**STATE OF WISCONSIN**

**TAX APPEALS COMMISSION**

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**BRADLEY AND ANITA FARNWORTH,** **DOCKET NO. 05-I-217**

Petitioners,

vs. **DECISION AND ORDER**

**WISCONSIN DEPARTMENT OF REVENUE,**

Respondent.

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**JENNIFER E. NASHOLD, COMMISSIONER:**

This matter came before the Commission for a hearing on December 4, 2006, in Madison, Wisconsin. Petitioners, Bradley and Anita Farnworth, appeared *pro se*. Respondent, Wisconsin Department of Revenue, appeared by Attorney Donald J. Goldsworthy. The parties presented testimony and evidence.

Having considered the entire record before it, the Commission finds, decides, concludes, and orders as follows.

## FINDINGS OF FACT[1]

1. By Notice of Field Audit Action dated November 9, 2004, petitioners were assessed in the amounts of $317.44 for tax year 2001 and $5,986.93 for

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[1] At the close of the hearing on December 4, 2006, the Commission ordered briefing; therefore, neither the Department nor petitioners presented closing arguments incorporating the evidence introduced at the hearing. Despite the Commission's Order, petitioners failed to submit a brief, which resulted in the Department not filing a response brief. Because there has been no briefing or closing argument summarizing and incorporating the evidence as it relates to the parties' theories of this case, and in light of the Commission's holding in this case, the facts set out in this section are cursory.

tax year 2002, including penalties and interest calculated to January 8, 2005, for a total amount of $6,304.37.

2. Tax year 2001 relates to the Department's disallowance of petitioners' claimed bowling business expenses.

3. Tax year 2002, which constitutes the bulk of the assessed amount, involves the following adjustments: (1) the Department's disallowance of petitioners' claimed bowling business expenses; (2) the Department's disallowance of petitioners' claimed vehicle depreciation consisting of a 30% bonus depreciation and depreciation under I.R.C. § 179; (3) the Department's disallowance of petitioners' expenses claimed for petitioners' business, World Financial Group, Inc.; and (4) the Department's adjustment to the percentages petitioners claimed for business use of their home from 39.62%, claimed by petitioners, to 23.07%, determined by the Department.

4. Petitioners filed a petition for redetermination with the Department dated January 7, 2005 and date-stamped by the Department on January 11, 2005.

5. The Department issued a Notice of Action dated October 5, 2005, granting petitioners' petition for redetermination in part and denying it in part, modifying the amounts alleged due to $332.32 for tax year 2001 and $6,597.05 for tax year 2002, including penalties and interest calculated to December 5, 2005, for a total assessed amount of $6,929.37.

6. The increase for tax year 2001 was based solely on the accumulation of additional interest between the November 9, 2004 Notice of Field Audit Action and the October 5, 2005 Notice of Action. The amended amounts for 2002

reflected not only the additional accumulation of interest and slight increase in the penalty amount, but also a reduction in the amount assessed for vehicle depreciation and an increase in the amount assessed for petitioners' business use of their home. The expenses disallowed for petitioners' claimed bowling business and for World Financial Group, Inc. remained the same.

7. Petitioners filed a petition for review with the Commission by certified mail date-stamped December 15, 2005 and received by the Commission on December 16, 2005.[2]

8. Petitioners were issued a no-change letter from the Internal Revenue Service (I.R.S.) for tax year 2001, dated September 18, 2003.

**CONCLUSION OF LAW**

Petitioners have failed to meet their burden of establishing that the amounts assessed by the Department were in error.

**OPINION**

Assessments made by the Department are presumed to be correct, and the burden is upon petitioners to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Puissant v. Dep't of Revenue,* Wis. Tax Rptr.

[2] Because the petition for review was filed with the Commission on December 15, 2005 and there is no indication in the record as to when petitioners actually *received* the Department's Notice of Action dated October 5, 2005, the presiding Commissioner was concerned as to whether petitioners' petition for review was filed within the statutory 60-day time limit for filing appeals with the Commission. *See* Wis. Stat. § 73.01(5)(a). Therefore, the presiding Commissioner inquired at the hearing as to whether either party objected to the Commission's jurisdiction in this matter. Because both parties conceded the Commission's jurisdiction, the Commission assumes that the Notice of Action was received by petitioners some time after October 15, 2005 because if it was received on or prior to that date, petitioners' petition for review with the Commission would have been outside the 60-day time limitation for filing a petition for review, the Commission would not have jurisdiction over this case and the Commission would be required to dismiss the appeal.

(CCH) ¶202-401 (WTAC July 5, 1984); Wis. Stat. § 77.59(1). Tax exemptions, deductions, and privileges are matters of legislative grace and will be strictly construed against the taxpayer. *Fall River Canning Co. v. Dep't of Taxation*, 3 Wis. 2d 632, 637, 89 N.W.2d 203 (1958).

Petitioners did not present any legal authority or coherent argument challenging any of the Department's adjustments or disallowances. As stated, they did not even bother to make a closing argument or submit a brief following up on any evidence or points they attempted to make at trial. Indeed, it appears that petitioners have abandoned their appeal.

Petitioners asserted in their opening statement that the "no-change" letter issued by the I.R.S. demonstrates that the Department's assessments were in error. However, the only evidence introduced with regard to the I.R.S.'s determinations is Petitioners' Exhibit C, which is a no-change letter for tax year 2001, and does not address tax year 2002, which involved the bulk of the assessed amount in this case. Tax year 2001 concerned only the Department's disallowance of bowling expenses, only $332.32 of the $6,929.37 at issue here. In addition, petitioners do not make any legal argument as to why the Department was obligated to follow the I.R.S.'s determinations for 2001 with regard to the bowling expenses the Department disallowed for both 2001 and 2002.

The Explanation provided in the Department's Notice of Field Audit Action dated November 9, 2004 states: "The deductions claimed for bowling supplies, travel, and equipment is disallowed, since the taxpayer has failed to show that it [sic]

constitutes an ordinary and necessary business expense." (Exh. 1, p. 5) At the hearing in this case, the Department's attorney stated that petitioners had not shown that the bowling activities were engaged in for profit.

Section 162 of the Internal Revenue Code (I.R.C.) allows deductions for "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." The I.R.C. does not define trade or business for purposes of Section 162. However, the United States Supreme Court has stated that "to be engaged in a trade or business, the taxpayer must be involved in the activity with continuity and regularity and . . . the taxpayer's primary purpose for engaging in the activity must be for income or profit. A sporadic activity, a hobby, or an amusement diversion does not qualify." *Commissioner v. Groetzinger*, 480 U.S. 23, 35 (1987).

Treasury Regulations § 1.183-2(b) provides a non-exhaustive list of factors to consider when determining whether an activity is engaged in for profit: (1) the manner in which the taxpayer carries on the activity; (2) the expertise of the taxpayer or his advisors; (3) the time and effort expended by the taxpayer in carrying on the activity; (4) the expectation that assets used in the activity may appreciate in value; (5) the success of the taxpayer in carrying on other similar or dissimilar activities; (6) the taxpayer's history of income or losses with respect to the activity; (7) the amount of occasional profits, if any, which are earned; (8) the financial status of the taxpayer; and (9) elements of personal pleasure or recreation. Treasury Reg. § 1.183-2(b) and the *Groetzinger* analysis have been previously employed by the Commission in determining whether an activity was a trade or business engaged in for profit. *See e.g., Calaway v.*

*Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-856 (WTAC 2005); *Kevo v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-439 (WTAC 1999).

Petitioners have failed to demonstrate that Mr. Farnsworth's bowling activities constituted a business or that the claimed expenses were ordinary and necessary. Indeed, they introduced little or no evidence on this issue[3] and their argument consisted of mere statements that Mr. Farnworth regularly engaged in bowling competitions and that he had a trainer, which is inadequate to contradict the Department's disallowance of bowling business expenses.

Regarding the Department's disallowance of petitioners' claimed vehicle depreciation, petitioners conceded that their 2002 tax return claimed vehicle expenses based on both the standard mileage rate, which the Department allowed, as well as I.R.C. § 179 depreciation and bonus depreciation, which the Department disallowed. They also appeared to concede that it was impermissible to use both methods simultaneously. Petitioners' position, to the extent it could be discerned, was that it was their tax preparer's fault and/or that the Department should have chosen the depreciation method that petitioners preferred rather than using the standard mileage rate. No legal or coherent argument was offered for such arguments and petitioners' suggestions or assertions at trial do not constitute a sufficient basis to challenge to the Department's disallowance of the claimed vehicle depreciation.

[3] Petitioners had provided a proposed Exhibit E to the Commission and Department prior to the hearing date, which contained some information about Mr. Farnworth's bowling activities, but it was never introduced into evidence. Even if it had been, it does not appear that such evidence would have assisted petitioners.

The Department stated that the Schedule C expenses for World Financial Group were not substantiated and not allowable in any event. Petitioners did not meet their burden of establishing that any of the admitted evidence demonstrated otherwise. While there were some 2002 receipts which showed purchases of men's clothing items, petitioners did not demonstrate that the Department improperly disallowed such items because they were considered "ordinary street wear." Petitioners merely submitted a stack of receipts to the Commission and opposing counsel, many of which were for 2001, without showing why they were allowable expenses.

Finally, as to the expenses for business use of their home, petitioners claimed that 39.62% of their home was used for business purposes in 2002. The Department adjusted the claimed percentage from 39.62% to 23.07%. Petitioners failed to present sufficient evidence or argument that the Department's adjustment was in error.

Accordingly,

**IT IS ORDERED**

That the Department's action on petitioner's petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 21st day of March, 2007.

**WISCONSIN TAX APPEALS COMMISSION**

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Jennifer E. Nashold, Chairperson

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Diane E. Norman, Commissioner

David C. Swanson, Commissioner

ATTACHMENT: **"NOTICE OF APPEAL INFORMATION"**