

STATE OF WISCONSIN
TAX APPEALS COMMISSION

MICHAEL M. AND BRENDA B. RAJEK,

DOCKET NO. 16-I-154

Petitioners,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

This matter comes before the Commission on the Department's motion to dismiss the Petitioners' Petition for Review. The Petitioners are Michael M. and Brenda B. Rajek of Eau Claire, Wisconsin. Mr. Rajek is an attorney practicing in Eau Claire, Wisconsin and has been representing the Petitioners in this matter. The Department is represented by Attorney Kelly A. Altschul. For the reasons set forth below, we dismiss the Petition for Review.

This case has been pending before the Commission for more than two years. The Petitioners filed a Petition for Review with the Commission on May 20, 2016, objecting to an assessment made by the Department for tax years 2009 and 2010. The Department filed an Answer to the Petition on June 17, 2016. Telephone status conferences in the case were held on December 8, 2016, February 15, 2017, March 8, 2017, May 24, 2017, August 16, 2017, September 21, 2017, December 1, 2017, January 24,

2018, February 8, 2018, April 12, 2018, May 23, 2018, August 8, 2018, October 17, 2018, and December 12, 2018.

At the first status conference on December 8, 2016, Chief Counsel Dana Erlandsen appeared for the Department and Attorney Rajek appeared for the Petitioners. The case was reassigned from Chief Counsel Erlandsen to Department Attorney Kelly Altschul on December 14, 2016. Attorney Altschul appeared for the Department at the second status conference on February 15, 2017, but Attorney Rajek failed to appear. At that conference, which went on as scheduled, Attorney Altschul informed the Commission that she had requested certain documentation from Attorney Rajek which she had not received, and that she had tried to contact him via email and phone, but he had not contacted her. She also stated that Attorney Rajek had requested certain documents from the Department, which were provided to him in December of 2016.

At each of the status conferences held from March 8, 2017 through August 8, 2018, both Attorney Altschul and Attorney Rajek appeared (except for the January 24, 2018 conference, where another Department attorney appeared on Attorney Altschul's behalf). At each conference, the parties informed the Commission that Mr. Rajek was attempting to assemble documentation requested by the Department, some of which related to a federal tax case pending at the US Tax Court involving the same or similar issues as those involved in this case.

At the telephone status conference held on October 17, 2018, Attorney Altschul appeared for the Department, but Attorney Rajek failed to appear. The Commission telephoned Attorney Rajek at his office, which was the telephone number used for all prior status conferences, but was told by the office staff that he was not available. The Commission advised the office staff that the conference would go on as scheduled. Attorney Altschul informed the Commission that she had received no information or communication from Attorney Rajek since the last conference on August 8, 2018, and that she had not received responses to multiple discovery requests made to the Petitioners. The Commission asked Attorney Altschul to provide information detailing the discovery requests previously made.

On October 17, 2018, Attorney Altschul sent an email message to the Commission, with a copy to Attorney Rajek, providing the following information:

- August 1, 2017: Mailed Respondent's First Set of Interrogatories and Request for Production of Documents. No response received from Petitioners.
- November 15, 2017: Discovery requests resent via email with a request for a response. No response received from Petitioners.
- December 1, 2017: Discovery requests resent again via email with a request for a response. No response received from Petitioners.
- January 8, 2018: Email request for update on response to outstanding discovery requests. No response received from Petitioners.
- May 21, 2018: Mailed Respondent's Second Set of Interrogatories and Request for Production of Documents. No response received from Petitioners.
- October 12, 2018: Mailed Respondent's Third Set of Interrogatories and Request for Production of Documents.

Attorney Altschul made a motion requesting that the Commission issue an Order to Compel Discovery or, alternatively, to dismiss the Petitioners' Petition for Review for failure to prosecute the appeal.

On October 18, 2018, the Commission issued a Status Conference Memorandum and Order outlining what had occurred at the October 17, 2018 status conference, ordering the Petitioners to respond to the Department's discovery requests on or before November 30, 2018, and stating that: "If the Petitioners fail to comply with this order, the Commission will dismiss the Petitioners' Petition for Review pursuant to Wis. Stats. §§ 805.03 and 804.12(2)(a) for failure to prosecute and for failure to follow the Commission's orders."

At the telephone status conference held on December 12, 2018, Attorney Altschul appeared for the Department but Attorney Rajek again failed to appear. The Commission telephoned Attorney Rajek at his office but was again told by the office staff that he was not available. The Commission advised the office staff that the conference would go on as scheduled. Attorney Altschul informed the Commission that she had received no responses to the Department's outstanding discovery requests nor any other communication from Attorney Rajek.

Now, upon the Department's oral Motion to Dismiss, the Commission finds adequate grounds upon which to dismiss the Petition for Review based upon the Petitioners' failure to comply with the orders of this Commission, their failure to appear at

scheduled conferences, and their failure to prosecute their appeal. Therefore, pursuant to Wis. Stats. §§ 805.03 and 804.12(2)(a):

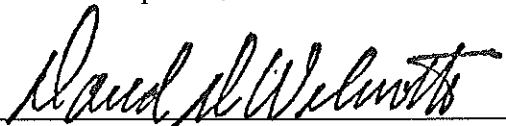
IT IS HEREBY ORDERED that the Petition for Review in this matter is dismissed.

Dated at Madison, Wisconsin, this 14th day of December, 2018.

WISCONSIN TAX APPEALS COMMISSION



Lorna Hemp Boll, Chair



David D. Wilmoth, Commissioner



David L. Coon, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION
5005 University Avenue - Suite 110
Madison, Wisconsin - 53705

NOTICE OF APPEAL INFORMATION

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES ALLOWED
FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS
RESPONDENT**

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternatively, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. **Several points about starting a case:**

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeals Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier within 30 days of this decision if there has been no petition for rehearing, or within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or the Wisconsin Statutes. The website for the courts is <http://wicourts.gov>.

This notice is part of the decision and incorporated therein.