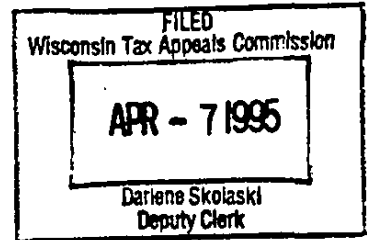


FOOD SERVICE PRODUCTS CO 94M1217 040795 TAC

P. Legal Library



STATE OF WISCONSIN
TAX APPEALS COMMISSION

FOOD SERVICE PRODUCTS CO.,
D/B/A MOORE'S FOOD PRODUCTS
P.O. Box 24305
Oakland, CA 94623

DOCKET NO. 94-M-1217

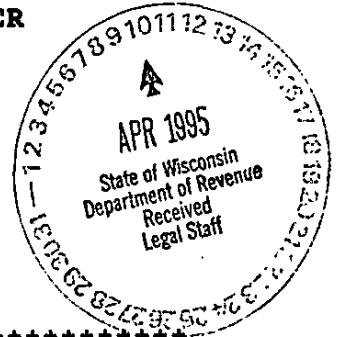
Petitioner,

RULING AND ORDER

vs.

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

Respondent.



MARK E. MUSOLF, COMMISSION CHAIRPERSON:

This matter is before us on respondent's motion to dismiss for lack of jurisdiction on the part of either this commission or the respondent's State Board of Assessors because the petitioner failed to file a complete and proper form of objection with the respondent. In the alternative, respondent moves for dismissal for failure of the petitioner, in its petition for review, to state a claim upon which relief can be granted.

A telephonic hearing on the motion was held on February 14, 1995, with appearances by Paul M. Bauer, C.P.A., representing petitioner, and Attorney Sheree Robertson representing respondent.

At the request of petitioner's representative, petitioner was granted until February 28, 1995 to file any brief. No brief was filed, and this matter is therefore ripe for a ruling.

201006031204024

20.

FACTS

1. On June 9, 1994, the respondent issued to petitioner its notice of real property assessment for the year January 1, 1994 for the subject real estate identified by Computer No. 76-28-226-R001000.

2. According to the notice of real property assessment, land was assessed at \$45,500.00 and improvements at \$3,179,300.00, for a total of \$3,224,800.00.

3. On August 8, 1994, a Manufacturer's Form of Objection to Property Assessment ("Objection") was filed on behalf of petitioner by Paul M. Bauer. The form filed on behalf of petitioner was its objection to the notice of assessment issued on June 9, 1994 for the subject real estate.

4. Petitioner's opinion of value for the subject property was not stated on the Objection form either in the space provided therefor or elsewhere.

5. Respondent's State Board of Assessors sent petitioner an acknowledgement of receipt of Objection dated August 12, 1994, and, per the acknowledgement, it stated that "The Board will probably deny jurisdiction and dismiss the objection if any of the following conditions exists: ... (2) You have not stated your opinion of value of the property"

6. In a letter dated September 1, 1994 to petitioner's representative, Paul M. Bauer, respondent requested that evidence be submitted in support of petitioner's appeal by September 10, 1994.

7. No opinion of value or evidence to support petitioner's contention that the assessed value exceeds market value was so submitted to respondent.

8. On September 26, 1994, respondent's State Board of Assessors issued to petitioner its Order for Dismissal. The Order was issued for the following reason:

Section 70.995(8)(c) requires all objections to the amount, valuation or taxability of real or personal property to be first made in writing on a form prescribed by the Department of Revenue. The prescribed form requires the objector to state an opinion of value for each property appeal. The State Board of Assessors has determined that the objector has not provided an opinion of value for the parcel appealed. Therefore, the State Board of Assessors lacks jurisdiction to hear the appeal under s. 70.995(8)(a), and the appeal is hereby dismissed.

9. On November 28, 1994, petitioner filed a petition for review with the Tax Appeals Commission.

10. On December 16, 1994, respondent filed its motion to dismiss.

11. On January 25, 1995, petitioner amended its petition for review by filing with this commission its appraisal reports for the subject property, indicating its opinion of value as of January 1, 1994 of \$2,150,000, with no breakdown between value of land and improvements, except indicating that the "Vacant (west) Site" was valued at \$95,900 and the "Improved (east) Site" was valued at \$2,054,100.

201008081204024

RULING

The sole issue before us is whether the respondent's State Board of Assessors properly determined it lacked jurisdiction to consider petitioner's appeal where, although timely filed, the appeal document contained no opinion of petitioner's value of the subject property.

The facts recited above speak for themselves. In spite of being notified of the need to provide an opinion of value, the petitioner did not do so, and its Objection to the State Board of Assessors was rejected by respondent because it was incomplete.

It was not until January 25, 1995, when petitioner filed with this commission an appraisal document constituting an amendment to its petition for review, that its opinion of value and the reasons therefor were revealed to respondent. This was more than five months after the expiration of the appeal period following the respondent's original assessment. In filing the appraisal, the petitioner asserted that "The Respondent is not prejudiced by this filing of the opinion of value at this time."

We disagree. The respondent was indeed prejudiced by this failure because, following expiration of the 60-day appeal period specified in § 70.995(8)(d), Stats., the Board of Assessors had nothing to consider in reviewing the Objection. Without an opinion of value from petitioner, there was no subject on which the Board could take action and no joinder of that issue.

Just as in *State ex rel. Reiss v. Board of Review*, 29 Wis.2d 246 (1965), which involved the taxpayer's failure to provide an opinion

of value on an official form specifically requesting it, the respondent here properly refused to consider petitioner's Objection where such information was not provided.

In *Reiss*, the Court held that the statute gave the board of review "reasonable latitude in specifying relevant information which must be supplied as part of a written objection." *Id.* at 251. Here, § 70.995(8)(c) similarly requires objections to be "made in writing on a form prescribed by the department of revenue ..." within 60 days of issuance of the assessment.

We further embrace the *Reiss* court's conclusion with respect to the importance of petitioner's timely providing its opinion of fair market value as requested on the Objection form:

We consider the types of information called for ... to be relevant to the issues ordinarily raised on objection to an assessment, helpful to the board in the performance of its duty and not unduly burdensome to the taxpayer.

Ibid.

We accordingly reach the same conclusion as did the Supreme Court in *Reiss*, which we deem authoritative here: without a timely filed objection by petitioner under §§ 70.995(8)(b) and (c), including petitioner's opinion of value, the respondent properly denied jurisdiction to consider it.

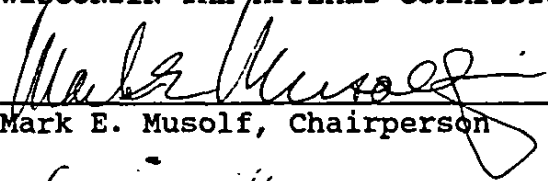
Therefore, we grant the respondent's motion to dismiss.

ORDER

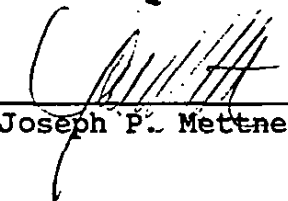
The petition for review is dismissed.

Dated at Madison, Wisconsin, this 7th day of April,
1995.

WISCONSIN TAX APPEALS COMMISSION



Mark E. Musolf, Chairperson



Joseph P. Mettner, Commissioner

ATTACHMENT:
"Notice of Appeal Information"