

STATE OF WISCONSIN
TAX APPEALS COMMISSION

NEW GLARUS FITNESS CENTER, LLC,

DOCKET NO. 06-S-115

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DIANE E. NORMAN, COMMISSIONER:

This case comes before the Commission on a motion of the Wisconsin Department of Revenue (“Department”) for summary judgment on the basis that there is no genuine issue as to any material fact and the Department is entitled to judgment as a matter of law under Wis. Stat. § 802.08 and Wis. Admin. Code § TA 1.31.

Attorney Linda M. Mintener represents the Department and has filed an affidavit with exhibits in support of the motion. Petitioner New Glarus Fitness Center, LLC¹ (“Petitioner”) has not filed a response to the motion.

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

JURISDICTIONAL AND MATERIAL FACTS

1. On June 23, 2005, petitioner filed a claim for refund of sales tax it claims to have mistakenly paid in the years 2000-2004 in the amount of \$16,086.23 (Mintener Affidavit, Exh. 1.)

¹ The Petition for Review in this matter was filed by Larry Kammerud, owner/manager of New Glarus Fitness Center, LLC.

2. By letter dated December 3, 2005, the Department denied petitioner's claim for refund stating that petitioner failed to provide information requested by the Department to determine whether the refund should be granted. (Mintener Aff., Exh. 2.)

3. On December 22, 2005, petitioner filed a petition for redetermination dated December 14, 2005 with the Department, contesting the denial of its claim for refund. (Mintener Aff., Exh. 3.)

4. On March 28, 2006, the Department issued a Notice of Action to petitioner denying the petition for redetermination. (Mintener Aff., Exh. 4.)

5. On April 28, 2006, the Commission received from petitioner a petition for review of the Department's denial of petitioner's petition for redetermination.

6. After petitioner filed the petition for review, the Department completed a further review of petitioner's claim for refund. Based upon additional factors considered and information learned, the Department granted the refund claimed by petitioner for the years 2001-2004. The remaining claim for a refund for the year 2000 was denied by the Department for the reason that the claim was filed beyond the 4 year statute of limitations of Wis. Stat. § 77.59(4)(a). (Mintener Aff., ¶7.)

7. The Department filed a Notice of Motion and Motion to Dismiss, along with attached affidavit and exhibits on June 26, 2006.

8. The Commission issued a Briefing Order on July 11, 2006, ordering petitioner to respond to the Motion to Dismiss by August 10, 2006.

9. Petitioner has not responded to the Department's Motion to Dismiss.

CONCLUSIONS OF LAW

1. There are no claims properly before the Commission for review.
2. There are no genuine issues as to any material facts, and the Department is entitled to summary judgment as a matter of law.

RULING

Summary judgment is warranted where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Wis. Stat. § 802.08(2). Summary judgment procedure imposes on the moving party the burden of demonstrating both the absence of any genuine factual disputes and entitlement to judgment as a matter of law under the legal standards applicable to the claim. Wis. Stat. §§ 802.08(2) and (3). The court must view the evidence, or the inferences therefrom, in the light most favorable to the party opposing the motion. *Kraemer Bros. v. United States Fire Ins. Co.*, 89 Wis. 2d 555, 567 (1979). Summary judgment is generally inappropriate when matters of complex factual proof need to be resolved before legal issues can be decided. *See, e.g., Peters v. Holiday Inns, Inc.*, 89 Wis.2d 115, 129, (1979). Because the Commission concludes that there is no genuine issue as to any material fact and that the Department is entitled to judgment as a matter of law, it grants the Department's motion for summary judgment.

After petitioner filed its petition for review with the Commission, the Department granted all of petitioner's requested relief for refunds of sales tax for the years 2001-2004. Therefore, there is no issue before the Commission with regard to petitioner's claim for refund of sales tax for the years 2001-2004.

Petitioner's remaining claim in this matter is for a refund of sales tax paid for the year 2000. The 4-year period provided for in Wis. Stat. § 77.59(4)(a) for petitioner to file a claim for refund of sales tax for the year 2000 expired on March 15, 2005, the date petitioner's income/franchise tax return for the year 2000 was due. Since petitioner filed its claim for refund on June 23, 2005, petitioner's claim for refund for the year 2000 is beyond the statute of limitations and cannot be granted. Therefore, the Commission lacks subject matter jurisdiction over the petition for review. *Kohlbeck v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-445 (WTAC 1999).

Accordingly, the Department has established that, as a matter of law, petitioner's claims for refund are no longer properly before the Commission, and that summary judgment is appropriate.

IT IS ORDERED

The Department's motion for summary judgment is granted, and its action on petitioner's petition for redetermination is affirmed.

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

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"