

PETTY MCKINLEY 111069 091586 TAC

2
Library

STATE OF WISCONSIN
DEPARTMENT OF REVENUE

RECEIVED
SEP 13 1986

LEGAL DIVISION

STATE OF WISCONSIN
TAX APPEALS COMMISSION

McKINLEY PETTY
5412 N. 38th Street
and/or
5412 N. 39th Street
Milwaukee, WI 53209

Petitioner,

vs.

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

Respondent.

*
* DOCKET NO. I-11069
* RULING AND ORDER
* ON MOTION TO DISMISS
* PETITION FOR REVIEW

Pursuant to its notice, this Commission convened in Room 611A, GEF-2 Building, 101 S. Webster Street, Madison, Wisconsin, at 10:30 a.m., on September 11, 1986, for the purpose of hearing the respondent's motion to dismiss the petition for review in this matter on the following grounds:

That the petitioner failed to file a proper petition for review within 60 days after receipt of the respondent's notice of denial of the petition for redetermination as required by sec. 73.01(5)(a), Stats., and therefore the State of Wisconsin Tax Appeals Commission lacks jurisdiction to review the alleged grievances of the petitioner.

In addition, the respondent's motion moved for summary judgment to the respondent, pursuant to sec. 802.08, Stats., and Rules TA 1.15, 1.31, and 1.39, Wis. Adm. Code, on the following grounds:

A. The petition for review fails to state a claim upon which relief can be granted by the Commission;

B. There is no genuine issue as to any material fact, and the respondent is entitled to dismissal of petitioner's petition for review as a matter of law;

C. There exists no legal basis on which to grant relief to the petitioner, this Commission having dismissed the petitions for review on respondent's motion in Daniel T. Betow v. Wisconsin Department of Revenue, affirmed by Court of Appeals (November 22, 1983), and Michael J. Kinzinger v. Department of Revenue, Wisconsin Tax Appeals Commission Docket No. I-9485 (August 23, 1983).

The petitioner, McKinley Petty, failed to appear either in person or by representative. The respondent, Wisconsin Department of Revenue, appeared by its attorney, Donald Goldsworthy.

The respondent moved for dismissal of the petition for review on all of the grounds stated above and offered oral argument in support thereof.

Having considered the pleadings, the record, the motion and the argument of the respondent thereon, this Commission finds as

FINDINGS OF FACT

1. By notice dated March 28, 1983, the respondent made an assessment of income tax against the petitioner in the amount of \$7,297.00, including interest.

2. On April 15, 1983, the petitioner filed a petition for redetermination with the respondent.

3. By notice dated August 8, 1983, mailed to petitioner by certified mail, return receipt requested, the respondent denied the petitioner's petition for redetermination. Said certified mail return receipt envelope was refused by petitioner.

4. Following petitioner's refusal of the certified mail return receipt envelope containing the notice of denial of petitioner's petition for redetermination, the respondent made several unsuccessful attempts to deliver such notice by personal service between October 21, 1983 and May 16, 1984.

5. The respondent obtained service of its notice of denial on petitioner by publication in a Milwaukee newspaper, The Daily Reporter, for three consecutive weeks, with the first insertion on June 5, 1984 and the last insertion on June 19, 1984.

6. The petitioner's petition for review relating to the respondent's action on the petition for redetermination was received and filed in the office of the Wisconsin Tax Appeals Commission on December 27, 1984.

7. The 60-day period provided in s. 73.01(5)(a), Wis. Stats., for filing a proper petition for review with this Commission expired on August 18, 1984.

8. The respondent has shown good cause and sufficient grounds for the granting of its motion to dismiss on grounds of

late filing of the petition for review.

9. Under the provisions of s. 73.01(5)(a), Wis. Stats., the petitioner failed to file a proper petition for review within 60 days after service of the respondent's notice of denial of the petitioner's petition for redetermination; therefore, the Wisconsin Tax Appeals Commission lacks jurisdiction to review the alleged grievances of the petitioner.

Therefore,

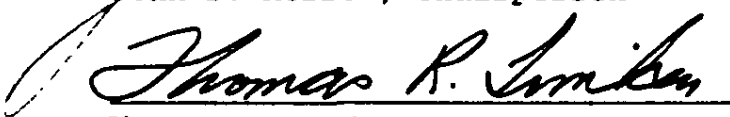
IT IS ORDERED

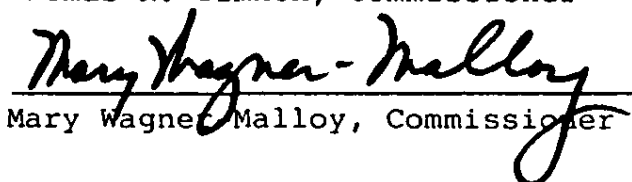
That the petition for review in the above-entitled matter be dismissed.

Dated at Madison, Wisconsin, this 15th day of September, 1986.

WISCONSIN TAX APPEALS COMMISSION


John P. Morris, Chairperson


Thomas R. Timken, Commissioner


Mary Wagner-Malloy, Commissioner

pc: Petitioner
Respondent

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"