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FILED
Wisconsin Tax Appeals Commission
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Darlene Skolaski
Deputy Clerk

STATE OF WISCONSIN
TAX APPEALS COMMISSION

1804

RAYMOND AND DEBRA GUNDERSON
P.O. Box 310
Osseo, WI 54758

* DOCKET NO. 94-I-315

*

Petitioners,

* RULING AND ORDER

vs.

*

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

*

*

Respondent.

*



JOSEPH P. METTNER, COMMISSIONER:

This matter has been submitted to the Commission for ruling based upon the respondent's Motion for Summary Judgment, dated March 3, 1995.

On April 17, 1995, a telephonic hearing was held for purposes of ruling upon separate motions of the petitioners for a continuance and to withdraw admissions made by the petitioners as a result of the petitioners' failure to timely respond to, deny, or otherwise object to the respondent's First Request for Admissions dated October 20, 1994. The Commission issued a Memorandum of Telephonic Hearing on Motions on April 18, 1995, summarizing the Commission's oral ruling, in which both the petitioners' motion for continuance and motion to withdraw admissions were denied.

On May 5, 1995, the petitioners filed a motion for reconsideration of the Commission's April 17, 1995 oral denial of the petitioners' motion for continuance and motion to withdraw

admissions. The motion for reconsideration of the Commission's ruling was denied in a Ruling and Order issued by the Commission on June 19, 1995.

The Commission's June 19, 1995 Ruling and Order had the effect of removing any pending matters before the Commission which may have precluded review of the respondent's Motion for Summary Judgment, dated December 20, 1994. Accordingly, the petitioners were given an opportunity to respond to the respondent's motion, and the respondent was given an opportunity to reply.

Having reviewed the submissions of the parties and the record in its entirety, this Commission finds, concludes, and orders as follows:

In a notice dated March 1, 1993, the respondent assessed the petitioners for additional income taxes and interest due in the amount of \$19,239.97. The respondent adjusted several items originally reported in the petitioners' 1989, 1990, and 1991 income tax returns. The respondent disallowed certain items of expense and losses claimed during those years relating to partnership and other business expenses claimed by the petitioners, net operating losses claimed by the petitioners, and farmland preservation credits claimed by the petitioners.

In a letter received by the respondent on May 5, 1993, the petitioners petitioned the respondent for redetermination of the additional taxes and interest due. In their letter, the petitioners indicate their belief that the audit adjustments were made by the respondent as a result of information which the

petitioners failed to provide during the audit, but that such information was available as of the date of the letter requesting redetermination.

The respondent denied the petition for redetermination in an action letter dated July 25, 1994 and received on July 27, 1994 by the petitioners. The respondent's action was based upon the petitioners' failure to provide substantiation information originally requested from the petitioners in a letter from the auditor in March 1994.

The petitioners filed a petition for review with the Commission on September 27, 1994.

The respondent filed its answer to the petition for review on October 20, 1994, along with its first requests for interrogatories, production of documents, and admissions. These discovery requests were received by the petitioners on October 26, 1994. The request for admissions, in particular, contained explicit language referencing § 804.11, Stats., which indicated that the petitioners were required to respond to the respondent's requests within 30 days, and that failure to respond resulted in the deemed admission of items addressed in the respondent's request.

The 30-day period provided by statute for response by the petitioners to the respondent's various discovery requests expired on or around November 25, 1994, with no responses having been received by the respondent since service of discovery.

The respondent wrote letters to the petitioners on

November 29 and December 15, 1994, each indicating that no responses had been received by the respondent to the discovery requests received by the petitioners on October 26, 1994.

On December 27, 1994, the petitioners provided apparent responses to the respondent's discovery requests. The petitioners' responses to the interrogatories were in many instances non-substantive, i.e., the answers drew mere conclusions, some answers indicated the absence of knowledge of the location of documentary support--but the intention to pursue same--and some answers merely offered the petitioners' intention to respond to individual questions at a later date through the production of presumably self-explanatory documentary material. The petitioners responded to the respondent's request for admissions by indicating the petitioners' across-the-board denial of each request to admit.

No documents requested by the respondent were provided until after the respondent moved for summary judgment on the basis of the petitioners' deemed admissions.

No substantive production of documents took place until after the Commission's denial of the petitioners' motion to withdraw admissions. The petitioner's first attempt at producing any breadth of substantiation documents requested by the respondent came in the form of attachments to the September 1995 affidavit of petitioner Raymond A. Gunderson, provided in opposition to the respondent's motion for summary judgment.

The failure of the petitioners to provide timely responses to the respondent's request for admissions resulted in

the deemed admission of the requested statements under § 804.11 (1)(b), Stats., which means, for purposes of this action only, that the admitted matters are considered conclusively established by operation of statute. See, § 804.11(2), Stats.

Matters deemed admitted and considered conclusively proved include:

1. No documentation exists, or ever existed, to substantiate the employee business expenses respondent disallowed on [petitioners'] Schedule C deductions for the year 1991.
2. There was no business purpose for any of the employee business expenses claimed on [petitioners'] Schedule C for the year 1991.
3. Meal and entertainment expenses claimed on 1990 and 1991 Schedule C's of petitioners' income tax returns were not incurred for business purposes.
4. The auto sales business in the petitioners' 1991 income tax return concerned sale of the personal and business automobiles of the petitioners and their family members.
5. Raymond Gunderson had no profit motive in running the auto sales business shown on Schedule C of the petitioners' 1991 income tax return.
6. The \$614.00 in "business fees" claimed on the Schedule C for Raymond Gunderson's auto sales business in 1991 were paid to a member of the Gunderson family.

7-a. The legal and professional services claimed on the Schedule C's for Raymond Gunderson's auto sales business in the period under review were never paid.

7-b. [Petitioners] have no documents to show that the legal and professional services claimed on the Schedule C's for Raymond Gunderson's auto sales business in the period under review were paid.

7-c. The legal and professional services claimed on the Schedule C's for Raymond Gunderson's auto sales business for the period under review were for personal services unrelated to the auto sales business.

8. All vehicles reported sold on the Schedule C's for Raymond Gunderson's auto sales business in the period under review were used for personal purposes by members of the Raymond Gunderson family during the audit period.

9. [Petitioners] had insufficient basis in Spring Side Farms to allow for the losses claimed on [petitioners'] Wisconsin income tax returns for 1989 and 1990.

10. No Wisconsin income tax return was filed for ARS Properties for the year 1991.

11. No documentation exists, or ever existed, to substantiate the repair expenses claimed on the 1990 ARS Properties partnership return.

12. No documentation exists, or ever existed, to substantiate the claimed payments made on alleged loans to ARS Properties in the period under review.

13. No documentation exists, or ever existed, to substantiate the interest [petitioners] claimed to have paid on [petitioners'] Schedules A and C in the period under review and/or the interest [petitioners] claimed as an offset on [petitioners] Schedule B for 1989.

14. [Petitioners] have no valid objection to respondent's adjustment to the Farmland tax relief credit claimed on [petitioners'] 1989 and 1990 returns.

The petitioners' affidavit and submissions may not be interpreted to create a genuine issue of material fact concerning a matter which is conclusively established as a matter of law under § 804.11(2), Stats.

Under Wisconsin law, summary judgment can be based upon a party's failure to respond to a request for admission, and admission[s] may be sought which would be dispositive of an entire case. See, Bank of Two Rivers v. Zimmer, 112 Wis.2d 230 (1983); Schmid v. Olson, 111 Wis.2d 228 (1983).

There is no genuine issue of material fact in this matter, and the respondent has demonstrated that, under § 802.08(2), Stats., it is entitled to judgment as a matter of law.

Therefore,

IT IS ORDERED

That the respondent's motion for summary judgment is hereby granted, and that the respondent's action on the petitioners' petition for redetermination is hereby affirmed.

Dated at Madison, Wisconsin, this 1st day of April

1996.

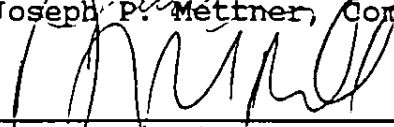
WISCONSIN TAX APPEALS COMMISSION

(Not participating)

Mark E. Musolf, Chairperson



Joseph P. Mettner, Commissioner



Don M. Millis, Commissioner

ATTACHMENT:
"Notice of Appeal Information"