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BROWN DEER MEDICAL BUILDING LTD I11442 011086 TAC

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STATE OF WISCONSIN  
DEPARTMENT OF REVENUE  
**RECEIVED**  
JAN 13 1986  
LEGAL DIVISION

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

\* \* \* \* \*

BROWN DEER MEDICAL BUILDING, LTD. \*  
 8200 North Teutonia Avenue \*  
 Brown Deer, Wisconsin 53209 \*

Petitioner, \*

vs. \*

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

Respondent. \*

\* \* \* \* \*

DOCKET NO. I-11442  
 RULING AND ORDER  
 (Drafted by  
 Commissioner  
 Wagner-Malloy)

1,130

*cm*

The above captioned matter came on for hearing of the respondent's motion to dismiss by this Commission on stipulated facts. The petitioner, Brown Deer Medical Building, Ltd., is represented by Linda M. Glembocki of Zirbel, Howard & Malone, S.C. and the respondent, Wisconsin Department of Revenue, is represented by Veronica Folstad, its attorney. Having considered all of the stipulated facts, evidence and briefs the Commission hereby finds, rules and decides as follows:

1. That John R. Miller is the accountant for Brown Deer Medical Building, Ltd.
2. That on May 21, 1985 Mr. Miller was directed by the officers of Brown Deer Medical Building, Ltd. to appeal the notice of action to the Wisconsin Tax Appeals Commission and to pay the tax and interest in the notice of amount due to stop interest from accruing while the appeal was pending.
3. That Mr. Miller caused a check to be drawn payable to Wisconsin Department of Revenue in the amount of \$5,386.49.

that said check and a copy of the notice of amount due was mailed to the respondent on May 21, 1985; that no communication other than the notice of amount due and check was included in the envelope mailed May 21, 1985; that petitioner's check in the amount of \$5,386.49 was processed on May 29, 1985 by the Central Audit Bureau of the Wisconsin Department of Revenue as payment in full of the assessment at issue.

As and for additional Findings of Fact this Commission hereby adopts the following:

4. Under date of May 21, 1984 the respondent, Wisconsin Department of Revenue, issued a notice of amount due in the amount of \$1,003.18 franchise tax and \$374.60 in interest to the petitioner, Brown Deer Medical Building, Ltd. This notice included Publication 505 "A Taxpayer's Appeal Rights of an Office Audit Adjustment".

5. Under date of July 2, 1984 the petitioner filed a petition for redetermination with the respondent.

6. Under date of July 24, 1984 the respondent, Wisconsin Department of Revenue, notified the petitioner of receipt of its appeal.

7. Under date of April 29, 1985, the respondent denied the petitioner's petition for redetermination and issued a notice of amount due in taxes of \$3,809.60 and interest of \$1,576.00.

8. The above mentioned notice was accompanied by Publication 507 "How to Appeal to the Tax Appeals Commission".

9. On June 28, 1985 the petitioner filed a timely appeal with the Wisconsin Tax Appeals Commission.

10. Said payment of May 21, 1985 was not a deposit of contested taxes made pursuant to Section 71.12(2) of the Wisconsin Statutes.

11. The provision of Section 71.12(2) of the Wisconsin Statutes contain the exclusive procedure for the deposit of taxes in contested franchise tax assessments.

12. The petitioner's payment of the additional assessment of franchise taxes to the Wisconsin Department of Revenue did not constitute compliance in any manner with provisions of Section 71.12(2) of the Wisconsin Statutes.

13. The respondent has shown good and sufficient grounds for the granting of its motion.

AUTHORITY: Marian College of Fond du Lac, Wisconsin Inc. v. Wisconsin Department of Revenue, 10 WTAC 80 Docket No. S-4764 (1975)

Betty Platzek vs. Wisconsin Department of Revenue, WTAC Docket No. I-10627 (Sept. 4, 1984)

Therefore,

IT IS ORDERED

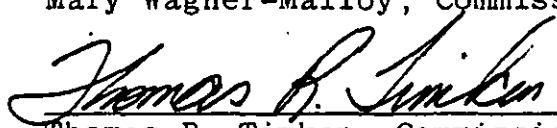
That the respondent's motion to dismiss the petitioner's petition for review is hereby granted.

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

WISCONSIN TAX APPEALS COMMISSION

  
John P. Morris, Chairperson

Mary Wagner-Malloy, Commissioner

  
Thomas R. Timken, Commissioner

Attachment: "NOTICE OF APPEAL INFORMATION"