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STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
RECEIVED
JUL 28 1986
LEGAL DIVISION

DAVID PLOETZ
115506 Alderete Dr.
Houston, TX 77068,

Petitioner,

DOCKET NO. S-11068

vs.

RULING AND ORDER

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

Respondent.

This matter having been heard before this Commission, petitioner having failed to appear in person or by representative, respondent having appeared by Linda H. Roberts, its duly authorized attorney, who moved to dismiss on the grounds of failure of petitioner to appear, and based upon the entire record herein this Commission rules and orders as follows:

FINDINGS OF FACT

1. This matter arises from a notice of assessment of additional sales and use tax dated May 11, 1984, to petitioner for the period August 1981 through November 1982 as an officer or employe of Thermal Specialists, Inc. in the total amount of \$24,402.89 including tax, interest and penalty with interest calculated to June 30, 1984.

2. Petitioner filed a timely petition for redetermination of the assessment, which was denied by respondent.

3. Petitioner filed a timely appeal of respondent's denial of redetermination with this Commission.

4. Thermal Specialists, Inc. was a Wisconsin corporation engaged in the sale of home improvements in Glendale, Wisconsin and upon application was issued sellers permit number 342054 by respondent on August 4, 1982. Thus, Thermal Specialists, Inc. was subject to Wisconsin's sales and use tax laws and was required by respondent's registration unit to file and pay its sales and use taxes on a monthly basis.

5. Thermal Specialists, Inc. failed to file monthly sales and use tax returns or to pay sales tax for the period August 1981 through November 1982.

6. Respondent requested Thermal Specialists, Inc. to file its monthly sales and use tax returns, and upon its failure to do so, respondent issued estimated assessments of such taxes on April 19, 1983 for August - November 1982 and on June 14, 1983 for August 1981 - July 1982.

7. Thermal Specialists, Inc. failed to pay the respondent's assessments, which became delinquent and were placed on respondent's delinquent assessment roll. Respondent filed delinquent tax liens which were not satisfied.

8. Upon discovery that Thermal Specialists Inc. had filed a bankruptcy petition on December 1, 1982 in the United States Bankruptcy Court for the Eastern District of Wisconsin, respondent filed a "Proof of Claim for Taxes" in such court on June 17, 1983. Respondent did not recover any of the delinquency

from the bankrupt estate of Thermal Specialists, Inc. which appears to have been closed.

9. On May 11, 1984, respondent assessed the delinquency of Thermal Specialists, Inc. to petitioner as an officer or employe thereof under s.77.60(9), Stats.

10. The total delinquency as of the hearing in this matter on December 19, 1985 was \$29,887.85.

11. Petitioner was president of Thermal Specialists, Inc. and had authority to and did dispense funds of that corporation through its bank checking accounts throughout the period of the assessment.

12. Petitioner failed to appear at the hearing although given proper written notice thereof sent by this Commission to his last known address. Respondent did not waive his appearance and moved to dismiss at the hearing upon the grounds that petitioner failed to make a personal appearance at the time and place designated for hearing.

13. Due to a possible misunderstanding on the December hearing date this matter was scheduled for further hearing on May 6, 1986, of which written notice was sent by this Commission to petitioner's last known address and which was returned to this Commission undelivered.

14. At the request of attorneys representing petitioner, a continuance was granted by this Commission until June 6, 1986, at which time they were to advise this Commission whether they had been able to reach petitioner. In the event

they were unable to locate him or he advised the Commission of his whereabouts, by that date, this Commission would act on the record before it.

15. This Commission has received no further contact or notice to date of petitioner's whereabouts and considers the record closed.

16. Petitioner at no time in the administrative proceeding or in his petition to this Commission denied that he was an officer or employe of Thermal Specialists, Inc., who had control, supervision or responsibility of filing sales or use tax returns or mailing payment of such taxes.

17. In his petition for redetermination with the respondent and his petition for review filed with this Commission, petitioner disputed the taxability of the business transactions of Thermal Specialits, Inc., but no competent evidence was introduced at hearing to sustain his contentions.

18. At the time of both the petition for redetermination and the petition for review the sales and use tax assessments against Thermal Specialists, Inc. had long become final as a matter of law and beyond dispute.

19. Petitioner was an officer or employe of Thermal Specialists, Inc. who had control, supervision or responsibility of filing its sales and use tax returns or making payment of such taxes imposed.

20. Petitioner wilfully failed to file sales and use tax returns in behalf of and to pay the amount of tax imposed by

respondent under Chapter 77 upon Thermal Specialists, Inc.

21. Respondent has shown good and sufficient cause for dismissing the petition for review on the basis of petitioner's failure to appear at scheduled hearings and disclose pertinent sales and use tax information or to keep this Commission apprised of his whereabouts.

CONCLUSIONS OF LAW

1. This Commission's notices of hearing sent to petitioner's last known address constituted proper service of notice of hearing. Sec. 73.01(5)(b), Stats.

2. Petitioner's failure to appear and make full disclosure of tax information pertaining to his assessment at the scheduled hearings precludes him from questioning the assessment complained of in his petition for review. § 77.60(9), 77.59(6)(b), and 71.12(3), Stats.; § TA 1.03 and 1.51, Wis. Ac̄m. Code.

Therefore,

IT IS ORDERED

That the petition for review in the above-captioned matter is dismissed.

Dated at Madison, Wisconsin, this 25th day of July,

1986.

WISCONSIN TAX APPEALS COMMISSION

Robert C. Jinceau
Robert C. Jinceau, Commissioner

John P. Morris
John P. Morris, Chairperson

Mary Wagner Malloy
Mary Wagner Malloy, Commissioner

cc: Petitioner
Respondent

Attachment: "NOTICE OF APPEAL INFORMATION"