

STATE OF WISCONSIN
TAX APPEALS COMMISSION

ANTHONY ANDREWS,

DOCKET NOS. 09-I-13, 09-I-14,
AND 09-I-15

Petitioner,

vs.

ORDER OF DISMISSAL

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

ROGER W. LEGRAND, COMMISSIONER:

This matter comes before the Commission on a motion filed by respondent, the Wisconsin Department of Revenue (the "Department"), to dismiss the petition for review based on petitioner's failure to comply with the Commission's lawful orders and failure to prosecute her appeal pursuant to Wis. Stats. §§ 805.03, 804.12(2)(a), and Wis. Admin. Code § TA 1.31(1).

Petitioner represents himself and has not responded to the motion. Attorney Linda Mintener represents the Department and has filed a notice of motion and motion to dismiss, affidavit, answer and affirmative allegation in support of the motion.

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

JURISDICTIONAL FACTS

1. On January 8, 2009, petitioner filed with the Wisconsin Tax Appeals Commission, ("Commission"), three Petitions for Review, appealing a Notice of Amount Due for income tax for the years 2000-2003 (Docket No. 09-I-113) and two Notices of Estimated Tax Amount Due for income tax for the years 2004 and 2005 (Docket Nos. 09-I-114 and 115, respectively). (See Commission's January 16, 2009 Receipt for said Petitions.)

2. Petitioner did not pay a filing fee with his filing of any of said three Petitions for Review. (See Commission's January 16, 2009 Receipt for said Petitions.)

3. On January 8, 2009, the Commission wrote to Petitioner stating that the Commission had "determined that the three \$25 statutory filing fees were not enclosed with the petitions." In said letter, the Commission further stated:

Section 73.01(5)(a) of the Wisconsin Statutes states, in part, "At the time of filing the petition, **the petitioner shall pay to the commission a \$25 filing fee**"

Accordingly, the three, \$25 filing fees made payable to the **Wisconsin Tax Appeals Commission** should be forwarded to the Commission **no later than January 16, 2009**. In the event no filing fees are paid, your petitions may be subject to dismissal based on your failure to comply with the above section of the statutes.

(Emphasis in the original)

4. Respondent filed a notice of motion and motion to dismiss for failure to pay the three filing fees as ordered by the Commission with supporting affidavit, and an answer to the petitions on February 11, 2009.

5. On February 12, 2009, the Commission issued a Briefing Order ordering petitioner to file a response to the Department's motion by March 13, 2009.

6. Petitioner did not pay the three \$25.00 filing fees, did not respond to the Commission's February 12, 2009 Briefing Order, and did not file a response to the respondent's motion by March 13, 2009.

RULING AND ORDER

Section 73.01(5)(a) of the Wisconsin Statutes requires that a petition for review be filed with the Commission within 60 days of receipt of respondent's Notice of Action on a petition for redetermination, and that the petitioner pay a \$25.00 filing fee to the Commission at the time of filing the petition. In this case, petitioner was informed that three (3) filing fees were due and that they must be paid by January 16, 2009 (Commission letter dated January 8, 2009.) Petitioner responded that he could not pay the fees because of his imprisonment (Letter to Commission dated January 13, 2009.) However, there is no provision in the statutes which allows for a waiver of filing fees. The requirement to pay the filing fee is statutory, and the Commission does not have jurisdiction to consider a petition for review if the required fee is not paid. Wis. Stat. § 73.01(5)(a); Wis. Admin. Code § TA 1.13(2). The respondent's motion to dismiss is granted and the appeals are dismissed for nonpayment of fees.

Dated at Madison, Wisconsin, this 23rd day of July, 2009.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger W. LeGrand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"