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STATE OF WISCONSIN : TAX APPEALS COMMISSION

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RICHARD F. HOSEK \*  
204 N. Walnut Avenue \*  
Marshfield, WI 54449 \*

DOCKET NO. 93-I-438

Petitioner, \*

vs. \*

RULING AND ORDER

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

Respondent. \*

\*\*\*\*\*

On January 5, 1994, the respondent, Wisconsin Department of Revenue, filed with this commission a Notice of Motion and Motion to Dismiss the above-entitled matter due to petitioner's alleged failure to prosecute his appeal, as well as his alleged failure to respond to the Department's discovery requests. The respondent in its Notice of Motion and Motion also requests the reasonable costs of bringing its motion under the provisions of § 804.12(1)(c) and/or (2)(b) of the Wisconsin Statutes.

The respondent's motion was heard by telephone at 1:30 p.m. on February 25, 1994, with Commissioner Thomas R. Timken presiding.

The respondent, Wisconsin Department of Revenue, appeared by its attorney, Linda M. Mintener.

The petitioner, Richard F. Hosek, did not appear despite being given proper notice.

After considering the entire record before it, this commission hereby finds and rules as follows:

MAR 1994  
State of Wisconsin  
Department of Revenue  
Received  
Legal Staff  
*[Signature]*

avoid litigation on the issue, the documents requested must be provided immediately. Respondent received no response of any sort whatsoever from either Richard F. Hosek or any representative to said letter, nor to the above discovery requests.

6. On December 1, 1993, the Tax Appeals Commission held a scheduling conference in the above matter, at which petitioner failed to appear and could not be reached by the Commission. In its Amended Scheduling Order Memorandum of said conference, the Commission stated that petitioner had not responded to respondent's discovery requests and that, if petitioner did not respond to said requests by January 1, 1994, the Commission would entertain a motion to dismiss the petition for review herein.

7. To this date, respondent has received no written responses to nor any of the documents requested in its requests for written interrogatories and production of documents, and has never had any communication whatsoever from either petitioner or any representative regarding any aspect of this case.

8. Petitioner has failed to communicate in any way with respondent regarding this matter.

9. The respondent needs the information requested in its discovery requests to either negotiate a settlement in this matter or, should this matter go to trial, to properly prepare its case and its responses to petitioner's allegations herein.

10. The petitioner's failure to comply with the respondent's discovery requests constitutes grounds for the dismissal of his appeal to this commission pursuant to the

provisions of § 804.12(2)(a)3 of the Wisconsin Statutes.

11. Because the petitioner, Richard F. Hosek, has not "substantially justified" his failure to comply with the respondent Wisconsin Department of Revenue's discovery requests, the respondent is entitled to "reasonable expenses, including attorney fees caused by his failure" under the terms of § 804.12(2)(b) of the Wisconsin Statutes.

12. The respondent has filed with this commission an itemized statement of its fees and costs totaling \$273.81, which this commission deems reasonable.

Therefore,

**IT IS ORDERED**

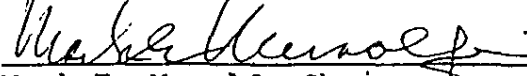
That the respondent's motion to dismiss the petitioner's petition for review is hereby granted pursuant to the provisions of § 804.12(2)(a)3 of the Wisconsin Statutes.

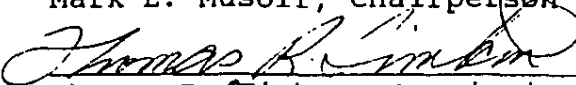
**IT IS FURTHER ORDERED**


That the respondent is awarded costs in the amount of \$273.81 under the provisions of § 804.12(2)(b) of the Wisconsin Statutes.

Dated at Madison, Wisconsin, this 21st day of March, 1994.

WISCONSIN TAX APPEALS COMMISSION

  
Mark E. Musolf, Chairperson

  
Thomas R. Timken, Commissioner

  
Joseph P. Mettner, Commissioner

ATTACHMENT: "Notice of Appeal Information"

1. That an income tax assessment was issued against petitioner on January 25, 1993, in the amount of \$5,772.68. On March 29, 1993, petitioner filed a petition for redetermination for the income tax assessment. On May 13, 1993, said petition for redetermination was denied due to petitioner's failure to provide the information requested by respondent, and a Notice of Amount Due was issued in the amount of \$5,968.58. Petitioner received the denial letter and Notice of Amount Due on June 4, 1993.

2. Petitioner appealed the action to the Wisconsin Tax Appeals Commission on or about August 2, 1993.

3. Respondent answered the petition for review on August 24, 1993. In respondent's cover letter with said answer, respondent requested that petitioner provide information pertinent to this matter. No response has ever been received by respondent to said informal request for information.

4. When petitioner failed to respond to respondent's above request for information, on October 7, 1993 respondent issued its first request for written interrogatories and production of documents to petitioner in this income tax matter, which was received by petitioner on October 23, 1993. The statutory time to respond to said requests expired on November 22, 1993, with no response of any sort whatsoever from petitioner.

5. When respondent received no response to its discovery requests, on November 24, 1993 respondent wrote to Richard F. Hosek stating that the statutory time to respond to respondent's discovery requests had passed and that, in order to