri Court of Appeals
Western District**

BRAD AND CHRISTINE FRANCIS,	)	
	)	
Appellants,	)	WD84199
	)	
v.	)	OPINION FILED: July 6, 2021
	)	
DIRECTOR OF REVENUE,	)	
	)	
Respondent.	)	

Appeal from the Administrative Hearing Commission

Before Division Three: Gary D. Witt, Presiding Judge, Mark D. Pfeiffer, Judge and
W. Douglas Thomson, Judge

Brad and Christine Francis ("the Francises") appeal the decision of the Administrative Hearing Commission¹ ("the Commission") finding the Francises liable for \$5,064 in State income tax, \$253.20 in additions, plus interest. On appeal, the Francises allege that the Commission erred in: (1) finding that the Francises admitted that they had worked and earned money to support its conclusion that the Francises had taxable income for the taxable years at issue; (2) admitting Exhibits A and A-1 through A-12 because they were admitted before the Francises were allowed to make their objections; (3) admitting

¹ The Francises' points in their brief allege error by the "Director of Revenue," but it is apparent that they are alleging error in the Commission's decision.

Exhibits B-1 through B-5 because such exhibits were only properly admissible in matters involving "Motor Vehicles, Watercraft and Aviation" and not in income tax cases; and (4) finding that the Director of Revenue ("Director") had issued a final decision for the Commission to review because the Director's decision was based on improperly altered documents. We affirm the decision of the Commission.

Factual and Procedural Background²

The Francises were residents of Missouri in 2013, 2014, and 2015, the years relevant to this appeal. In 2013, Brad Francis ("Brad")³ was employed at Fiber Glass Systems and received \$142,794 in wages, tips, and/or other compensation according to his W-2. Christine Francis ("Christine") performed contract work, primarily refereeing soccer games and doing medical transcription, and the IRS's Wage and Income Transcript shows that she received \$1,200 from Refpay LLC; \$26,714 from Pro-Scribe Document Solutions; \$646 from Missouri Referee Development Program; and \$717 from KJCCC. In 2014, the Francises filed timely 2013 federal and state tax returns showing income of \$0, Missouri tax of \$0, and seeking a refund from Missouri of \$6,529. The Department of Revenue issued a Notice of Proposed Changes, proposing alternate figures for income and tax, and later, the Taxation Division of the Department of Revenue issued a decision finding that there had been income and calculating unpaid tax, addition to tax, and interest, showing a balance due of \$2,524.

² We defer to the Commission regarding the credibility of evidence. *Campbell v. Dir. of Revenue*, 927 S.W.2d 452, 454 (Mo. App. W.D. 1996).

³ To avoid confusion, this opinion will refer to Brad Francis as "Brad" and to Christine Francis as "Christine." No familiarity or disrespect is intended.

In 2014, Brad earned \$111,212 from Fiber Glass Systems, and Christine earned \$9,721 from Lockton Management, LLC; \$600 from Refpay; \$25,121 from Pro-Scribe Document Solutions; and \$792 from KJCCC. The Francises again filed a MO-1040, to which they attached their federal 1040, and again claimed income and tax of \$0; they requested a refund of \$4,873. The Department of Revenue sent a Notice of Proposed changes, finding that the Francises had income and tax, and the Taxation Division found a balance due, after addition to tax and interest, of \$925.

In 2015, Brad earned \$149,782 from Fiber Glass Systems, and Christine earned \$39,801 from Lockton Management; \$2,057 from Missouri Referee Development Program; and \$1,455 from Heartland Soccer Association. The Francises also had "proceeds" of \$5,900 from Coffelt Land Title. The Francises again filed a MO-1040 showing income and tax of \$0. The Department of Revenue sent a Notice of Proposed changes, finding that the Francises had income and owed tax; the Taxation Division found a balance due, after addition to tax and interest, of \$2,029.⁴

The Francises protested all of the notices of proposed changes showing a deficiency for each of the years in question. They argued that, under Title 26 of the United States Code, they were not "employees" who earned "wages" for federal income tax purposes, and they, therefore, did not have federal adjusted gross income for purposes of the Missouri income tax. The Francises also maintained that Missouri's income tax is a "lawful, valid,

⁴ The Director of Revenue's Decision appears to have calculated the Francises' income based only on Brad's wages from Fiber Glass Systems and Christine's wages from Lockton Management. The income from other sources appears not to have been included.

and enforceable excise on privilege" and not a direct tax on income, which they contend is only a "measure of the privilege."

The Director of Revenue's Decision concluded that the notices of deficiency issued by the Department were correct and found that the Francises were liable for a total due of \$5,717 for taxable years 2013, 2014, and 2015. The Department of Revenue intercepted the Francises' 2016 and 2017 tax refunds to pay the balance owed from the 2013, 2014, and 2015 taxable years. The Francises appealed the Director's Decision to the Commission, which conducted a contested hearing. The Francises objected to the admission of documents offered by the Department of Revenue including an affidavit by Kimberly Gorman, the Department's custodian of records, and several documents from the IRS. The Commission admitted the documents but noted that "if the exhibits contain information that might be otherwise inadmissible" it would affect the weight the exhibits would be given. The Commission ultimately issued a decision finding the Francises liable for state income taxes, additions, and interest. The Francises then filed a "motion to declare mistrial" which the Commission construed as a motion to reconsider. The Commission issued a final amended decision that again found the Francises liable for the amounts. This appeal follows.

Standard of Review

We review an administrative decision arising from a contested case pursuant to sections 536.100 to 536.140. *Nowden v. Div. of Alcohol & Tobacco Control*, 552 S.W.3d 114, 117 (Mo. banc 2018). "Generally, appellate review is limited to determining whether the decision of the [Commission] is supported by substantial and competent evidence based

on the record as a whole; whether the Commission's decision is arbitrary, capricious, or unreasonable; or whether the Commission abused its discretion." *Campbell v. Dir. of Revenue*, 927 S.W.2d 452, 454 (Mo. App. W.D. 1996). We will uphold the Commission's factual findings if they are supported by substantial evidence on the record as a whole. *New Garden Rest., Inc. v. Dir. of Revenue*, 471 S.W.3d 314, 317 (Mo. banc 2015). "The Commission judges the credibility of witnesses." *Campbell*, 927 S.W.2d at 454. But we review the Commission's interpretation of applicable statutes *de novo*. *New Garden Rest.*, 471 S.W.3d at 317. "[I]t is within the discretion of the fact-finder as to whether to admit or exclude evidence and such a decision will not be overturned absent an abuse of discretion." *C.L.E.A.N., LLC v. Div. of Emp't. Sec.*, 405 S.W.3d 613, 630 (Mo. App. W.D. 2013) (internal quotation omitted).

Analysis

We will address the Francises' points on appeal⁵ out of order for ease of analysis. The Francises argue in their "point d" that the Commission lacked authority or jurisdiction⁶

⁵ Although neither party challenges this Court's jurisdiction on appeal, we have an obligation to determine our own authority to hear all appeals that come before us, acting *sua sponte* if necessary. *Maly Com. Realty, Inc. v. Maher*, 582 S.W.3d 905, 910 (Mo. App. W.D. 2019). The Missouri Constitution confers exclusive appellate jurisdiction to the Missouri Supreme Court in all cases involving the construction of the revenue laws of this state. MO. CONST. art. V, § 3. Therefore, any cases involving "(1) construction (2) of revenue laws (3) of this state" have appellate jurisdiction lying exclusively with the Missouri Supreme Court. *Armstrong-Trotwood, LLC v. State Tax Comm'n*, 516 S.W.3d 830, 834 (Mo. banc 2017). The Francises' argument, and the substantive issue in this case, is whether the Francises performed work and earned income under the federal income tax code, 26 U.S.C. § 3401(c), so it does not involve construction of revenue laws "of this state." Moreover, a case does not involve construction of a revenue law if the law at issue has already been interpreted (by the Missouri Supreme Court if it is a state revenue law, and presumably by the federal courts if it is a federal law) and this Court can dispose of the issue by merely applying that construction of law to the facts of the case. See *Twelve Oaks Motor Inn v. Strayhan*, 96 S.W.3d 106, 108-09 (Mo. App. S.D. 2003). The federal courts have uniformly rejected the Francises' position, finding it to be frivolous. Accordingly, this case does not require transfer to the Missouri Supreme Court on a jurisdictional basis.

⁶ The Francises use jurisdiction and authority interchangeably. The Commission "is 'an adjunct executive agency,' not a court vested with judicial power." *Cass C'nty v. Dir. of Revenue*, 550 S.W.3d 70, 74 (Mo. banc 2018). "The [C]ommission is not constitutionally vested with subject matter jurisdiction, as the courts of this state are; rather,

to rule on their appeal because there had not been a final decision from the Director of Revenue in that the Director had exceeded his own authority. Specifically, they contend that section 143.611⁷ does not permit the Director to estimate a person's income when the person has filed a timely tax return, even if, as here, the person falsely declares income of zero.

Section 621.050.1 provides that "any person or entity shall have the right to appeal to the administrative hearing commission from any ruling, order, decision, assessment or additional assessment made by the director of revenue." And a decision by the Director "is final upon the expiration of thirty days from the date when he mails notice of his action to the taxpayer unless within this period the taxpayer seeks review of the director of revenue's determination by the administrative hearing commission." Section 143.651. The Francises appealed the Director's Decision to the Commission pursuant to these provisions.

Section 143.611.2 provides, "If the taxpayer fails to file an income tax return, the director of revenue shall estimate the taxpayer's taxable income and the tax thereon from any available information and notify the taxpayer of the amount proposed to be assessed as in the case of a deficiency." The Francises argue that they did file Missouri tax returns, albeit claiming zero income, so section 143.611.2 does not allow the Director to estimate their income from available sources, such as IRS documents. Instead, they essentially claim that section 143.611.1 allows the Director to examine a filed return "to determine the correct amount of tax," but that the Director may only consider the correct amount of tax

it is merely conferred with statutory authority to take certain actions. This authority statutorily granted to the [C]ommission should not be equated to the subject matter jurisdiction constitutionally granted to courts." *Id.*

⁷ All statutory references are to RSMo. 2016, as updated by supplement, unless otherwise noted.

based on the amount of income claimed by the filers on the tax return. They imply that the logical conclusion is, since their return lists an income of \$0, and the Director lacks authority to alter their income tax return, the "correct amount of tax" on \$0 is \$0. They conclude that since the Director exceeded his authority, his Decision was not final, and thus the Commission lacked authority to consider the appeal of the Decision.

Had the Director exceeded the authority of the office by using the resources at its disposal to determine the proper amount of taxable income⁸ that the Francises should have listed on their Missouri returns, that error still would not have rendered the Decision somehow not final for purposes of appeal to the Commission. The Commission operates expressly for the purpose of reviewing administrative decisions based on a claimed error in the underlying decision. *See* section 621.050.1. If, as argued by the Francises, any claimed error rendered an administrative decision not final and therefore unappealable, the Commission would never have authority to hear any appeals.

Moreover, it was the Francises who requested that the Commission hear their appeal of the Director's Decision. They cannot now claim error in the Commission's granting the relief they themselves requested. *See Shoate v. State*, 529 S.W.3d 869, 876 (Mo. App. W.D. 2017) ("[O]ne who is awarded the relief prayed is not an aggrieved party and may not appeal from the judgment in his favor."). "[I]f a party seeks a ruling that could ultimately be detrimental to that party, if the party obtains the judgment sought, the party is not aggrieved so as to entitle that party to appeal." *Id.* The Francises asked the

⁸Section 143.611.1 states, "If the director of revenue finds that the amount of tax shown on the return is less than the correct amount, he shall notify the taxpayer of the amount of the deficiency proposed to be assessed." The Director clearly acted within his authority in this case.

Commission to review the Director's decision, which it did. The Francises cannot now credibly claim that the Commission lacked authority to consider their appeal. The Francises' "point d" is denied.

The substantive portion of the Francises' argument, in their "point a," is that the Commission erred in finding that they had taxable income, and therefore owed tax, because they were not "employees" who earned "income" under the federal income tax code, 26 U.S.C. § 3401(c). They also claim that federal and Missouri's income taxes are not direct taxes on income but rather are "lawful, valid, and enforceable excise[s] on privilege," that income is a measure of the privilege, and that this makes the taxes invalid. The Francises' position is one commonly argued by tax protesters, and it has been determined consistently by multiple courts over the course of over thirty years to be frivolous. *See, e.g., Parker v. Comm'r*, 724 F.2d 469, 471-72 (5th Cir. 1984) (refuting allegation that "the income tax is an excise tax applicable only against special privileges" and finding Congress empowered to levy income tax against any source of income); *United States v. Latham*, 754 F.2d 747, 750 (7th Cir. 1985) (finding taxpayer's argument that the IRC category of "employee" would "not include privately employed wage earners" a "preposterous reading of the statute"). The Francises cite no opinions from any court accepting their theories. We find, as many courts have done, that their arguments herein are meritless. The Francises' "point a" is denied.

The Francises argue in their "point b" and "point c" that the Commission erred in admitting the Director's Exhibit A and Exhibits A-1 through A-12, and Exhibits B-1 through B-5 at the hearing. Exhibit A is an affidavit of Kim Gorman, the Director's

custodian of records, outlining the Director of Revenue's Decision with respect to the Francises and attesting that the accompanying exhibits were true and correct copies. Exhibits A-1 through A-10, referenced in the affidavit, are documents originated by the IRS including "Account Transcripts" for the years 2013-2015 and transcripts of the Francises' W-2s and 1099s and mortgage interest for the years 2013-2015, as well as a copy of the Director's Decision. Exhibits B-1 through B-5 are copies of the Francises' W-2s with affidavits from Gorman attesting to their accuracy. Exhibits A-11 and A-12 are copies of Brad's and Christine's Linked In pages showing that they worked for Fiber Glass Systems and Lockton Companies, respectively.

We find that it is unnecessary to review the propriety of the Commission's admission of these documents. Pursuant to section 621.050.2, the Francises bore the burden of proof at the administrative hearing.⁹ To satisfy that burden, they are required to present evidence that they in fact had taxable income of \$0 and therefore were entitled to a refund of their Missouri tax assessed and collected by the Director of Revenue. They presented no such credible evidence. On the contrary, both Brad and Christine testified at the hearing that they did perform work, for which they received money. The Francises' appeal to the Commission was based solely on their spurious legal arguments. They argued:

And so our understanding of the law is exactly the polar opposite of the Director's understanding of the law. And we believe that this is the fundamental issue at stake.

⁹ The Francises claim that the Director bore the burden at the administrative hearing because they "produced evidence. . . that established a reasonable dispute with the Director's findings and show the Commission's decision was made against the weight of the evidence." They produced no such evidence, only the legal argument above, which we reject.

So our position is that it's an excise on federal privilege. The Director's position, as stated in his response, is that it is a direct tax. And so, while we construe the income tax, to administer an indirect or an excise on federal privilege, they construe the income tax, to essentially impose a direct tax. And so we view the evidence, in the light of our understanding of the law.

So the evidence will show, and we will testify that we do not deny working for certain companies, but we will deny working for those companies within the meaning of the Internal Revenue Code. We don't deny receiving money from certain companies, but we will deny receiving money within the meaning of the Internal Revenue Code.

And it's because our understanding of the law dictates how we view the evidence, just as the Director's understanding of the law views how they see the evidence. And so we will, in the end, ask the Commission to find for us, as a matter of law. We believe we're entitled to judgment as a matter of law.

The Commission rejected the Francises' legal argument, as do we. And because the Francises failed to meet their burden to produce evidence that their taxable income was \$0 as they claimed, it is irrelevant whether the Director's evidence supporting his Decision was properly admitted. Points b and c are denied.

Conclusion

For all of the above-stated reasons, we affirm the Decision of the Commission.



Gary D. Witt, Judge

All concur