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SEIDLER GENE W 94I73 092295 TAC



FILED
Wisconsin Tax Appeals Commission
SEP 22 1995
Darlene Skolaski
Deputy Clerk

11/19/96
7A Sep

STATE OF WISCONSIN
TAX APPEALS COMMISSION

GENE W. SEIDLER
606 East Otjen Street
Milwaukee, WI 53207-1613

*
* DOCKET NO. 94-I-73

Petitioner,

vs.

* RULING AND ORDER

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

*
*

Respondent.

1785

SEP 1995
Wisconsin
Department of Revenue
Legal Staff

JOSEPH P. METTNER, COMMISSIONER:

The above-entitled matter was heard in Milwaukee, Wisconsin on November 22, 1994.

The petitioner represented himself. The respondent was represented by Attorney Michael J. Buchanan.

At the conclusion of the petitioner's presentation of evidence, the respondent's attorney moved to dismiss the petition for review under § 805.17, Stats., alleging that the petitioner had failed to provide evidence sufficient to overcome the presumptive correctness of the respondent's assessment.

Subsequent to the hearing date, the respondent submitted written arguments in support of its position.

Having considered the record and arguments of the parties in their entirety, this commission finds, concludes, and orders as follows:

- 1. The petitioner operated a sole proprietorship known

as Seidler Tool Company during the years 1988, 1989, 1990, and 1991 ("the period under review"). The petitioner reported his income on a cash basis.

2. During 1992 and 1993, the respondent conducted a field audit of the petitioner's income tax returns for the years during the period under review.

3. In the course of its field audit, the respondent requested that business records be produced by the petitioner in order to verify business income and expenses during the period under review. The respondent has verified that written inquiries were issued to the petitioner for these records, requesting checking statements, cancelled checks, financial books of entry, and invoices. The written requests were dated March 10 and March 26, 1992. Additionally, the respondent made telephone inquiries in an attempt to obtain the requested business records of the petitioner and attempted unsuccessfully on at least one occasion to receive the petitioner's written authorization to obtain bank statements which the petitioner did not, or would not, produce.

4. On May 20, 1992, the petitioner provided the extent of records allegedly in his possession to the respondent's auditor and, by his signature, acknowledged the return of those records on the following day. Missing from the records provided to respondent were bank statements from six months during the period under review which were needed to verify income for those months and receipts relating to several business expenses claimed by the petitioner.

These records have never been provided to the respondent, and no substitute documents have been produced to enable verification of the underlying income and expenses reported by the petitioner.

5. On April 22, 1993, the respondent issued an assessment notice to the petitioner in the amount of \$ 10,303.47, for additional taxes, penalties, and interest due. On the same date, the respondent issued a Notice of Better Records Required to the petitioner. The assessment was primarily based upon additional estimates of business income for those months during the period under review for which the petitioner could not produce bank statements for his business checking account and disallowed business expenses deducted by the petitioner for which receipts were not provided.

6. In a letter dated June 20, 1993, the petitioner petitioned the respondent for a redetermination of its assessment. In his letter, the petitioner cited several grounds for his disagreement with the respondent concerning the assessment. In particular, the petitioner maintained that the respondent's auditor had possession of all of his bank statements for the period under review, that the respondent never requested receipts for his business expenses, and that the respondent's assessment was based upon estimates of income.

7. On December 15, 1993, the respondent issued an action letter to the petitioner in which the petition for redetermination was denied.

8. On February 17, 1994, petitioner appealed the

respondent's denial to this commission.

9. The respondent has shown good and sufficient grounds for the granting of its motion under § 805.17, Stats., because the petitioner has failed to demonstrate sufficient facts to indicate that the respondent erred in making its assessment under § 71.74 (3), Stats., according to its best judgment. See, Woller v. Department of Taxation, 35 Wis.2d 227 (1967).


Therefore,

IT IS ORDERED


That the respondent's motion to dismiss is granted, and its action on the petitioner's petition for redetermination is hereby affirmed.

Dated at Madison, Wisconsin, this 22nd day of September, 1995.

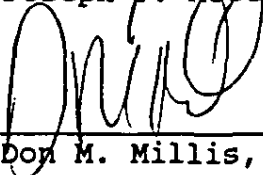
WISCONSIN TAX APPEALS COMMISSION



Mark E. Musolf, Chairperson



Joseph P. Metzner, Commissioner



Don M. Millis, Commissioner

ATTACHMENT:
"Notice of Appeal Information"