

STATE OF WISCONSIN
TAX APPEALS COMMISSION

KIZZY M. SLATER,

DOCKET NO. 11-I-147

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

ROGER W. LEGRAND, COMMISSIONER:

This case comes before the Commission on a Motion to Dismiss the Petition for Review on the basis that Petitioner has failed to comply with Commission orders and has otherwise failed to prosecute her appeal pursuant to Wis. Stat. § 805.03. Petitioner is *pro se*. Respondent, Wisconsin Department of Revenue, appears by Attorney John R. Evans.

Having considered the entire record, the Commission hereby finds, rules, and orders as follows:

FACTS

1. On July 1, 2010, Respondent filed an income tax assessment for the years 2006, 2007, 2008, and 2009 against Petitioner. (Exhibit 1.)
2. Petitioner filed a Petition for Redetermination dated August 23, 2010. (Exhibit 2.)
3. Respondent denied the Petition for Redetermination on March 4,

2011. (Exhibit 3.)

4. On May 4, 2011, Petitioner appealed the denial of the Petition for Redetermination to the Tax Appeals Commission.

5. On May 18, 2011, Respondent filed an answer with the Commission.

6. Status conferences by telephone were held on August 30, 2011, September 30, 2011, and November 9, 2011, at which both parties participated.

7. At a status conference on January 23, 2012, the matter was set for trial. The trial was scheduled for May 8, 2012.

8. Both parties attended the status conference on January 23, 2012, by telephone. In an order resulting from the conference, each party was ordered to exchange exhibits and lists of witnesses by April 2, 2012.

9. On April 2, 2012, Respondent filed its list of exhibits and witnesses. Petitioner did not file her list of exhibits and witnesses.

10. On April 2, 2012, a telephone status was held but Petitioner could not be reached and did not participate.

11. On April 23, 2012, Respondent's representative filed a Motion to Dismiss for failure to prosecute. A briefing order was sent to both parties on April 26, 2012, ordering Petitioner to file a response to the Motion no later than May 25, 2012. Petitioner did not respond to the briefing order.

12. On May 29, 2012, the Commission sent Petitioner a letter extending the time for her to respond to the briefing order to June 12, 2012. The letter informed

Petitioner that if no response was filed, the Commission may find a failure to prosecute the appeal. The Petitioner filed no response.

13. On June 13, 2012, the Commission sent a second letter to Petitioner informing her that unless she responded, the Commission may consider dismissing the petition for failure to prosecute. The Petitioner filed no response.

DECISION & ORDER

Wisconsin Statute § 805.03 provides as follows:

Failure to prosecute or comply with procedure statutes. For failure of any claimant to prosecute or for failure of any party to comply with the statutes governing procedure in civil actions or to obey any order of court, the court in which the action is pending may make such orders in regard to the failure as are just, including but not limited to orders authorized under s. 804.12(2)(a). Any dismissal under this section operates as an adjudication on the merits unless the court in its order for dismissal otherwise specifies for good cause shown recited in the order.

In this case, Petitioner met the jurisdictional requirements to file her appeal. She participated by telephone in four status conferences. The Respondent sent her a letter attempting to resolve the matter. (Affidavit of Attorney John R. Evans, "Evans Affidavit," dated April 20, 2012, Exhibit 1.) However, after the matter had been set for trial and a scheduling order issued, Petitioner did not appear for a telephone status conference on April 2, 2012. She did not file exhibits or a list of witnesses required by the scheduling order memorandum. (Evans Affidavit, Exhibit 2.) After Respondent filed the Motion to Dismiss on April 23, 2012, Petitioner did not file a brief, or make a response as required by the briefing order of April 26, 2012. Petitioner was

sent two letters by the Commission informing her that a failure to respond may result in dismissal of the Petition for Review. She did not respond in any manner to these letters.

The Commission finds that Petitioner's failure to comply with the scheduling order and memorandum of April 26, 2012, and the failure to respond in any manner to the Motion to Dismiss constitutes a failure to prosecute under Wis. Stat. § 805.03. The Commission grants the Respondent's Motion to Dismiss and affirms the assessment issued by the Department.

ORDER

The Petition for Review is dismissed.

Dated at Madison, Wisconsin, this 25th day of September, 2012.

WISCONSIN TAX APPEALS COMMISSION

Lorna Hemp Boll, Chair

Roger W. LeGrand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"