

FILED
Wisconsin Tax Appeals Commission
JUL - 6 1995
Darlene Skolaski
Deputy Clerk

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STATE OF WISCONSIN
TAX APPEALS COMMISSION

ROLAND H. BESSETT
7542 Hwy. 51 South
Minocqua, WI 54548

* DOCKET NO. 94-S-397

Petitioner,

* RULING AND ORDER

vs.

* AWARDING SUMMARY

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

* JUDGMENT

Respondent.

*

JUL 1995
State of Wisconsin
Department of Revenue
Received
Legal Staff

CM

MARK E. MUSOLF, COMMISSION CHAIRPERSON:

This matter is before us on a motion for summary judgment by the respondent, supported by affidavit and argument by Attorney Sheree Robertson. The petitioner, whose only argument is by way of late-submitted discovery responses, appears *pro se*.

Under date of July 29, 1993, the respondent issued to petitioner a personal liability assessment in the amount of \$2,494.24 for sales and use taxes for the period September 1991 quarter, October 1991, December 1991, and January 1992 through March 1992. The assessment was issued because respondent determined that petitioner is a person who is personally responsible for the delinquent sales and use taxes of Rollie and Helen's Muskys Plus, pursuant to § 77.60(9), Stats.

An application for seller's permit was submitted for Rollie and Helen's Muskys Plus, and respondent assigned the

business seller's permit #517968. The application listed petitioner as one of the principals of Rollie and Helen's Muskys Plus.

Pursuant to § 71.83(1)(b)2, Stats., a personal liability assessment in the amount of \$752.85, dated July 21, 1993, was issued to petitioner for the delinquent withholding taxes of Rollie and Helen's Muskys Plus for the period April 1991 through June 1991, July 1991 through October 1991, and December 1991 through January 1992. This personal liability assessment went delinquent.

Under date of December 6, 1994, respondent mailed discovery requests to petitioner, which petitioner received on December 7, 1994. Included in the discovery requests were respondent's First Request for Admissions, which was to be answered by January 6, 1995.

Because petitioner failed to answer respondent's First Request for Admissions, the matters stated in the requests are deemed admitted pursuant to § 804.11(1)(b), Stats., including the following:

1. Petitioner, during the period September 1991 through March 31, 1992, was president of Rollie and Helen's Muskys Plus.
2. During the period September 1991 through March 31, 1992, petitioner managed the overall day-to-day operations of the business known as Rollie and Helen's Muskys Plus.

3. During the period September 1991 through March 31, 1992, Rollie and Helen's Muskys Plus was required to file Wisconsin and county sales and use tax returns.

4. During the period September 1991 through March 31, 1992, Rollie and Helen's Muskys Plus was required to remit to the Wisconsin Department of Revenue the sales and use taxes it collected.

5. During the period September 1991 through March 31, 1992, Rollie and Helen's Muskys Plus did not remit to the Department of Revenue the sales and use taxes it collected.

6. During the period September 1991 through March 31, 1992, creditors of Rollie and Helen's Muskys Plus were paid from funds in the checking account of the business.

7. During the period September 1991 through March 31, 1992, petitioner wrote checks on the checking account of Rollie and Helen's Muskys Plus to pay its creditors.

8. Rollie and Helen's Muskys Plus ceased to operate on March 31, 1992.

By Scheduling Order Memorandum of this commission dated May 1, 1995, the petitioner was given until May 5, 1995 to file a reply to respondent's summary judgment motion. On May 2, 1995, the petitioner filed with respondent handwritten responses to the various discovery requests he had received on December 7, 1994, including three pages to "explain this mess to ya" (sic), which was

placed on file by this commission on May 7, 1995 as petitioner's only response to the motion.

Petitioner's belated discovery responses taken at face value (although not in affidavit form acceptable for summary judgment purposes) do not materially controvert respondent's facts relied on in its motion for summary judgment. Although it appears that petitioner may have been victimized by others during his involvement as a principal in the operation of Rollie & Helen's Muskys Plus, this does not relieve him from personal liability under the statutes.

Unfortunately for petitioner, his deemed admissions show that he was a responsible party and was therefore liable for the unpaid sales and use and withholding taxes assessed against him pursuant to §§ 77.60(9) and 71.83(1)(b)2, Stats.

Because an award of summary judgment can be based on a deemed admission under § 804.11(2), Stats., which forecloses all pertinent issues of fact,¹ we are compelled to grant the respondent's motion here because the respondent has shown it is entitled to judgment as a matter of law.

ORDER

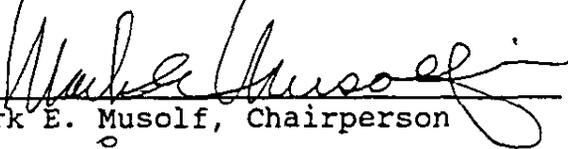
The respondent's motion for summary judgment is granted, pursuant to § 802.08(2), Stats., and the respondent's personal liability assessment against petitioner is affirmed.

¹*Bank of Two Rivers v. Zimmer*, 112 Wis.2d 624, 631 (1983).

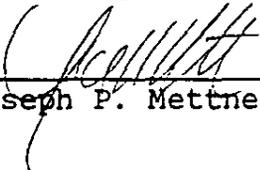
Dated at Madison, Wisconsin, this 6th day of July,

1995.

WISCONSIN TAX APPEALS COMMISSION



Mark E. Musolf, Chairperson



Joseph P. Mettner, Commissioner

ATTACHMENT:
"Notice of Appeal Information"