

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 30, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2008AP2273

Cir. Ct. No. 2007CV48

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STEPHEN D. WILLETT AND MARY M. WILLETT,

PETITIONERS-APPELLANTS,

V.

STATE OF WISCONSIN DEPARTMENT OF REVENUE,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Price County:
JON M. COUNSELL, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Stephen Willett¹ and Mary Willett appeal a judgment affirming a Wisconsin Tax Appeals Commission decision that upheld a

¹ Stephen Willett is an attorney and represents himself and his spouse on appeal.

\$104 tax assessment. The Willetts purport to present ten issues on appeal.² We address three primary issues, two concerning the weight of the evidence and one regarding a claimed procedural irregularity. We affirm the Commission's decision and admonish Attorney Willett.

BACKGROUND

¶2 The Wisconsin Department of Revenue audited the Willetts' 2001, 2002, and 2003 tax returns. As a result, the Willetts were denied the \$2,697 refund requested in their amended 2002 return and were assessed a total of approximately \$137 in tax and interest for the three years. The Willetts subsequently appealed to the Commission.

¶3 The Commission concluded the Willetts failed to prove entitlement to a \$41,000 deduction claimed as a business loss on their 2002 amended state income tax return. The deduction related to a cosmetology salon operated by Marti's Cuts Unlimited, a partnership. The Commission also determined the Willetts failed to establish entitlement to a \$10,493 capital loss claimed on their 2001 return based on the sale of stock in Northwinds Flying Club. Additionally, the Commission upheld the DOR's denial of a \$500 capital loss carryforward claimed on the Willetts' 2002 and 2003 returns that was based on the stock sale. The Willetts then pursued WIS. STAT. ch. 227 judicial review of the Commission

² The Willetts actually set forth eleven issues in their statement of issues, listing two issues as number six. Issues nine and ten are nearly identical. The issue numbers then fail to correspond with the argument section of the brief. Further, the fifteen-page argument under issue nine/ten, which requests depositions, interrogatories, and an evidentiary hearing before this appellate court, appears to be nothing more than a restatement of the arguments and factual assertions previously presented in the brief.

decision.³ The Willetts now appeal the circuit court’s decision affirming the Commission.

DISCUSSION

¶4 The Willetts’ appellate brief is disorganized, presents arguments in the fact section, lacks *any* citation to the record on appeal, sets forth facts outside the record, ignores the standard of review, and frequently omits supporting legal citation for unexplained legal conclusions. The Willetts’ reply brief suffers from the same problems, despite the Department’s observation regarding the lack of record citations.⁴

¶5 As the Department notes in its brief, we may decline to consider arguments “unguided by references and citations to specific testimony.” *Grothe v. Valley Coatings, Inc.*, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463; *see also State v. Flynn*, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994) (we may decline to address issues that are inadequately briefed or not supported by legal authority). Although the Willetts’ arguments rely heavily on their unsupported factual assertions, we reach the merits because the Department took the time to thoroughly do so. However, we address the issues as set forth in the Department’s brief and rely solely on the facts presented therein.

³ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

⁴ The Willetts’ briefs violate WIS. STAT. RULES 809.19(1)(d)-(1)(e), because they fail to provide any citation to the record in either the fact or argument sections and repeatedly omit citation to legal authority. We therefore admonish Attorney Willett that future violations will result in sanctions. *See* WIS. STAT. RULE 809.83(2).

¶6 Because the Commission frequently determines whether claimed income tax deductions are allowable, its decision with respect to substantive tax issues is entitled to at least due weight deference. *See Madison Newspapers, Inc. v. DOR*, 228 Wis. 2d 745, 759, 599 N.W.2d 51 (Ct. App. 1999). Further, the Commission determines the credibility of witnesses and the weight to be accorded each item of evidence. WISCONSIN STAT. § 227.57(6); *L & H Wrecking Co. v. LIRC*, 114 Wis. 2d 504, 509, 339 N.W.2d 344 (Ct. App. 1983). If there is conflicting evidence, it is to be construed most favorably to the Commission's findings. *Cornwell Pers. Assocs. v. LIRC*, 175 Wis. 2d 537, 544, 499 N.W.2d 705 (Ct. App. 1993).

¶7 A DOR tax assessment is presumptively correct and the burden is upon the taxpayer to demonstrate any aspect of the assessment's invalidity. *Woller v. Department of Taxation*, 35 Wis. 2d 227, 233, 151 N.W.2d 170 (1967). The Commission consistently applies the rule that a taxpayer cannot overcome the presumption of correctness of DOR assessments by relying upon the oral testimony of an interested party that is unsupported by sufficient, detailed documentary evidence. *See Dvorak v. Wisconsin DOR*, Wis. Tax. Rptr. [CCH] ¶400-600 (April 30, 2002); *Zablocki v. Wisconsin DOR*, Wis. Tax. Rptr. [CCH] ¶400-516 (Dec. 18, 2000); *Gavran v. Wisconsin DOR*, Wis. Tax. Rptr. [CCH] ¶203-137 (April 26, 1990).⁵

⁵ The Willetts appear to argue the evidentiary rules set forth in this paragraph do not apply to them based on WIS. STAT. § 799.01(2), pertaining to the permissive use of small claims procedure by a taxing authority. They assert the rules of evidence under WIS. STAT. chs. 901 through 911 therefore do not apply. This undeveloped argument lacks merit. The Tax Appeals Commission is not a taxing authority seeking collection. Further, WIS. STAT. § 227.45(1) governs evidentiary matters in proceedings before the Commission.

¶8 We address three primary issues: first, whether the Willetts established entitlement to the capital loss deduction and resulting carryforward based on their sale of the Northwinds stock; second, whether the Willetts demonstrated entitlement to the business loss deduction related to the salon; and third, whether the Willetts are entitled to relief due to a procedural irregularity.

¶9 The record supports the Commission's holding that the Willetts failed to establish their capital loss for the sale of the Northwinds stock. Willett acknowledged he had no records to substantiate his claimed \$12,000 cost basis in the stock.⁶ Additionally, John Teasdale, a DOR employee, testified he reviewed the club's tax returns and was unable to substantiate that number or otherwise determine any amount allocable to Willett. In fact, Teasdale determined that even construing the numbers most favorably to Willett, the amount that could be considered basis would have not even covered his basis claim from the prior tax year, where the Willetts also reported a loss from a sale of stock in the club.

¶10 The record similarly supports the Commission's holding that the Willetts failed to establish their claimed \$41,000 business loss deduction relative to the salon. Martha Heizler-Sleck testified she operated Marti's Cuts as a sole proprietor until Willett asked her to become a partner with his daughter, Ericka Willett. Willett's firm drafted the partnership agreement between Heizler-Sleck and Ericka. Heizler-Sleck testified Willett was not a partner and was not named in the agreement. She also testified Willett never contributed toward any of the business expenses nor received any profits. Only Heizler-Sleck and Ericka signed

⁶ All references to Willett singularly are to Stephen Willett.

the building lease. Willett never filed either a business Schedule C or a partnership return with the state.

¶11 Heizler-Sleck and Ericka obtained a \$31,000 loan to pay for remodeling costs, equipment, and supplies. Heizler-Sleck testified Willett did not lend \$20,000 to Marti's Cuts and that the construction company was paid solely from the bank loan funds. Teasdale testified Willett provided no documentation substantiating either his alleged \$20,000 loan or Willett's partnership status. He also stated Willett once told him the loan amount was actually \$16,000, but that Willett could not document that either. Willett then testified he paid somewhere between \$6,000 and \$11,000 to the construction company, but acknowledged he had no documentation.

¶12 The Willetts did guarantee the \$31,000 bank loan, but only to their daughter—Heizler-Sleck's name was not listed on the guaranty. Heizler-Sleck testified Willett received no compensation for guaranteeing the loan. Heizler-Sleck and Ericka defaulted on the loan in either 1999 or 2000, after Ericka abruptly left the state. In November of 2000, a fire occurred at the building where the salon was located, but Heizler-Sleck testified the salon, which went out of business, "was no longer in there ... before the fire."⁷ Willett testified he paid off the entire \$31,000 loan balance, but he never identified when he did so and acknowledged he did not have any documentation. Although the fire occurred in 2000, the Willetts claimed all of their loss on their amended 2002 tax return and yet, identified the date of the entire claimed loss as June 2003.

⁷ On their tax filings, the Willetts claimed the \$41,000 business loss was incurred due to a building fire.

¶13 To claim the business loss deduction, the Willetts needed to prove Willett was a partner, the amounts loaned or contributed to Marti's Cuts directly or indirectly, the loan guarantee was made either for a business purpose or for profit, the guaranty was given in exchange for reasonable consideration, and the debts became worthless in the given tax year. *See* 26 U.S.C. §§ 152(a)(1), 165(a), 165(c), 166(a), 166(d) (2002); 26 C.F.R. § 1.166-9(d), (e) (2002). Willett could not state the amount of money loaned or invested, or paid on the loan guarantee, much less provide any documentation for anything. Given the burden of proof and the evidence presented, the Commission reasonably concluded Willett was not engaged in the business of operating the salon, did not loan or invest any money to or in the salon partnership, the bank loan guarantee was not business or investment related, and that Willett did not satisfy any amount of the bank loan.

¶14 Finally, the Willetts seek reversal of the Commission's decision under WIS. STAT. § 227.57, due to a procedural irregularity. That section permits a circuit court to hear new evidence in support of the claimed irregularities. Alternatively, the Willetts ask this court to conduct its own § 227.57 review.⁸ The circuit court apparently did allow some evidence concerning whether the Willetts had proper notice of the Commission's hearing. We say "apparently" because the Willetts failed to obtain a transcript of the circuit court proceeding where the court issued its oral decision. Because we cannot review either the evidence presented or the court's analysis, we affirm. *See Butcher v. Ameritech Corp.*, 2007 WI App 5, ¶¶34-35, 298 Wis. 2d 468, 727 N.W.2d 546 (2006) ("[I]n the absence of a

⁸ This is an appeal pursuant to WIS. STAT. § 227.58. Willett cannot obtain the circuit court review provided for by WIS. STAT. § 227.57 in this court. We do not order discovery or conduct evidentiary hearings.

transcript we presume that every fact essential to sustain the circuit court's decision is supported by the record.”).

¶15 Regardless, based on the information alleged in the brief, the Willetts' claim would fail on the merits. Willett asserts he was told the Commission's evidentiary hearing was postponed and that he therefore notified his witnesses they did not need to appear. He claims he did not read the e-mail sent two days prior to the telephone hearing, notifying him the evidentiary hearing would also occur as scheduled.

¶16 Even if Willett was erroneously deprived of notification of the hearing, it would constitute harmless error. Willett failed to file his list of witnesses and exhibits by the scheduled deadline. Thus, he was not entitled to present any witnesses at the hearing. Further, because Willett acknowledged in his testimony that he had no documents to substantiate his claims, it is highly unlikely that a remand to the Commission would yield a different result. *See Amsoil, Inc. v. LIRC*, 173 Wis. 2d 154, 167, 496 N.W.2d 150 (Ct. App. 1992) (remand to an administrative agency required only if “but for the error, there probably would have been a different result”).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

