

**STATE OF WISCONSIN**  
**TAX APPEALS COMMISSION**

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**BARBARA M. FULLERTON**  
1236 N. 86th Street  
Wauwatosa, WI 53226-3204

**DOCKET NO. 01-I-212**

**BARBARA M. FULLERTON INTERIORS, LTD.**  
1430 Underwood Avenue  
Wauwatosa, WI 53213,

**DOCKET NOS. 01-I-213  
and 01-S-214**

Petitioners,

vs.

**RULING AND ORDER**

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

Respondent.

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**DIANE E. NORMAN, COMMISSIONER:**

These matters come before the Commission for a ruling on the April 26, 2004 motion of respondent, Wisconsin Department of Revenue ("Department"), to dismiss the petitions for review filed on December 7, 2001 for failure of petitioners to prosecute, under Wis. Stat. §§ 802.10(7) and 805.03 and Wis. Admin. Code §§ TA 1.31 and 1.39.

Petitioners, Barbara M. Fullerton ("Ms. Fullerton") and Barbara M. Fullerton Interiors, Ltd. ("Fullerton Interiors"), are represented by Edward W. Hastreiter, CPA. The Department is represented by Attorney Michael J. Buchanan.

Having considered the motion, the affidavit and exhibits in support of the

motion, and the entire record herein, the Commission finds, rules, and orders as follows:

### **MATERIAL FACTS**

1. On July 14, 2000, the Department issued an individual income tax assessment to Ms. Fullerton for the years 1994 through 1997 in the total amount of \$22,504.62. By correspondence dated September 11, 2000, Ms. Fullerton, through a representative, filed a petition for redetermination with the Department, which was denied by the Department on October 8, 2001. Ms. Fullerton, through a representative, then filed a timely appeal to the Commission on December 7, 2001.

2. Also on July 14, 2000, the Department issued a franchise tax assessment to Fullerton Interiors, Ms. Fullerton's wholly-owned corporation, for the period June 1, 1994 through May 31, 1998 in the total amount of \$88,438.33. By correspondence dated September 11, 2000, Fullerton Interiors, through a representative, filed a petition for redetermination with the Department, which was denied by the Department on October 8, 2001. Fullerton Interiors, through a representative, then filed a timely appeal to the Commission on December 7, 2001.

3. Also on July 14, 2000, the Department issued a sales tax assessment to Fullerton Interiors for the period June 1, 1994 through May 31, 1998 in the total amount of \$31,458.28. By correspondence dated September 11, 2000, Fullerton Interiors, through a representative, filed a petition for redetermination with the Department, which was denied by the Department on October 8, 2001. Fullerton Interiors, through a representative, then filed a timely appeal to the Commission on December 7, 2001.

4. The first telephone status conference<sup>1</sup> was held on May 29, 2002. The issue in virtually all three cases required substantiation or documentation for petitioners to challenge the over 800 adjustments made by the Department in its tax assessments. During the conference, petitioners' then-representative admitted that he had little, if any, substantiation to contest the adjustments made by the Department. The parties agreed to discuss what little substantiation may exist and how these cases might be resolved. The parties were ordered to complete these actions in good faith and expeditiously.

5. The second telephone status conference was held on June 25, 2002. The parties had been unable to resolve their differences, and the cases were scheduled for a telephone pretrial conference on October 1, 2002 and a trial on October 8, 9, 10, and 11, 2002. The representative for petitioners again noted that petitioners may not have any substantiation to contest the adjustments made by the Department in the three cases.

6. On September 24, 2002, new counsel for petitioners requested that the trial be postponed to allow additional time to prepare for the trial. The request was granted, the trial was postponed, and the October 1, 2002 pretrial conference was converted to a status conference.

7. The third telephone status conference was held on October 1, 2002 with petitioners' new counsel, who requested more time to consider filing amended petitions for review.

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<sup>1</sup> All telephone status conferences refer to all three cases herein.

8. A fourth telephone status conference was held on November 26, 2002 in which counsel for petitioners was ordered to: file amended petitions for review within 60 days; confer with Ms. Fullerton and continue to provide detailed documentation to the Department person or persons designated by Attorney Buchanan; and try to provide the material in advance of the next telephone status conference. The Commission ordered that the foregoing actions proceed expeditiously and in good faith.

9. Counsel for petitioners filed amended petitions for review on January 24, 2003. The petitions state that documents exist to support petitioners' claims.

10. A fifth telephone status conference was held on February 4, 2003. Counsel for petitioners said that Ms. Fullerton's health problems had caused difficulties in getting documentation as ordered by the Commission. Counsel for petitioners said that he would be reviewing recently received documentation and providing it to the Department. The Commission ordered that the foregoing actions be conducted in good faith and expeditiously.

11. On March 5, 2003, counsel for petitioners moved to withdraw as representative. The motion was granted by the Commission on March 6, 2003.

12. A sixth telephone status conference was held on May 28, 2003. Ms. Fullerton's son participated on his mother's behalf and requested more time because of her medical problems.

13. A seventh telephone status conference was held on August 12, 2003. Petitioners' new representative, Mr. Hastrieter, stated that he would be reviewing

Ms. Fullerton's documentation of her claims. The Commission ordered that the actions of reviewing the documents be undertaken expeditiously and that originals of documents should be sent to Attorney Buchanan periodically, rather than waiting until all items are found. The Commission ordered that petitioners' representative review and send some of the documents to Attorney Buchanan prior to the next telephone conference.

14. At the eighth telephone status conference on October 14, 2003, petitioners' representative and the Department agreed to discuss settlement.

15. At the ninth telephone status conference held on January 14, 2004, petitioners' representative requested more time to evaluate these cases. The Commission ordered the foregoing actions to be completed by the next telephone conference.

16. At the tenth telephone status conference held on February 18, 2004, petitioners' representative proposed that he would suggest to Ms. Fullerton that she either accept the Department's settlement offer or withdraw her petitions and file a petition for compromise with the Department. The Commission ordered that these actions be undertaken expeditiously and in good faith.

17. The eleventh telephone status conference was held on March 24, 2004. Petitioners' representative planned to then meet with Ms. Fullerton on March 26, 2004 to discuss her options of either accepting the Department's settlement offer, withdrawing her appeals and filing a petition for compromise with the Department, or going to trial and attempting to prove all or many of the almost 800 adjustments in the

Department's assessments. The Commission ordered petitioners' representative to inform Attorney Buchanan of the progress made at the March 26, 2004 meeting.

18. On April 26, 2004, the Department filed a motion to dismiss petitioners' petitions for review.

19. A twelfth telephone status conference was held on April 28, 2004. Petitioners' representative reported that Ms. Fullerton was still planning on providing documentation to prove her petitions. The Commission ordered Ms. Fullerton to provide the documentation to her representative by May 12, 2004 or, if she failed to provide the documentation by May 12, 2004, to file a response to the Department's motion to dismiss the petitions for review by June 14, 2004.

20. On November 4, 2004, respondent informed the Commission that Ms. Fullerton did not provide the documents to the representative by May 12, 2004.

21. Ms. Fullerton did not respond to the Department's motion to dismiss by June 14, 2004.

### **RULING**

Since Ms. Fullerton filed her appeals to the Commission on December 7, 2001, more than 3 years ago, she has repeatedly failed to provide the necessary documentation or substantiation to challenge the more than 800 adjustments made by the Department in these tax assessments. The Commission and the Department have patiently waited for Ms. Fullerton to substantiate her challenges to the Department's tax assessments with tangible records, but she has failed to provide any records at all. In spite of holding 12 telephone conferences, these cases have not progressed toward any

resolution since the time Ms. Fullerton filed them with the Commission.

Ms. Fullerton has simply failed to prosecute her appeals in the manner ordered by the Commission. The Commission repeatedly ordered her to act in a timely and expeditious manner. When the Commission ordered Ms. Fullerton to produce documentation to her representative by a deadline date of May 12, 2004, she failed to comply in any way. More significantly, Ms. Fullerton failed to comply with the Commission's order to respond to the Department's motion to dismiss. This failure, combined with Ms. Fullerton's prior inaction, constitutes a failure to prosecute her appeals. Therefore, the Commission will dismiss the petitions for review.

#### **ORDER**

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

Dated at Madison, Wisconsin, this 27th day of January, 2005.

#### **WISCONSIN TAX APPEALS COMMISSION**

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Jennifer E. Nashold, Chairperson

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Diane E. Norman, Commissioner

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