

STATE OF WISCONSIN
TAX APPEALS COMMISSION

SHAMROCK BAR, INC. (P),

DOCKET NO. 06-S-83 (P)

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

JENNIFER E. NASHOLD, CHAIRPERSON:

This matter comes before the Commission on a motion to dismiss filed by respondent, Wisconsin Department of Revenue. Petitioner, Shamrock Bar, Inc., is represented by Attorneys Daniel J. Krause and Richard Wm. King, of King Law Offices, LLC. Attorney Krause has filed a response to the motion, including exhibits. The Department appears by Attorney Linda M. Mintener, who has filed an affidavit and exhibits in support of the motion, and a reply to Shamrock Bar's response.

Having considered the motion of the Department, the submissions of the parties, and the entire record herein, the Commission finds, rules, and orders as follows:

MATERIAL FACTS

1. By the Department's Notice of Field Audit Action, dated June 26, 2005, a sales/use tax assessment was made against Shamrock Bar in the amount of \$15,930.15, including interest. The caption of the assessment includes a "TAN" number of 004-0000189117-01. (Affidavit of Linda M. Mintener, Exh. 1.)

2. On August 10, 2005 the Department received a petition for redetermination from Shamrock Bar, filed by Attorney King, contesting the assessment.

The petition for redetermination states, among other things:

Our appeal is based on the fact that during the period in question the Shamrock Bar was essentially stolen from its rightful owners (John J. O'Connell and then the Estate of John J. O'Connell) by George F. Rogers, who is currently being prosecuted for the [] felony of stealing a business (see attached newspaper story and criminal complaint). We believe that any income that was underreported to the [Department] was misappropriated by Mr. Rogers.

(Mintener Affidavit, Exh. 2.)

3. By Notice of Action dated January 26, 2006, the Department denied Shamrock Bar's petition for redetermination. On January 26, 2006, the Department sent the Notice of Action by certified mail, along with an updated Notice of Amount Due, to Attorney King at the Madison address of King Law Offices, LLC. The caption of the Notice of Action includes the number 004-0000189117. (Mintener Affidavit, Exh. 3.)

4. King Law Offices, LLC, received the Notice of Action and Notice of Amount Due on January 27, 2006.

5. By letter received by the Commission on March 22, 2006, a petition for review was filed with the Commission. The letter, on the letterhead of King Law Offices, LLC, and signed by Attorney King, stated in pertinent part:

RE: Shamrock Bar, Inc.
004-0000189-117

Dear Sir or Madame:

Please be advised that we represent the Estate of John J. O'Connell.

By way of this letter we are requesting an appeal of the Wisconsin Department of Revenue's decision relative to the above.

6. The Commission takes official notice that on March 22, 2006, Attorney King also filed an appeal with the Commission in Docket Number 06-I-82, *Estate of John J. O'Connell v. Wis. Dep't of Revenue*, which states, in pertinent part:

RE: Estate of John J. O'Connell
333-20-8421

Dear Sir or Madame:

Please be advised that we represent the Estate of John J. O'Connell.

By way of this letter we are requesting an appeal of the Wisconsin Department of Revenue's decision relative to the above.

7. On April 20, 2006, the Department filed with the Commission a Notice of Motion and Motion to Dismiss, along with an affidavit and exhibits.

8. On May 24, 2006, Attorney Krause filed a response to the motion, with attached exhibits, as well as an amended petition for review with the Commission on behalf of Shamrock Bar, which begins, "The Shamrock Bar, Inc., by its attorneys, King Law Offices, LLC, hereby petitions the [Commission] for review. . . ."

RULING

As grounds for its motion to dismiss, the Department asserts that Shamrock Bar has not filed a timely petition for review within 60 days after receipt of the Department's Notice of Action, as required by Wis. Stat. § 73.01(5)(a). The Department asserts that the petition for review filed on March 22, 2006 was not filed by Shamrock Bar or a representative for Shamrock Bar because Attorney King stated in the

petition that King Law Offices was representing the Estate of John J. O'Connell, an entity distinct from Shamrock Bar, and because the petition did not state that King Law Offices represented Shamrock Bar, nor was such representation established by the filing of a Notice of Appearance or Power of Attorney with the Commission.

We reject the Department's arguments as grounds for dismissal. The Department has not cited any authority in the Commission's administrative rules, the state statutes or case law that requires a representative to file a Notice of Appearance with the Commission or that requires anything more than the representative filing a petition for review with the Commission on behalf of a taxpayer. Indeed, the Wisconsin Administrative Code governing this topic states only:

TA 1.03 Appearance and practice. Any party before this commission may select a representative. This section does not constitute a waiver of any requirement of personal appearance of a petitioner at a commission hearing.

Although the Commission prefers that representation be established through the filing of a formal document with the Commission, such as a Notice of Appearance, the Commission acknowledges that it routinely accepts as sufficient a representative's filing of a petition for review on behalf of a taxpayer. The question here is whether the statement in the petition for review that King Law Offices represents "the Estate of John J. O'Connell" means that a petition for review was not filed in this case by Shamrock Bar or its representative.

In view of all of the other evidence establishing that King Law Offices represents Shamrock Bar in this appeal, the Commission concludes that King Law

Offices filed a timely petition for review on Shamrock Bar's behalf. First, the petition for review itself specifically states that the petition relates to Shamrock Bar. It also provides a reference number of 004-0000189-117, the same as the "TAN" number on the assessment that is the subject of this appeal. That the attorney for King Law Offices mistakenly included language in the petition involving Shamrock Bar that it was representing the Estate of John J. O'Connell, a related entity also being represented before the Commission by King Law Offices, does not mean that a petition for review was not timely filed on behalf of Shamrock Bar.

Moreover, it is evident that King Law Offices represented Shamrock Bar at the administrative proceedings before the Department, and there is no indication that the firm ever withdrew its representation prior to filing its petition for review with the Commission. For example, King Law Offices filed the petition for redetermination with the Department, in which it stated that Shamrock Bar was owned by the Estate of John J. O'Connell. In addition, the Department sent its Notice of Action to King Law Offices less than two months before King Law Offices filed the appeal in this case. We are satisfied that the petition for review and other evidence in the record establishes that King Law Offices represented Shamrock Bar at the time the petition for review was filed and that the party which is the subject of that petition is Shamrock Bar.

Accordingly, we hold that a timely petition was filed in this case.

IT IS ORDERED

1. The Department's motion to dismiss is denied.

2. A **telephone status conference** in this matter will be held on **November 14, 2006, at 10:00 a.m.**, in conjunction with the case of *Estate of John J. O'Connell vs. Wisconsin Department of Revenue*, Docket No. 06-I-82.

Dated at Madison, Wisconsin, this 31st day of August, 2006.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

David C. Swanson, Commissioner