

STATE OF WISCONSIN
TAX APPEALS COMMISSION

CITY OF LA CROSSE (P),

DOCKET NO. 03-M-134(P)

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent,

ORDER

vs.

GUNDERSEN CLINIC, LTD,

Intervenor.

DON M. MILLIS, COMMISSION CHAIRPERSON:

This matter comes before the Commission on the motion of Gundersen Clinic, Ltd., to intervene in the above docket. Petitioner and respondent have filed submissions objecting to the motion to intervene. Petitioner is represented by its City Attorney, Patrick J. Houlihan, and its Deputy City Attorney, Peter B. Kisken. Respondent is represented by Attorney Veronica Folstad. The intervenor is represented by Foley & Lardner, by Attorneys Timothy C. Frautschi and Maureen A. McGinnity.

Based upon the submissions of the parties and the entire record in this matter, the Commission finds, rules, and orders as follows:

The intervenor owns several items of medical equipment that are used at the intervenor's clinic in La Crosse. The intervenor appealed several of petitioner's

determinations with respect to this medical equipment to the State Board of Assessors. The State Board of Assessors determined that the central question raised by intervenor was whether the medical equipment at issue qualifies for the exemption under section 70.11(39) of the Statutes. The State Board of Assessors determined that many, but not all, of the items of medical equipment were exempt.

On May 12, 2003, petitioner filed a timely petition for review with the Commission, challenging those determinations of the State Board of Appeals that found intervenor's medical equipment exempt. The intervenor filed no petition for review with the Commission.

On January 8, 2004, the intervenor filed its motion to intervene. This motion, however, was hardly a surprise to anyone involved. The Commission's Scheduling Order Memorandum of October 13, 2003, provided:

At the status conference set for February 23, 2004, the parties and intervenor, if any, shall be prepared to establish deadlines for expert/opinion witness reports, exchange of documents and witness lists, and dates of a pretrial mediation conference and trial.

Petitioner opposes the motion to intervene, arguing that intervenor seeks the status as a full party. The Commission does not read the motion to intervene as seeking full party status. While the motion does not specifically identify the terms of the intervention sought, intervenor's counsel is well-acquainted with the Commission's recent practice of allowing intervention in appeals from the State Board of Assessors not as a party, but in a more limited manner.

Petitioner and respondent argue that granting the motion would impermissibly expand the jurisdiction of the Commission by allowing a party that

failed to timely file a petition for review to nevertheless obtain redress before the Commission. The Commission addressed this argument in *Xerox Corp. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-653 (WTAC 2002), a case in which, ironically, petitioner sought to intervene as a party even though it had not filed a petition for review. The Commission determined that it did not have the authority to permit circumvention of the requirement to file a timely petition for review by allowing an intervenor to have full party status. *Id.* at 2. The Commission concluded, however, that it has the discretion to permit intervention on limited terms. *Id.*

Because the Commission has not established due dates for filing of expert/opinion witness reports, as well as other relevant dates and deadlines, I conclude that the rights of the parties and the prosecution of this matter will not be seriously compromised by granting the motion to intervene with limitations similar to those prescribed in *Xerox Corp.*

ORDER

1. The motion to intervene is granted, subject to the following limitations:

- A. The intervenor will not be entitled to any relief with respect to any item of personal property that is more favorable to the intervenor than that provided by the State Board of Assessors;
- B. The intervenor will not have the power to object to any stipulation or settlement entered into by petitioner and respondent;
- C. The intervenor will be able to participate in all hearings, conferences, and trial; offer evidence (both documents and witness testimony); make arguments; and file briefs, except that the intervenor may not offer evidence that contradicts a fact established by a stipulation between petitioner and respondent or that has been rendered moot or irrelevant by such a stipulation;
- D. Subject to the limitations of this paragraph, the intervenor may engage in discovery of petitioner and respondent as provided in Chapter

804, and petitioner and respondent may engage in discovery of the intervenor as provided in Chapter 804. Petitioner and respondent shall not serve requests for admissions upon intervenor, because an admission by intervenor is meaningless and not binding on respondent and petitioner. Intervenor may serve requests for admissions upon both petitioner and respondent; however, any admission established by such service and response/non-response shall be disregarded to the extent it is contradicted by a stipulation between petitioner and respondent.

2. The intervenor shall be prepared to establish deadlines for expert/opinion witness reports, exchange of documents and witness lists, and dates of a pretrial mediation conference and trial at the telephone status conference set for February 23, 2004.

Dated at Madison, Wisconsin, this 29th day of January, 2004.

WISCONSIN TAX APPEALS COMMISSION

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