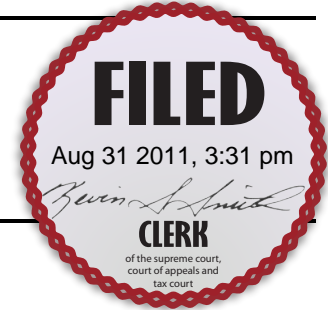


PETITIONER APPEARING PRO SE:
LYLE LACEY
Indianapolis, IN

ATTORNEYS FOR RESPONDENT:
GREGORY F. ZOELLER
ATTORNEY GENERAL OF INDIANA
LYNNE D. HAMMER
DEPUTY ATTORNEY GENERAL
Indianapolis, IN

**IN THE
INDIANA TAX COURT**



LYLE LACEY,)
)
 Petitioner,)
)
 v.)
)
 INDIANA DEPARTMENT OF)
 STATE REVENUE,)
)
 Respondent.)

Cause No. 49T10-1102-TA-7

ORDER ON RESPONDENT'S MOTION TO DISMISS

**FOR PUBLICATION
August 31, 2011**

WENTWORTH, J.

Lyle Lacey previously filed two original tax appeals, one for the 2006 tax year and the other for 2007 tax year, in which he unsuccessfully argued that he did not owe Indiana adjusted gross income tax (AGIT). See Lacey v. Ind. Dep't of State (Lacey II), 948 N.E.2d 878 (Ind. Tax Ct. 2011) (regarding the 2007 tax year); Lacey v. Ind. Dep't of State Revenue (Lacey I), 894 N.E.2d 1113 (Ind. Tax Ct. 2008) (regarding the 2006 tax year), review denied. Now, Lacey has petitioned the Court a third time regarding his 2008 AGIT liability, which is currently before the Court on the Indiana Department of

State Revenue's (Department) Motion to Dismiss for failure to state a claim on which relief can be granted.¹ Concluding that the issues in this action are substantially the same as those decided in Lacey II, the Court dismisses this case.

PROCEDURAL HISTORY

Lacey claimed in Lacey II that he had a constitutionally guaranteed right to trial by jury, that the judge of the tax court was biased, and that the Department had violated the Distribution of Powers Clause of the Indiana Constitution. See Lacey v. Ind. Dep't of State Revenue (Lacey II Interim Order), No. 49T10-0906-TA-25, slip. op. *3-4 (Ind. Tax Ct. Oct. 26, 2009). Lacey also asserted that he owed no Indiana AGIT because "the compensation he received in 2007 as a result of his employment . . . [wa]s not income within the meaning of the Sixteenth Amendment to the United States Constitution or the Internal Revenue Code." Lacey II, 948 N.E.2d at 879-80 (footnote omitted).

In the Lacey II Interim Order, this Court, dismissed Lacey's first three claims pursuant to Indiana Trial Rule 12(B)(6). Lacey II Interim Order, No. 49T10-0906-TA-25, at *5-6. Then, following both a trial and oral argument, the Court resolved Lacey's final claim on May 16, 2011, finding in favor of the Department. See Lacey II, 948 N.E.2d at 880-82. On June 15, 2011, Lacey filed a motion requesting the Court take judicial notice of several authorities, including Miles v. Department of Treasury, 199 N.E. 372 (Ind. 1935). That same day, Lacey also filed a petition for rehearing in which he cited Miles as support. On June 20, 2011, the Court, in two separate orders, granted Lacey's motion to take judicial notice and denied his petition for rehearing.

¹ The Department also claims that this case should be dismissed because the Tax Court lacks subject matter jurisdiction, arguing that Lacey asks the Court to construe federal law that does not arise under the tax laws of Indiana. (See Hr'g Tr. at 7-9; Mem. Supp. Resp't Mot. Dismiss at 8-10.) The Court disagrees because this matter concerns whether Indiana can tax Lacey's income, a question arising under Indiana's tax laws.

On February 3, 2011, during the pendency of Lacey II, Lacey filed this original tax appeal. The Department filed a Motion to Dismiss on March 7, 2011, Lacey filed his response on March 25, 2011, and the Court held a hearing on the matter on August 26, 2011.

STANDARD OF REVIEW

A motion to dismiss for failure to state a claim upon which relief may be granted tests the legal sufficiency of a claim, not the facts supporting it. Caesars Riverboat Casino, LLC v. Kephart, 934 N.E.2d 1120, 1122 (Ind. 2010) (citation omitted). A Court will not grant such a motion “unless it is clear on the face of the complaint that the complaining party is not entitled to relief.” City of New Haven v. Reichhart, 748 N.E.2d 374, 377 (Ind. 2001) (citation omitted). Consequently, the Court views the pleadings and all reasonable inferences drawn therefrom in favor of the non-moving party. See id. (citation omitted).

DISCUSSION AND ORDER

This Court will both uphold and adhere to its prior decisions absent the presentation of new arguments or facts requiring otherwise. See generally Ameritech Publ'g, Inc. v. Ind. Dep't of State Revenue, 916 N.E.2d 752 (Ind. Tax Ct. 2009), review denied.² The Department contends that Lacey's present appeal fails to state any claim upon which relief may be granted because it presents the same four claims and theories for relief as presented in Lacey II. (See Hr'g Tr. at 5-7; Mem. Supp. Resp't Mot. Dismiss at 4-8.) Lacey, on the other hand, asserts that the two cases are distinguishable substantively because his theory of non-taxability in this case, unlike in Lacey II, hinges

² Cf. Miller Brewing Co. v. Ind. Dep't of State Revenue, No. 49T10-0607-TA-69, 2011 WL 3630147, at *2 n.7 (Ind. Tax Ct. Aug. 18, 2011) (explaining that although the Tax Court is bound by prior precedent, it is not necessarily bound when presented with new arguments).

upon the Miles case. (See Hr'g Tr. at 22-24.) In addition, Lacey claims that the Department's arguments regarding his constitutionally guaranteed right to a jury trial are unpersuasive because those arguments, for the most part, are based on Tax Court precedent only, not Indiana Supreme Court precedent.³ (See Hr'g Tr. at 24-27 (footnote added).) Lacey is incorrect.

As mentioned, Lacey requested that the Court take judicial notice of Miles during the Lacey II proceedings. The Court granted Lacey's request and considered the significance of Miles in its ruling on Lacey's petition for rehearing. The Court ultimately found Lacey's arguments and new authorities unpersuasive and denied Lacey's petition for rehearing. Therefore, Lacey's current reference to Miles does not create a new substantive issue for this Court's review. Similarly, the theory underlying Lacey's argument with respect to his right to a jury trial also presents nothing new.

The issues and arguments presented in Lacey's current petition do not materially differ from those presented to and rejected by this Court in Lacey II; therefore, the Court must uphold and adhere to its prior decisions. Consequently, the Court GRANTS the Department's motion to dismiss in its entirety.⁴

SO ORDERED this _____ day of August 2011.

Martha Blood Wentworth
Judge, Indiana Tax Court

³ During the hearing on the Department's motion to dismiss, Lacey waived/withdrew his two other claims (i.e., whether the judge of the tax court was biased and whether the Department had violated the Distribution of Powers Clause of the Indiana Constitution). (See Hr'g Tr. at 28-29.)

⁴ During the hearing, the Department also requested an award of attorney's fees, asserting that Lacey's claims are frivolous. (See Hr'g Tr. at 9-11.) To the extent the Department still seeks such fees, it must make that request by separate motion.

Distribution:

Lyle Lacey, 9502 Thornwood Drive, Indianapolis, IN 46250

Gregory F. Zoeller, Attorney General of Indiana, By: Lynne D. Hammer, Deputy Attorney General, Indiana Government Center South, Fifth Floor, 302 West Washington Street, Indianapolis, IN 46204-2770