

STATE OF WISCONSIN
TAX APPEALS COMMISSION

REYNALDO GOMEZ
7546 Sheridan Road
Kenosha, WI 53140,

DOCKET NO. 96-D-635

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8907
Madison, WI 53708-8907,

Respondent.

This matter comes before the Commission on a motion by respondent, Wisconsin Department of Revenue ("Department"), to dismiss petitioner's petition for review for failure to prosecute under Wis. Stat. § 805.03 and § TA 1.39, Wis. Admin. Code.

Petitioner is represented by Attorney Michael J. Fitzgerald. The Department, previously represented by Attorney Veronica Folstad, is represented by Chief Counsel Lili Best Crane, who has filed an affidavit with exhibits in support of the motion.

Based upon the record in this matter, the Commission hereby finds, concludes, and orders as follows:

FACTUAL BACKGROUND

1. On May 16, 1996, petitioner filed a petition for review with the Commission.

2. On June 7, 1996, the Department filed a motion to dismiss the petition for review based upon petitioner's failure to file a petition for redetermination with the Department.

3. By notice dated July 9, 1996, the Commission scheduled a hearing on the Department's motion for August 16, 1996. The hearing notice was sent to petitioner at his address of record: 7546 Sheridan Road, Kenosha, WI 53140.

4. On July 18, 1996, the certified mail envelope addressed to petitioner was returned to the Commission by the United States Postal Service ("USPS"), marked 'FORWARDING ORDER EXPIRED.'

5. By notice dated July 19, 1996, the Commission rescheduled the hearing on the Department's motion to September 27, 1996. The hearing notice was sent to petitioner at his Sheridan Road address in Kenosha.

6. On July 25, 1996, the certified mail envelope addressed to petitioner was returned to the Commission by the USPS, marked 'FORWARDING ORDER EXPIRED.'

7. By notice dated September 20, 1996, the Commission postponed the hearing on the Department's motion to a date later to be announced. The notice was sent by ordinary mail to petitioner at his Sheridan Road address in Kenosha.

8. On September 27, 1996, the envelope addressed to petitioner was returned to the Commission by the USPS, marked 'FORWARDING ORDER EXPIRED.'

9. The case was held in abeyance for a period of years awaiting final resolution of similar drug cases by the appellate courts.

10. Under date of August 25, 2004, the Department sent petitioner's attorney a letter with a stipulation for petitioner's signature in an attempt to resolve the case (Affidavit of Lili Best Crane, Ex. 1). The Department did not receive a response to its letter.

11. By letter dated October 7, 2004, the Department sent petitioner's attorney additional copies of the stipulation (Crane Affidavit, Ex. 2).

12. By letter dated October 13, 2004, petitioner's attorney informed the Department that he no longer had a current address for petitioner (Crane Affidavit, Ex. 3).

13. By notice dated November 24, 2004, the Commission scheduled a telephone status conference for January 18, 2005. During the telephone conference, petitioner's attorney stated that he has been unable to locate petitioner by telephone or written correspondence and does not know petitioner's whereabouts.

14. On January 21, 2005, the Department filed its notice of motion to dismiss and affidavit with exhibits, dated January 20, 2005. The notice was addressed to petitioner at: 2624 S. 6th Street, #3, Milwaukee, WI 53215. The notice states, in part, "Upon the issuance of the Commission's order dismissing the petition for review . . ., respondent will cancel petitioner's remaining assessment."

15. On February 2, 2005, the Department filed a letter and attached a copy of the envelope addressed to petitioner that the USPS had returned to the

Department, marked 'RETURN TO SENDER - NO SUCH NUMBER - UNABLE TO FORWARD.'

RULING

This is one of many drug cases that were held in abeyance by the Commission for several years. Upon final resolution in the courts, the Department attempted to move the case forward, only to be stymied by the lack of a mailing address for petitioner. Neither the Commission, the Department, nor petitioner's own attorney has been successful in contacting him via mail.

Wisconsin Statutes § 73.01(5)(b) states, "At all times while [his] appeal is pending before the commission, the petitioner shall keep the commission informed as to the petitioner's residence." Petitioner has failed to keep the Commission or his attorney informed of his address, making it impossible to move petitioner's appeal forward. For years, petitioner has failed to act in any way on the petition he filed with the Commission. Thus, he has failed to prosecute his petition for review. Wis. Stat. § 805.03. On that basis, we will grant the Department's motion to dismiss.

ORDER

The Department's motion is granted, and the petition for review is dismissed.

Dated at Madison, Wisconsin, this 8th day of February, 2005.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"