

STATE OF WISCONSIN
TAX APPEALS COMMISSION

PAUL AND WENDY DOCTER,

DOCKET NO. 05-I-58

Petitioners,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DAVID C. SWANSON, COMMISSIONER:

This case comes before the Commission on the motion of respondent, the Wisconsin Department of Revenue (“Department”), to dismiss the petition for review on the basis that petitioners have failed to comply with Commission orders and have otherwise failed to prosecute their appeal, pursuant to Wis. Stat. § 805.03 and Wis. Admin. Code § TA 1.39.

Petitioners appear *pro se* and have not responded to the motion. Attorney Michael J. Buchanan represents the Department.

Having considered the entire record, the Commission hereby finds, rules, and orders as follows:

JURISDICTIONAL AND MATERIAL FACTS

1. On or about November 1, 2004, the Department issued an assessment of individual income tax and interest to petitioners in the approximate amount of \$13,656.97 for tax years 2000, 2001 and 2002.

2. On or about December 24, 2004, petitioners filed with the Department a petition for redetermination of the assessment.

3. The Department denied the petition for redetermination.¹

4. On April 11, 2005, petitioners filed their petition for review with the Commission.

5. On April 12, 2005, the Commission sent its acknowledgment of receipt of the petition to petitioners, with a copy to the Department. That acknowledgment stated as follows:

At all times while a petition is pending before the Commission, petitioner is required to keep the Commission informed of petitioner's current address, Wis. Stat. § 73.01(5)(b), and telephone number. (emphasis in original.)

6. On May 10, 2005, the Department filed its answer to the petition.

7. On July 20, 2005, the Commission issued a notice scheduling a telephone conference in this case for September 29, 2005, which stated in part:

If the Commission is unable to reach you or your representative by telephone, the conference will proceed, and the petition for review will be subject to dismissal, pursuant to Wis. Stat. §§ 802.10(7) and 805.03.

8. Both parties appeared at the scheduled telephone status conference held on September 29, 2005.

9. On October 4, 2005, the Commission issued a Status Conference Memorandum and Order scheduling a telephone conference for November 30, 2005.

The Memorandum ordered in part that:

¹ Neither party has filed with the Commission any copies of the original notice of assessment, petition for redetermination or notice of action denying the petition for redetermination. However, neither party has questioned the Commission's jurisdiction in this matter.

The parties or their representatives shall participate in the next-scheduled status conference. Failure to comply with the terms of this order may result in any sanction authorized by law, including dismissal of the petition for review.

10. Both parties appeared at the scheduled telephone status conference held on November 30, 2005.

11. On December 1, 2005, the Commission issued a Status Conference Memorandum and Order scheduling a telephone conference for January 10, 2006. The Memorandum ordered in part that:

The parties or their representatives shall participate in the next-scheduled status conference. Failure to comply with the terms of this order may result in any sanction authorized by law, including dismissal of the petition for review.

12. On January 10, 2006, both parties appeared at the scheduled telephone status conference. During the conference, the parties indicated that they had reached a settlement in this case and that a stipulation and draft order to that effect would be filed shortly.

13. On March 28, 2006, the Department sent petitioners a letter, with a copy to the Commission, requesting that petitioners sign and return the settlement stipulation sent to them on January 12, 2006.

14. On May 17, 2006, the Commission issued a Notice informing both parties that a telephone status conference would be held on June 7, 2006, unless a settlement stipulation was filed with the Commission before that date.

15. No settlement stipulation was filed in this case.

16. On June 7, 2006, petitioners failed to appear at the scheduled

telephone status conference.

17. On June 8, 2006, the Commission issued a Status Conference Memorandum and Order scheduling a telephone conference for July 12, 2006. The Memorandum and Order was sent to petitioners at their address of record with the Commission and ordered in part that:

Petitioners or their representative shall participate in the next-scheduled status conference. **Failure to comply with the terms of this order may result in any sanction authorized by law, including dismissal of the petition for review on the Commission's own motion based upon a failure to prosecute the petition.** (emphasis in original)

18. Petitioners never informed the Commission that their address of record with the Commission had changed.

19. On July 10, 2006, the June 8, 2006 Status Conference Memorandum and Order sent to petitioners was returned to the Commission by the U.S. Postal Service marked "Not here" and "Not Deliverable as Addressed - Unable to Forward."

20. On July 12, 2006, petitioners failed to appear at the scheduled telephone status conference.

21. During the July 12, 2006 status conference, Attorney Buchanan made an oral motion to dismiss the petition based on petitioners' failure to prosecute their petition and failure to comply with the Commission's scheduling orders.

22. On July 18, 2006, the Commission issued a Status Conference Memorandum and Briefing Order directing petitioners to file a response to the Department's motion by August 4, 2006. The Memorandum and Briefing Order was sent to petitioners at their address of record with the Commission.

23. On August 9, 2006, the July 18, 2006 Status Conference Memorandum and Briefing Order sent to petitioners was returned to the Commission by the U.S. Postal Service marked "moved" and "Not Deliverable as Addressed - Unable to Forward."

24. Petitioners did not file a response to the Department's motion.

RULING

Assessments made by the Department are presumed to be correct, and the burden is on a petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984); Wis. Stat. § 77.59(1). In order to prove that an assessment is incorrect, a petitioner must begin by prosecuting his or her appeal and complying with the Commission's orders.

Petitioners filed their petition for review with the Commission on April 11, 2005. Although petitioners initially pursued their petition, they now appear to have abandoned it. Since early 2006, petitioners have: (1) failed to comply with Commission orders to appear at telephone status conferences scheduled for June 7, 2006 and July 12, 2006; (2) failed to comply with the Commission's Briefing Order dated July 18, 2006, which ordered petitioners to respond to the Department's motion to dismiss the petition for review; and (3) failed to inform the Commission of their current address. The Commission no longer has a functioning mailing address for petitioners, and the Commission's last two attempted communications with petitioners have been returned to the Commission by the U.S. Postal Service as undeliverable. Petitioners'

demonstrated lack of interest in pursuing their own petition for review constitutes a failure to prosecute their appeal, and their repeated failure to comply with Commission orders similarly constitutes independent grounds for dismissal. *See* Wis. Stat. §§ 73.01(5)(b) and 805.03; Wis. Admin. Code § TA 1.39. Therefore, the Commission grants the Department's motion to dismiss.

ORDER

The Department's motion is granted, and the petition for review is dismissed.

Dated at Madison, Wisconsin, this 19th day of October, 2006.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"