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STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
OCT 26 1990
RECEIVED
LEGAL DIVISION

THOMAS J. CASSELLS	*	DOCKET NO. 89-I-489
CAROL J. CASSELLS	*	DOCKET NO. 89-I-490-SC
THOMAS J. AND CAROL J. CASSELLS	*	DOCKET NO. 89-I-491
4595 S. Shore Drive	*	
Rhineland, WI 54501	*	
Petitioners,	*	RULING AND ORDER
vs.	*	DISMISSING PETITIONS
WISCONSIN DEPARTMENT OF REVENUE	*	FOR REVIEW
P.O. Box 8933	*	
Madison, WI 53708	*	
Respondent.	*	

On August 30, 1990 the respondent, Wisconsin Department of Revenue, by its attorney Deborah Rychlowski, filed with this Commission a Notice of Motion and Motion to Dismiss the petitions for review filed with this Commission, for the petitioners' alleged failure to comply with discovery requests. That motion was heard, after notice to both parties sent to their last known address. The petitioners failed to appear. The respondent appeared by Attorney Deborah Rychlowski.

Having reviewed the entire record, this Commission hereby finds and rules as follows:

1. Under date of December 12, 1988, the Wisconsin Department of Revenue issued an income tax assessment to petitioner Thomas J. Cassells in the amount of \$2,902.28, with interest calculated through February 13, 1989, for the years 1984 and 1985. Petitioner Thomas J. Cassells has conceded the Department's

adjustments for 1984, but objects to the Department's disallowance of a claimed casualty loss deduction of \$17,432 in 1985.

2. Under date of February 12, 1989, petitioner Thomas J. Cassells filed a timely petition for redetermination with the Department's Appellate Bureau, and under date of August 14, 1989, the Department denied the petition for redetermination.

3. Under date of December 12, 1988, the Wisconsin Department of Revenue issued an income tax assessment to petitioner Carol J. Cassells in the amount of \$1,256, with interest calculated through February 13, 1989, for the year 1985. The Department's only adjustment was the disallowance of a claimed casualty loss in the amount of \$15,663 in 1985.

4. Under date of February 12, 1989, petitioner Carol J. Cassells filed a timely petition for redetermination with the Department's Appellate Bureau, and under date of August 14, 1989, the Department denied the petition for redetermination.

5. Under date of December 12, 1988, the Wisconsin Department of Revenue issued an income tax assessment to petitioners Thomas J. Cassells and Carol J. Cassells in the amount of \$2,137.10, with interest calculated through February 13, 1989, for the year 1986. The Department of Revenue's only adjustment was the disallowance of \$21,687 for a claimed casualty loss carryover from 1985.

6. Under date of February 12, 1989, petitioners Thomas J. Cassells and Carol J. Cassells filed a timely petition for redetermination with the Department's Appellate Bureau, and under

date of August 14, 1989, the Department denied the petition for redetermination.

7. On October 16, 1989 the petitioners, by their attorney Karen A. Case, filed appeals with this Commission, objecting to the above assessments.

8. The petitioners claim their home and its contents were destroyed by a fire in 1985. Petitioners claimed a casualty loss of the tangible personal property in their home in the amount of \$116,135 and claimed that they were reimbursed \$58,450 for the tangible personal property by their insurance company. The remaining \$57,685 was claimed as a casualty loss on the petitioners' 1985 Wisconsin income tax return, and the petitioners claimed a carry-over of \$21,687 of this casualty loss on their 1986 Wisconsin income tax return.

9. The sole issue in dispute in these appeals is the allowance of the casualty losses claimed as a result of the alleged 1985 fire at petitioners home.

10. Under date of November 2, 1989, respondent issued its first set of discovery requests to petitioners, through their attorney, Karen Case.

11. Under date of November 22, 1989, the respondent wrote to Attorney Case, agreeing to a 30-day extension for petitioners to comply with the Department's discovery requests.

12. Under date of December 21, 1989, the respondent wrote to Attorney Case, agreeing to allow an extension until January 31, 1990 for petitioners to comply with the Department's production of

documents request.

13. Under date of January 16, 1990, the respondent wrote to Attorney Case, advising her that the Department had not yet received petitioners' responses to the Department's discovery requests.

14. On January 17, 1990, the respondent received petitioners' responses to the Department's first set of interrogatories.

15. On January 18, 1990, the respondent wrote to Attorney Case, asking that the interrogatories six and eight be answered, as petitioners listed estimated cost and replacement values but not fair market values.

16. On January 29, 1990, Attorney Case cancelled the January 31, 1990 meeting scheduled to review the documents pursuant to the Department's production of documents request because petitioners had not yet been able to locate the documents.

17. Under date of February 20, 1990, respondent issued its second set of discovery requests to petitioners, through their attorney, Karen Case.

18. Under date of March 7, 1990, the respondent wrote to Attorney Case, asking that she follow up on the responses to the Department's discovery requests as soon as possible.

19. Under date of April 11, 1990, the respondent wrote to Attorney Case, confirming that petitioners would be responding to the Department's discovery requests.

20. Under date of April 20, 1990, the respondent wrote

to Attorney Case, stating that interrogatories six and eight of the first set of interrogatories, relating to the fair market value of the items lost in the fire, had not yet been answered, and document requests two, seven, and ten of the production of documents request had not been answered.

21. Under date of May 9, 1990, the respondent wrote to Attorney Case, stating that the Department was still awaiting responses to its discovery requests.

22. Under date of May 24, 1990, the respondent wrote to Attorney Case, asking her to provide the requested information.

23. On June 5, 1990, this Commission received a letter from Attorney Case, stating that she was withdrawing as petitioners' representative because:

"The petitioners have failed to respond to repeated requests to contact their representative and have failed to provide information necessary to resolve the matters before the Commission."

24. That three different telephone scheduling conferences were held and scheduling orders issued by this Commission (2-15-90, 6-26-90, 7-23-90), wherein it was ordered that these matters be consolidated and in which various discovery limitations were established. The petitioners have not complied.

25. That at the telephone scheduling conference held on June 26, 1990, it was agreed that petitioners would provide the information requested by the Department at a meeting on July 6,

1990.

26. On July 5, 1990, Thomas J. Cassells telephoned the respondent, stating that he had just been in a bad automobile accident and would be unable to meet with respondent on July 6, 1990.

27. That another telephone scheduling conference was held in these matters on July 18, 1990, at which time Thomas J. Cassells stated that he had completed the responses to the Department's discovery requests and would put them in the mail on July 18, 1990 or July 19, 1990. He also agreed to meet with respondent at 1:00 p.m. on August 10, 1990.

28. Under date of July 31, 1990, the respondent wrote to petitioners, advising them that the Department had not yet received their responses to the Department's discovery requests and confirming the August 10, 1990 meeting date.

29. Under date of August 6, 1990, the respondent again wrote to petitioners, advising them that the Department had not yet received their responses to the Department's discovery requests and confirming the August 10, 1990 meeting date.

30. The petitioners did not appear at the scheduled August 10, 1990 meeting, nor did they contact the respondent in any way stating that they would not attend.

31. As of this date, petitioners have not answered interrogatories six and eight of the Department's first set of interrogatories, nor have they answered document requests two, seven, and ten of the Department's first request for production of

documents. These discovery requests were issued November 2, 1989, over eleven months ago.

32. As of this date, petitioners have not answered the Department's second set of discovery requests in any way. The second set of discovery requests were issued February 20, 1990, over eight months ago.

33. On August 16, 1990, the respondent filed with this Commission a Notice of Motion and Motion to Compel Discovery. After notice to both parties, that motion was heard by telephone on September 21, 1990. The petitioners were not available at the telephone listed, and this Commission was informed they were no longer employed by the Rhinelander School District (the telephone number given).

34. The information requested by the Department is necessary for the successful preparation of its case. For example, petitioners claim to have purchased and/or been gifted some very expensive items shortly before the fire. The Department has requested that the stores at which the purchases were made be identified and also that those making the gifts be identified. Petitioners have failed to provide this information. Without this information being provided prior to the Wisconsin Tax Appeals Commission hearing, the Department is unable to verify petitioners' claims before the Wisconsin Tax Appeals Commission hearing.

35. The applicable provisions of the Wisconsin Statutes and Administrative Code are as follows:

2025 RELEASE UNDER E.O. 14176

WISCONSIN STATUTES

Section 804.12 Failure to make discovery;
sanctions.

* * *

(2) FAILURE TO COMPLY WITH ORDER.

(a) If a party ... designated under s. 804.05 (2)(c) or 804.06(1) ... fails to obey an order to provide or permit discovery, including an order made under sub (1) or s. 804.10, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

* * *

3. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party; ...

WISCONSIN ADMINISTRATIVE CODE

TA 1.35 Discovery. (s. 73.01(4)(d), Stats.)

(1) Parties may obtain discovery before the Commission in the same manner and by the same methods as provided under ch. 804, Stats., unless inconsistent with or prohibited by statute, or as otherwise determined by the commission. When resort would normally be had to a circuit court under ch. 804, Stats., resort shall be had to the commission.

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

Therefore,

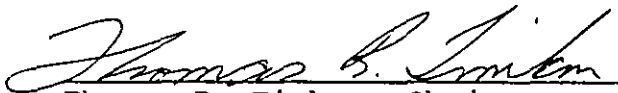
IT IS HEREBY ORDERED


That respondent's motion to dismiss for failure to comply with discovery requests is granted and the petitioners' petitions

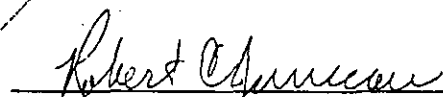
for review in the above-entitled matters are hereby dismissed.

Dated at Madison, Wisconsin, this 25th day of October,
1990.

WISCONSIN TAX APPEALS COMMISSION


Thomas R. Timken, Chairperson


John P. Morris, Commissioner


Robert C. Junceau, Commissioner

pc: Petitioners
Respondent

ATTACHMENT: NOTICE OF APPEAL INFORMATION

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