

MERGET SAND & GRAVEL CO INC 89S140 080789 TAC

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

STATE OF WISCONSIN  
DEPARTMENT OF REVENUE  
AUG 8 1989  
RECEIVED  
LEGAL DIVISION

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MERGET SAND & GRAVEL CO., INC. \*  
W218 N11546 Appleton Avenue \*  
Germantown, WI 53022 \*

Petitioner, \* DOCKET NO. 89-S-140

vs. \* RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE \* ON MOTION TO DISMISS  
P.O. Box 8933 \*  
Madison, WI 53708 \* PETITION FOR REVIEW

Respondent. \*

\*\*\*\*\*

Pursuant to its notice, this Commission convened in Room 120, Waukesha State Office Building, 141 N.W. Barstow Street, Waukesha, Wisconsin, at 9:30 a.m., on July 26, 1989, for the purpose of hearing the above-entitled matter on its merits. At the hearing, the respondent modified the assessment against petitioner and then made a motion to dismiss the petition for review in this matter on the following grounds:

That the petitioner failed to meet the personal appearance requirements of s. 71.12(3), Wis. Stats., and ss. TA 1.03 and 1.51(2), Wis. Adm. Code, as made applicable by s. 77.59 (6)(b), Wis. Stats.; therefore, this Commission lacks jurisdiction to hear the matters of which the petitioner complains in its petition for review.

The petitioner, Merget Sand & Gravel Co., Inc., failed to appear either by a corporate officer or by representative.

The respondent, Wisconsin Department of Revenue, appeared by its attorney, Allyn Lepaska.

The respondent introduced exhibits, modified the assessment against petitioner, made a motion to dismiss the petition for review on the grounds stated above, and offered oral argument in support of its motion.

Having considered the pleadings, the record, the motion and the argument of the respondent thereon, this Commission finds as

#### FINDINGS OF FACT

1. By notice dated November 3, 1987, the respondent made an assessment of sales and use tax against the petitioner in the amount of \$15,999.97, including interest and penalty.

2. On December 29, 1987, the petitioner filed a petition for redetermination with the respondent.

3. By notice dated December 19, 1988, the respondent denied in part the petitioner's petition for redetermination.

4. On February 20, 1989, the petitioner filed with this Commission a petition for review of respondent's partial denial.

5. This Commission served good and sufficient notice of hearing upon the petitioner at its last known address (see s. 73.01(5)(b), Wis. Stats.).

6. The petitioner failed to appear at the hearing before this Commission and make full disclosure under oath.

7. The respondent refused to waive the appearance of the petitioner at the hearing.

8. Under the provisions of s. 71.12(3), Wis. Stats., and ss. TA 1.03 and 1.51(2), Wis. Adm. Code, as made applicable by s. 77.59(6)(b), Wis. Stats., the petitioner's failure to appear at the hearing before this Commission bars it from questioning the assessment at issue.

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


Therefore,

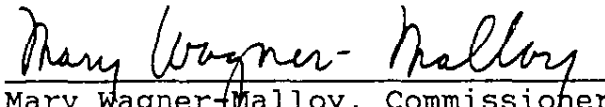
**IT IS ORDERED**

That the assessment herein be modified and the petition for review be dismissed.

Dated at Madison, Wisconsin, this 7th day of August, 1989.

WISCONSIN TAX APPEALS COMMISSION

  
Thomas R. Timken, Chairperson

  
Mary Wagner-Malloy, Commissioner

  
John P. Morris, Commissioner

pc: Petitioner  
Respondent

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"