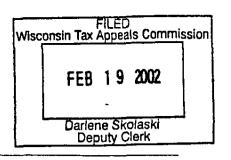
ARKIN ANDREW OOI267 021902 TAC

(1) (1) (1) (1) (1) (1) Legal Library

STATE OF WISCONSIN

TAX APPEALS COMMISISON



ANDREW J. ARKIN

2052 Lincoln Parkway, Suite 1601 Chicago, IL 60614,

DOCKET NO. 00-I-267

Petitioner,

VS.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE P.O. Box 8907 Madison, WI 53708-8907,

Respondent.

FEB 2002 State of Wisconsin Department of Revenue Received Legal Staff

DON M. MILLIS, ACTING CHAIRPERSON:

This matter came before the Commission for trial on February 7, 2002. Petitioner, who represents himself, failed to appear. Respondent appeared by Attorney Michael J. Buchanan. At the conclusion of the hearing, respondent moved to dismiss the petition for review based on petitioner's failure to appear and petitioner's failure to prosecute his appeal.

Based on the evidence received at trial, the representations of respondent, and the entire record in this matter, the Commission hereby finds, concludes, and orders as follows:

RULING

Under the date of March 16, 2000, respondent issued an income tax assessment against petitioner in the principal amount of \$13,862.45, plus \$2,699.16 in

interest. Petitioner was assessed as a person responsible for the income tax delinquency of MSB Corporation.

Petitioner filed a timely petition for redetermination with respondent objecting to the assessment. Under the date of October 18, 2000, respondent denied the petition for redetermination. Petitioner then filed a petition for review with the Commission.

The Commission convened a number of telephone status conferences so that this matter could be resolved. By order of the Commission of March 22, 2001, discovery was to be completed by June 22, 2001, and shortly thereafter, on June 27, 2001, the parties were processed to participate in a telephone scheduling and status conference. Petitioner failed to appear at the June 27, 2001, telephone conference.

Petitioner participated in a telephone scheduling conference on July 23, 2001. As a result of this conference, the Commission issued an order on July 24, 2001, which, among other things, contained the following orders:

- 1. No later than September 28, 2001, each party was ordered to serve on the other party and file with the Commission copies of all exhibits the party plans to introduce and the names and addresses of all witnesses the party plans to call at the hearing in this matter. Exhibits not exchanged and witnesses not disclosed will not be admitted or permitted to testify except by leave of the Commission for good cause shown.
- 2. The parties were to appear at a telephone conference set for October 24, 2001, at which time they were to be prepared to schedule a trial date.
- 3. Failure to abide by the terms of the order may result in sanctions against that party to the extent permitted by law.

Petitioner failed to file with the Commission or serve on respondent the exhibits he planned to use at trial and the names and addresses of witnesses he planned to call at trial. At a status conference held on December 4, 2001, the parties agreed to a trial date of February 7, 2002. Petitioner acknowledged that he would not be permitted to introduce any exhibits and not be allowed to call any witnesses, other than himself, to testify on his behalf.

Petitioner failed to appear at trial. Petitioner did not contact the Commission prior to the hearing or after the hearing to obtain a continuance or to explain his absence. At the hearing, respondent moved the Commission to dismiss the petition for review pursuant to section 71.89(2) of the Statutes, on the basis that petitioner failed to appear at the hearing, and pursuant to section 805.03 of the Statutes, on the basis that petitioner failed to prosecute his appeal.

The record contains ample grounds to grant each of respondent's motions. Moreover, it appears to the Commission that petitioner realized that he had no grounds upon which to base his objection to the assessment, and that he used these proceedings primarily for delay. Therefore, the Commission assesses an additional \$500 against petitioner, pursuant to section 73.01(4)(am) of the Statutes.

ORDERS

 Respondent's motion is granted, and the petition for review is dismissed based on petitioner's failure to appear at trial and failure to prosecute his appeal; and 2. The Commission assesses an additional \$500 against petitioner, on the basis that petitioner's position in this matter is groundless and that petitioner maintained these proceedings primarily for delay.

Dated at Madison, Wisconsin, this 19th day of February, 2002.

WISCONSIN TAX APPEALS COMMISSION

Don M. Millis, Acting Chairperson

Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"