

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

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**GALA RESORT & CAMPGROUND, INC.**

**DOCKET NO. 07-S-50**

Petitioner,

vs.

**RULING AND ORDER**

**WISCONSIN DEPARTMENT OF REVENUE,**

Respondent.

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**DAVID C. SWANSON, COMMISSIONER:**

This case comes before the Commission on its own motion to dismiss the petition for review on the basis that petitioner has failed to comply with Commission orders and has otherwise failed to prosecute its appeal, pursuant to Wis. Stat. § 805.03 and Wis. Admin. Code § TA 1.39. Petitioner appears *pro se* and Attorney Lisa Ann Gilmore represents respondent, the Wisconsin Department of Revenue (“Department”).

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

**JURISDICTIONAL AND MATERIAL FACTS**

1. The Department issued an assessment of sales and use tax dated September 27, 2005 to petitioner in the total amount of \$74,543.79 for the period April 1, 2000 through March 31, 2004.
2. Petitioner filed with the Department a timely petition for redetermination dated November 26, 2005 of the assessment.

3. The Department issued to petitioner a Notice of Action dated January 29, 2007 granting in part and denying in part the petition for redetermination.

4. On March 28, 2007, petitioner filed a petition for review with the Commission.

5. On April 25, 2007, the Department filed an answer to the petition.

6. On June 6, 2007, the Commission issued a notice scheduling a telephone conference in this case for August 9, 2007, 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.

7. On August 9, 2007, petitioner failed to appear at the scheduled telephone status conference.

8. On August 9, 2007, the Commission issued a Status Conference Memorandum and Order (“Memorandum”) scheduling a telephone status conference for September 10, 2007. The Memorandum stated in part that:

If petitioner fails to appear at the next-scheduled status conference and does not contact the Commission before that time, the petition for review will be dismissed. Prior to the next-scheduled status conference, petitioner shall provide the Commission and Attorney Gilmore with a statement of “the facts upon which the petitioner relies, together with a statement of the propositions of law involved” in this petition for review, as required under Wis. Stat. § 73.01(5)(b).

9. The Memorandum further 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.

10. On September 10, 2007, petitioner failed to appear at the scheduled telephone status conference.

11. Petitioner did not file a response to the Memorandum, and has not contacted the Commission in any other way since filing its petition.

### **RULING**

Assessments made by the Department are presumed to be correct, and the burden is on 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 its appeal and complying with the Commission's orders.

Petitioner filed its petition for review with the Commission on March 28, 2007. Since that date, petitioner has: (1) failed to comply with Commission orders to appear at telephone status conferences scheduled for August 9, 2007 and September 10, 2007; and (2) failed to comply with the Commission's Status Conference Memorandum and Order dated August 9, 2007, which ordered petitioner to provide the Commission and Attorney Gilmore with a statement of "the facts upon which the petitioner relies, together with a statement of the propositions of law involved" in this petition for review, as required under Wis. Stat. § 73.01(5)(b). Petitioner's demonstrated lack of interest in pursuing its own petition for review constitutes a failure to prosecute its appeal, and its repeated failure to comply with Commission orders similarly constitutes independent grounds for dismissal. *See*, Wis. Stat. § 805.03 and Wis. Admin. Code § TA 1.39. Therefore, the Commission hereby dismisses this petition.

**ORDER**

The petition for review is dismissed.

Dated at Madison, Wisconsin, this 12th day of September, 2007.

**WISCONSIN TAX APPEALS COMMISSION**

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Diane E. Norman, Acting Chairperson

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David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"