

01006081204013

PRINTPACK INC 91M446 466 112293 TAC

Legal Library



STATE OF WISCONSIN
TAX APPEALS COMMISSION

PRINTPACK, INC. P.O. Box 98309 Atlanta, GA 30359	*	DOCKET NO. 91-M-446
	*	DOCKET NO. 91-M-466
Petitioner,	*	
vs.	*	RULING AND ORDER
WISCONSIN DEPARTMENT OF REVENUE P.O. Box 8933 Madison, WI 53708	*	
	*	
Respondent.	*	

On December 17, 1991, the respondent, Wisconsin Department of Revenue, filed with this commission a Notice of Motion in each of the above-referenced matters requesting that an order be issued dismissing Docket No. 91-M-446 "for the reason that the action of the Wisconsin Department of Revenue in adding the personal property as omitted taxable property in 1990 is proper because no exemption for waste treatment property under sec. 70.11 (21), Stats., was issued due to Printpack's failure to timely apply for exemption by a date not later than January 15 of the year in which a new exemption is requested and therefore this Commission lacks jurisdiction to review the alleged grievances of the petitioner" and Docket No. 91-M-466 for the following alleged reasons:

- " 1. The Wisconsin Tax Appeals Commission lacks jurisdiction to review the alleged grievance filed by Printpack, Inc., because a proper objection to the

APPROVED BY THE BOARD OF ASSESSORS
MAY 13 1993

respondent's assessment of 1989 omitted personal property issued to Daniels Packaging Co., on September 18, 1991, was not filed with the Board of Assessors within 60 days of issuance as required by sec. 70.995(8)(b), Stats., and thus, the assessment became final and conclusive. Also, Printpack, Inc., did not file with the Board of Assessors, as authorized agent of Daniels Packaging Co., Inc., a proper objection to respondent's assessment of omitted personal property issued September 18, 1991, within 60 days of issuance as required by sec. 70.995(8)(b), Stats.; and

2. Printpack, Inc., has no legal standing to file a petition for review under sec. 73.01(5)(a), Stats., because respondent's assessment of 1989 omitted personal property was issued on September 18, 1991, to Daniels Packaging Co., Inc., at 114 West Kemp Street, P.O. Box 220, Rhinelander, Wisconsin 54501, who in 1989, was owner of the personal property in question, and since the assessment was not issued to Printpack, Inc., it is precluded from filing an appeal with this Commission."

The petitioner, Printpack, Inc., has appeared in this proceeding by Attorney F. Patrick Matthews of the law firm of Weiss, Berzowski, Brady & Donahue; the respondent, Wisconsin Department of Revenue, has appeared by Attorney Sheree Robertson.

Both parties have filed affidavits and briefs in support of their various positions, and on May 13, 1993, the petitioner

filed a Motion for Leave to File Out of Time and a Motion for Summary Judgment. Those motions will not be considered herein for the reasons expressed.

After carefully considering the affidavits and briefs of counsel, this commission hereby finds and rules as follows:

The personal property in question and its proper classification is a Reeco oxidizer/incinerator (hereinafter referred to as "incinerator").

In late 1988, Daniels Packaging Company, Inc. (hereinafter referred to as "Daniels") installed the incinerator in its plant in Rhinelander, Wisconsin. It installed it for environmental reasons and before its installation operated its manufacturing process without it. Daniels was the owner of this equipment on January 1, 1989.

In May of 1989, the petitioner, Printpack, Inc., purchased Daniels and all its assets, including the incinerator in question. Daniels is no longer in business.

In September 1990, the respondent, Wisconsin Department of Revenue, conducted a field audit of the petitioner, Printpack, Inc.'s, books and records in the city of Rhinelander and discovered that the incinerator was listed by the petitioner as exempt manufacturing machinery and equipment on its reporting Schedule M Form filed by the petitioner with the respondent.

After investigation and review, the respondent concluded that the incinerator did not qualify for exemption from property tax as claimed because it was not used directly and exclusively in

the manufacturing process, but that it might qualify as exempt waste treatment equipment provided the necessary qualification steps were taken, including the required Form PA-008 being filed with and approved by the respondent.

The incinerator subsequently qualified for exemption as waste treatment equipment for 1991 and thereafter (but not 1989 and 1990) after the petitioner complied with statutory requirements, including the filing and approval of a Form PA-008 with the respondent.

No timely request for waste treatment exemption was made by Daniels for the 1989 assessment year or by Printpack, Inc., for the 1990 assessment year.

On September 18, 1991, the respondent issued a notice of 1989 omitted personal property tax against Daniels which subjected the incinerator to tax for that year. The amount of valuation used is not in issue. The assessment was issued against Daniels, not the petitioner, because Daniels was the owner of the equipment in question in that year.

Daniels did not file with the State Board of Assessors within the 60 days provided in sec. 70.995(8)(b), Wis. Stats., a proper objection to the respondent's assessment of omitted personal property issued on September 18, 1991.

On June 20, 1991, the respondent issued a notice of 1990 omitted personal property tax assessment against Printpack, Inc., which subjected the incinerator to tax for that year. Once again, the amount of valuation used is not in issue.

On July 9, 1991, the petitioner filed an appeal of these actions with the State Board of Assessors, which were denied on September 4, 1991. Those denials have been appealed to this commission.

Sections 70.11(21)(a), (c), and (f) of the Wisconsin Statutes provide as follows:

(a) All property purchased or constructed as a waste treatment facility used for the treatment of industrial wastes as defined in s. 144.01(5) or air contaminants as defined in s. 144.30(1) but not for other wastes as defined in s. 144.01(8) and approved by the department of revenue for the purpose of abating or eliminating pollution of surface waters, the air or waters of the state if that property is not used to grow agricultural products for sale. For the purposes of this subsection "industrial waste" also includes wood chips, sawdust and other wood residue from the paper and wood products manufacturing process that can be used as fuel and would otherwise be considered superfluous, discarded or fugitive material. The department of natural resources and department of health and social services shall make recommendations upon request to the department of revenue regarding such property. All property purchased or upon which construction began prior to July 31, 1975, shall be subject to s. 70.11(21), 1973 stats.

(c) A prerequisite to exemption under this subsection is the filing of a statement on forms prescribed by the department of revenue with the department of revenue. This statement shall be filed not later than January 15 of the year in which a new exemption is requested or in which a waste treatment facility that has been granted an exemption is retired, replaced, disposed of, moved to a new location or sold. [Emphasis added]

(f) If property about which a statement has been filed under par. (c) is determined to be taxable, the owner may appeal that determination to the tax appeals commission under s. 73.01(5)(a), except that assessments under s. 76.07 shall be appealed under s. 76.08.

The petitioner did not comply with the requirements of this statute. The term "prerequisite" as used above cannot be ignored or temporized by this commission.

Section 70.995(8)(c) of the Wisconsin Statutes provides
as follows:

(c) All objections to the amount, valuation or taxability of real or personal property shall be first made in writing on a form prescribed by the department of revenue and shall be filed with the state board of assessors within the time prescribed in par. (b). A \$45 fee shall be paid when the objection is filed unless a fee has been paid in respect to the same piece of property and that appeal has not been finally adjudicated. The objection is not filed until the fee is paid. Neither the state board of assessors nor the tax appeals commission may waive the requirement that objections be in writing.
[Emphasis added]

Neither Daniels nor the petitioner complied with the procedural requirements contained in sec. 70.995(8)(c) of the Wisconsin Statutes. This statutory language is clear and unambiguous -- "Neither the state board of assessors nor the tax appeals commission may waive the requirement ..."

The respondent, Wisconsin Department of Revenue, has shown good and sufficient grounds for the granting of its motion to dismiss.


Therefore,


IT IS ORDERED


That the respondent's motion to dismiss the petitions for review in Docket Nos. 91-M-446 and 91-M-466 is hereby granted and the petitions for review dismissed for the reasons stated above.

Dated at Madison, Wisconsin, this 22nd day of November,
1993.

WISCONSIN TAX APPEALS COMMISSION


Mark E. Musolf, Chairperson


Thomas R. Timken, Commissioner


Joseph P. Mettner, Commissioner

ATTACHMENT:
"Notice of Appeal Information"