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STATE OF WISCONSIN
DEPARTMENT OF REVENUE

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STATE OF WISCONSIN
TAX APPEALS COMMISSION

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LA CROSSE RADIO, INC.
932 South 28th Street
LaCrosse, Wisconsin 54601

Petitioner,

vs.

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

Respondent,

* * * * *

DOCKET NO. 87-I-447

RULING AND ORDER

ON MOTION TO DISMISS

PETITION FOR REVIEW

Pursuant to this Commission's notice, this Commission convened in its hearing room at its offices in Madison, Wisconsin on February 26, 1991 at 1:30 p.m. for the purpose of hearing the respondent, Wisconsin Department of Revenue's motion for an order dismissing the petition for review in the above-entitled matter on the following grounds:

"a. The petitioner failed to file a proper petition for redetermination with the Wisconsin Department of Revenue within sixty days of the issuance of the assessment notice as required by sec. 71.12(1)(a), stats., and the assessment in issue is therefore final pursuant to sec. 71.12(3), stats., and

"b. Because petitioner failed to file a petition for redetermination with the Department of Revenue, no redetermination was made or issued by the Wisconsin Department of Revenue pursuant to sec. 71.12(1), stats., and therefore petitioner's petition

for review filed with the Wisconsin Tax Appeals Commission under date of November 20, 1987 is not properly filed pursuant to sec. 71.12(1)(c), stats., petitioner is not aggrieved by the Department of Revenue's determination as required by sec. 71.12(1)(c), stats.; and the Tax Appeals Commission lacks jurisdiction to review the grievances alleged by the petition for review pursuant to sec. 73.01(5), stats., and,

"c. In the alternative, portions of the petition for review filed by the petitioner under date of November 20, 1987, objecting to the filing of a delinquent tax warrant against petitioner under date of September 21, 1987 should be dismissed for the reason that the Tax Appeals Commission lacks jurisdiction under sec. 73.01(4) or (5), stats., to review or determine issues related to delinquent tax collections."

This motion was heard by Chairperson Thomas R. Timken.

The petitioner, LaCrosse Radio, Inc., appeared by its attorney, Joseph J. Connell of the law firm of Parke, O'Flaherty, Hein, Egan & Koby, Ltd.

The respondent, Wisconsin Department of Revenue, appeared by its attorney, Veronica Folstad, who moved for dismissal on the above stated grounds. The petitioner objected to the granting of the motion. The parties offered evidence, and arguments in support of and in opposition to the motion.

Having considered the pleadings, the record, the motion and the arguments of the parties thereon, this Commission finds, rules, and orders as follows:

FINDINGS OF FACT

1. By notice from the Wisconsin Department of Revenue dated June 22, 1987, an assessment of franchise tax was made against the petitioner in the amount of \$31,117.50 including interest.

2. Under date of July 15, 1987 a letter was mailed to the Wisconsin Department of Revenue by David A. Schlueter, Hawkins, Ash, Baptie & Company, Certified Public Accountants stating as follows:

Your notice dated June 22, 1987 of additional tax and interest due from LaCrosse Radio, Inc. has been referred to our office for reply. Based on the information that accompanied the notice, copies of which are enclosed, we are unable to determine how the taxable gain was arrived at. Also, all stockholders during 1983 were residents of Wisconsin and any gain reportable that year was included in a Wisconsin income tax return.

To help resolve this issue, could you please forward to our office the schedule referred to in the letter of explanation or any other computations used to compute the gain.

3. Under date of July 28, 1987, D. L. Rau, an auditor for the respondent, mailed a letter to David A. Schlueter, and forwarded the information requested. The letter also states, as follows:

"The letter of July 25, 1987 has not been treated as an appeal. If an appeal is wanted a letter of appeal must be filed."

4. No further correspondence was mailed to the Department of Revenue on behalf of petitioner after July 25, 1987 or July 28, 1987; that the 60-day period for filing a petition for redetermination of the assessment notice of June 22, 1987 expired on August 11, 1987; that no further notices were issued

by the Wisconsin Department of Revenue relative to the assessment issued on June 22, 1987 against petitioner and the assessment in issue was treated as a final assessment.

5. The petitioner, LaCrosse Radio, Inc., filed its petition for review objecting to the respondent, Wisconsin Department of Revenue's assessment with this Commission on November 20, 1987.

6. The procedure for appealing contested assessments is statutory and is contained in secs. 71.12 and 73.01(5) of the Wisconsin Statutes.

Section 71.12 Contested assessments and claims for refund.

"(1)(a) Except for refunds set off under s.71.105 in respect to which appeal is to the agency to which the debt is owed and except for refunds set off under s.46.255 in respect to which a hearing is held before the circuit court, any person feeling aggrieved by a notice of additional assessment, refund, or notice of denial of refund may, within 60 days after receipt of the notice, petition the department of revenue for redetermination. A petition or an appeal by one spouse is a petition or an appeal by both spouses. The department shall make a redetermination on the petition within 6 months after it is filed. (Emphasis added)

* * *

"(c) A person feeling aggrieved by the department's redetermination may appeal to the tax appeals commission by filing a petition with the clerk of the commission as provided by law and the rules of practice promulgated by the commission. If a petition is not filed with the commission within the time provided in s.73.01 or, except as provided in s.71.10(10)(e), if no petition for redetermination is made within the time provided the assessment, refund, or denial or refund shall be final and conclusive. (Emphasis added)

* * *

"(3) No person against whom an assessment of income tax has been made shall be allowed in any action either

as plaintiff or defendant or in any other proceeding to question such assessment unless the requirements of sub. (1) shall first have been complied with, . . ."

Section 73.01(5)(a) provides:

"APPEALS TO COMMISSION.

"(a) Any person who . . . who has filed a petition for redetermination with the department of revenue and who is aggrieved by the redetermination of the department may . . . , within 60 days after the redetermination, but not thereafter, file with the clerk of the commission a petition for review of the action of the department. . . ." (Emphasis added)

7. It is clear from the record that the petitioner did not file a petition for redetermination with the respondent as required by sec. 71.12(1)(a) of the Wisconsin Statutes and therefore the respondent was not able to review the petitioner's complaints and make a redetermination thereunder. Thus, there is no redetermination for this Commission to review under Section 71.12(1)(c) of the Wisconsin Statutes.

8. Because the petitioner did not follow the statutory procedure for appealing contested assessments as contained in Sections 71.12 and 73.01 of the Wisconsin Statutes, this Commission lacks jurisdiction to review its alleged grievances.

9. The respondent has shown good and sufficient grounds for granting its motion to dismiss.

Therefore,


IT IS ORDERED

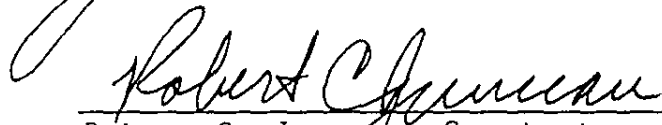
That respondent's motion to dismiss the herein petition for review is granted and the petition for review is dismissed.

Dated at Madison, Wisconsin, this 26th day of March,
1991.

WISCONSIN TAX APPEALS COMMISSION


Thomas R. Timken, Chairperson


John P. Morris, Commissioner


Robert C. Junceau, Commissioner

Attachment: "NOTICE OF APPEAL INFORMATION"