

BLICKENS DERFER THOMAS S10873 011086 TAC

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STATE OF WISCONSIN  
TAX APPEALS COMMISSION

STATE OF WISCONSIN  
DEPARTMENT OF REVENUE  
**RECEIVED**  
JAN 18 1986  
LEGAL DIVISION

\* \* \* \* \*

THOMAS BLICKENS DERFER  
6848 Boot Court  
Lorton, Virginia 22079,  
  
Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE  
P.O. Box 8933  
Madison, Wisconsin 53708,  
  
Respondent.

\* \* \* \* \*

DOCKET NO. 5-10873  
RULING AND ORDER ON  
MOTION TO DISMISS  
PETITION FOR REVIEW

Pursuant to this Commission's notice, this Commission convened in Room 611A of GEF-II, 101 S. Webster Street, Madison, Wisconsin at 1:00 P.M. on October 17, 1985 for the purpose of hearing respondent's motion for an order dismissing the petition for review in the above-entitled matter on the following grounds:

". . .for an order dismissing the petition for review for the reason that the Wisconsin Tax Appeals Commission does not have jurisdiction under sec. 73.01(4), Stats., to review issues of law and fact related to the collection of delinquent taxes and, therefore, lacks jurisdiction to review the alleged grievances of the petitioner."

The petitioner, Thomas Blickensderfer, appeared by Attorney Paul R. Soglin of Heibl, Heibl, Crisafi & Soglin, Attorneys at Law, 900 John Nolen Drive, Suite 210, Madison, Wisconsin 53713; the respondent, Wisconsin Department of Revenue, appeared by its attorney, Veronica Folstad, who introduced exhibits and then moved for dismissal on the above stated grounds. The petitioner

objected to the granting of the motion. The parties offered arguments in support of and in opposition to the motion.

Having considered the pleadings, the record, the motion and the arguments of the parties thereon, this Commission finds, rules and orders as follows:

#### FINDINGS OF FACT

1. Under date of September 6, 1983, respondent issued a notice of hearing captioned as follows:

"In re: Delinquent Sales Taxes of  
321-42-0735  
S251209  
Tom Blickensderfer  
6848 Boot Ct.  
Lorton, VA 22079."

The total amount due was stated as \$3,252.29. The notice stated as follows:

"You are requested to appear at:  
(Place) Room 139, 4638 University Avenue,  
Madison, Wisconsin (Date) 09/27/83 (Time) 9:10 a.m.  
for the purpose of determining your ability to pay  
your delinquent taxes in the amount shown above  
You are requested to have in your possession at  
the above time and place such records, documents,  
and memoranda as are necessary for you to give a  
full and complete statement concerning all your  
property and income and your ability to pay these  
delinquent taxes. If you are unable to meet with  
the representative of the Department at the time  
and place indicated above, mail your remittance to  
the address shown below. If a remittance has  
previously been mailed to Madison, please advise  
of the date and amount sent.

Your failure to appear at the time specified above may result in the holding of a Supplementary Hearing before a Circuit Court Commissioner with resulting additional costs to you."

2. Under date of August 1, 1984, respondent issued to

petitioner a letter which read as follows:

"Dear Tom Blickensderfer:

Please provide us with documentation to support your statement that you were a limited partner of the partnership Blickensderfer and Sambos of Wisconsin Inc.

I have researched our files and can find no evidence of your filing a timely appeal of these assessments within the sixty day period required by Wisconsin Statutes. Therefore the amounts assessed against you are final and are legally collectible. However if you can establish that you were not liable for these taxes an adjustment may be made.

Sincerely,

J.E. Hazard

Out of State collection Unit

P.O. Box 8901

(608) 266-8515"

3. Under date of August 15, 1984, counsel for petitioner, Paul R. Soglin, in apparent reply to respondent's August 1, 1984 letter wrote the following request for redetermination to respondent:

"J.E. Hazard  
Out-of-State Collection Unit  
Compliance Bureau  
P.O. Box 8902  
Madison, WI 53708

RE: Claim for Delinquent Taxes HFLLRAN9

Dear Mr. Hazard:

Our office represents Thomas Blickensderfer. The state claims that he, as a partner with Sambo's Restaurants, Inc., sales tax No. 251209, owes sales tax for the periods May 15-EOM and June 1-15, 1981. According to your records, there is a balance due, including penalties and interest, of \$3,488.74 as of May 2, 1984.

Pursuant to Wisconsin Statutes, Chapter 77, we wish to request a redetermination in this matter.

Your prompt attention would be most appreciated, for if the redetermination is denied, we will then file an appeal with the Wisconsin Tax Appeals Commission.

I realize that your office may take the position that this request for redetermination is not timely. While I do not have a complete file in this matter, I find no correspondence from the State of Wisconsin Department of Revenue to Mr. Blickensderfer indicating the necessity nor the manner in which a timely request for redetermination or appeal may be made.

However, the record does indicate numerous correspondence from Mr. Blickensderfer to the Department dating back to September 20, 1983, which given the nature of the correspondence, should have been construed by the Department of Revenue as an appeal.

In addition, it is our position that the correspondence from the State of Wisconsin Department of Revenue to Mr. Blickensderfer indicating that upon submission of additional documentation proving that he was a limited partner in the venture prevents the state from denying him a right to either a redetermination or an appeal.

It is our position that Mr. Blickensderfer is not responsible for the subject tax because he was a limited partner in the venture and, in the alternative, he was not a partner in the venture for the period in question. The following documentation is offered:

1. The joint venture agreement between Sambo's Restaurant, Inc., signed by its president on October 11, 1976 and signed by Major Blickensderfer on January 6, 1977, was believed to be unfair and inequitable or fraudulent to purchasers by the Commissioner of Securities, State of Wisconsin, on December 12, 1977.
2. After February, 1978, Major Blickensderfer had no active control or management in the affairs of Sambo's Restaurant No. 789 in West Allis, Wisconsin.
3. We allege that during all of 1980, 1981 and 1982, including the period in question, Sambo's Restaurants, Inc., had exclusive possession of Sambo's Restaurant No. 789, and by reasons of its acts and conduct, breached the joint venture agreement so that during the period in question no partnership existed between Major Blickensderfer and Sambo's Restaurant, Inc.
4. That during the period in question, Sambo's Restaurants, Inc., in essence ran restaurant No. 893 as if it was a subsidiary corporation of Sambo's Restaurant, Inc., and by its action of invoking clauses in the joint venture agreement which deprived

Major Blickensderfer of any control or management of said restaurant, violated the joint venture agreement, thus making it null and void.

Sincerely,  
SCHULTZ & SOGLIN  
Paul R. Soglin"

4. Response to Mr. Soglin's letter came under date of September 5, 1984 by letter from respondent reading as follows:

"Paul F. Soglin  
Attorney at Law  
217 S. Hamilton, Suite 300  
Madison, WI 53703

RE: Thomas Blickensderfer  
SS# 321-42-0735  
IH 9/27/83

Dear Attorney Soglin:

This is in response to your letter of August 15, 1984. It is the department's position that no appeal was filed within the statutory appeal period provided for in Section 77.59 of the Wisconsin Statutes. There is no provision which allows for further review at this time.

H.E. McCarthy  
Referral Section  
P.O. Box 8901  
(608) 266-8510"

5. On September 12, 1984, petitioner thorough his attorney Paul R. Soglin filed a petition for review with this Commission reading as follows:

"September 11, 1984  
Wisconsin Tax Appeals Commission  
Room 1003, 131 W. Wilson Street  
Madison, WI 53703

RE: Thomas Blickensderfer  
Social Security No. 321-42-0735

Pursuant to Wisconsin Statute 77.59(6)(a) and Chapter 73, particularly 73.01(5), on behalf of Major Thomas Blickensderfer I wish to appeal the Department of Revenue's refusal to consider a

redetermination in the above-encaptioned matter. This appeal is necessitated by the fact that the State of Wisconsin, Department of Revenue, never properly gave Thomas Blickensderfer proper notice as to any tax liability so that, consequently, a 60-day period for filing a timely appeal never began to toll. In the alternative, it is our position that numerous correspondence between Major Blickensderfer and the Department of Revenue constituted an appeal which consequently entitled him to proper notice of his right to a redetermination of the tax liability and/or a hearing before the Wisconsin Tax Appeals Commission.

Unless we are otherwise notified, I will assume that this letter is sufficient to constitute an appeal pursuant to the statutes. Enclosed is our check for \$5.00.

Sincerely,  
SCHULTZ & SOGLIN

Paul R. Soglin"

6. On October 17, 1984, respondent filed with this Commission its notice of motion objecting to this Commission's jurisdiction to review the petition for review and filed an affidavit in support thereof as well as the four exhibits identified in paragraphs 1 - 4 above.

7. Petitioner's appeal to this Commission relates to the issue of whether a sales tax assessment which respondent is seeking to collect from petitioner as an individual has in fact become delinquent. However, the genesis of this appeal is clearly respondent's tax collection proceedings concerning the delinquent account of Blickensderfer and Sambos of Wisconsin, Inc., a joint venture or partnership, and its proceedings against petitioner on such delinquency. Rightly or wrongly, the issue is in the collection stage of the proceedings, not the assessment contest stage.

8. This Commission's jurisdiction is confined to those powers conferred in sec. 73.01(4)(a), Stats. which include contested assessments and claims for refund under secs. 71.12 and 77.59(6)(b), Stats., but does not involve issues involving collection of delinquent taxes under sec. 77.62 and 71.13, Stats. This forum is inappropriate for the consideration of collection issues and petitioner's defense to the respondent's collection activities must be raised within the context of those delinquent tax proceedings and not before this Commission which lacks jurisdiction to review the alleged grievances of petitioner.

9. Respondent has shown good and sufficient cause for the granting of its motion to dismiss.

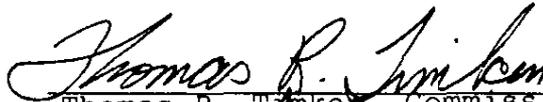
Authority: Raoul Diambra, WTAC Docket No. S-10902, Ruling and Order, June 18, 1985.

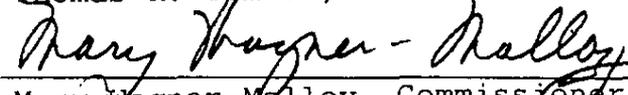
ORDER

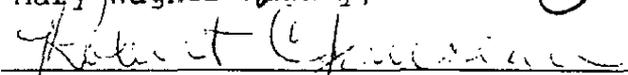
The petition for review is dismissed. Respondent's motion to open the record for admission of evidence filed on October 31, 1985 is denied.

Dated at Madison, Wisconsin, this 10th day of January, 1986.

WISCONSIN TAX APPEALS COMMISSION

  
Thomas R. Tanken, Commissioner

  
Mary Wagner-Malloy, Commissioner

  
Robert C. Junceau, Commissioner

ATTACHMENT:  
"Notice of Appeal  
Information"