

STATE OF WISCONSIN
TAX APPEALS COMMISSION

SHAHID AHMAD,

DOCKET NO. 05-I-108

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DAVID C. SWANSON, COMMISSIONER:

This case comes before the Commission on the motion of respondent, the Wisconsin Department of Revenue (“Department”), to dismiss the petition for review on the basis that petitioner has failed to comply with Commission orders and has otherwise failed to prosecute his appeal, pursuant to Wis. Stat. § 805.03 and Wis. Admin. Code § TA 1.39.

Petitioner represents himself and has not responded to the motion. Attorney Mark S. Zimmer represents the Department, and has filed an affidavit with exhibits and a brief in support of the motion.

Having considered the entire record, including the motion, affidavit, exhibits, and brief of the Department, the Commission hereby finds, rules, and orders as follows:

JURISDICTIONAL AND MATERIAL FACTS

1. By notice dated December 27, 2004, the Department issued an

assessment of individual income tax and interest to petitioner in the total amount of \$3,196.72 for tax years 2000, 2001, 2002, and 2003, inclusive (“years at issue”). (Affidavit of Julie Lotto filed May 18, 2006, Exh. 1.)

2. On February 28, 2005, petitioner filed with the Department a timely petition for redetermination of the assessment. (Lotto Affidavit, Exh. 2.)

3. The Department issued and sent to petitioner by certified mail a Notice of Action, dated May 16, 2005, denying the petition for redetermination on the grounds that the information requested by the Department had not been provided. (Lotto Affidavit, Exh. 3.)

4. On July 6, 2005, petitioner filed his petition for review with the Commission.

5. On July 27, 2005, the Department sent a letter to petitioner requesting additional information regarding his appeal. No response was received from petitioner. (Lotto Affidavit, ¶¶ 6-7.)

6. On September 26, 2005, the Commission issued a notice scheduling a telephone conference in this case for November 3, 2005, which stated in part:

If the Commission is unable to reach you or your representative by telephone, the conference will proceed, and the petition for review will be subject to dismissal, pursuant to Wis. Stat. §§ 802.10(7) and 805.03.

7. On October 11, 2005, the Department again sent a letter to petitioner requesting additional information regarding his appeal. No response was received from petitioner. (Lotto Affidavit, ¶¶ 9-10.)

8. On October 28, 2005, at petitioner’s request, the Commission

postponed the November 3, 2003 telephone conference until April 4, 2006. On January 20, 2006, the Commission rescheduled the conference to April 11, 2006.

9. On April 11, 2006, petitioner failed to appear at the scheduled telephone status conference. (Lotto Affidavit, ¶ 14.)

10. On April 12, 2006, the Commission issued a Status Conference Memorandum and Order scheduling a telephone conference for April 25, 2006. The Memorandum ordered in part that:

The parties or their representatives shall participate in the next-scheduled status conference. Failure to comply with the terms of this order may result in any sanction authorized by law, including dismissal of the petition for review.

11. On April 25, 2006, both parties appeared at the scheduled telephone status conference. (Lotto Affidavit, ¶ 16.)

12. On April 25, 2006, following the telephone status conference, the Department sent petitioner a letter listing the documents that petitioner had provided and describing the additional documents and information the Department required to substantiate petitioner's claims. (Lotto Affidavit, ¶ 17.)

13. On April 26, 2006, the Commission issued a Status Conference Memorandum and Order directing petitioner to "send Attorney Zimmer any additional information prior to the next-scheduled conference, allowing sufficient time for Attorney Zimmer to review that information before the conference." The Memorandum scheduled another telephone status conference for May 16, 2006, and ordered, in part:

The parties or their representatives shall participate in the next-

scheduled status conference. Failure to comply with the terms of this order may result in any sanction authorized by law, including dismissal of the petition for review.

14. The Department received no answer, additional documents or information from petitioner in response to its April 25, 2006 letter. (Lotto Affidavit, ¶ 18.)

15. On May 16, 2006, petitioner failed to appear at the scheduled telephone status conference. (Lotto Affidavit, ¶ 19.)

16. On May 18, 2006, the Department filed a Notice of Motion and Motion to Dismiss, with supporting brief, affidavit and exhibits, requesting that the Commission dismiss petitioner's appeal on the basis that petitioner has failed to comply with Commission orders and has otherwise failed to prosecute his appeal, pursuant to Wis. Stat. § 805.03 and Wis. Admin. Code § TA 1.39.

17. On May 23, 2006, the Commission issued a Briefing Order directing petitioner to file a response to the Department's motion by June 23, 2006.

18. Petitioner did not file a response to the Department's motion.

RULING

Assessments made by the Department are presumed to be correct, and the burden is on petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984); Wis. Stat. § 77.59(1). In order to prove that an assessment is incorrect, a petitioner must begin by prosecuting his or her appeal and complying with the Commission's orders.

Petitioner filed his petition for review with the Commission on July 6, 2005. Since that date, petitioner has: (1) failed to respond to a series of inquiries made by the Department; (2) failed to comply with Commission orders to appear at telephone status conferences scheduled for April 11, 2006 and May 16, 2006; and (3) failed to comply with the Commission's Briefing Order dated May 23, 2006, which ordered petitioner to respond to the Department's motion to dismiss the petition for review. Petitioner's demonstrated lack of interest in pursuing his own petition for review constitutes a failure to prosecute his appeal, and his repeated failure to comply with Commission orders similarly constitutes independent grounds for dismissal. *See*, Wis. Stat. § 805.03 and Wis. Admin. Code § TA 1.39. Therefore, the Commission grants the Department's motion to dismiss.

ORDER

The Department's motion is granted, and the petition for review is dismissed.

Dated at Madison, Wisconsin, this 18th day of September, 2006.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"