

STATE OF WISCONSIN
TAX APPEALS COMMISSION

GENERAL ELECTRIC,

DOCKET NOS. 07-M-230
AND 07-M-232

and

GE HEALTHCARE,

DOCKET NO. 07-M-231

Petitioners,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

RULING AND ORDER

Respondent.

DAVID C. SWANSON, COMMISSIONER:

These matters come before the Commission on a motion to dismiss the petitions for review filed by respondent, the Wisconsin Department of Revenue (the "Department"). The Department appears by Attorney Lisa Ann Gilmore and has filed an affidavit with exhibits, brief and reply brief in support of its motion. Petitioners, General Electric and GE Healthcare (together herein, "Petitioner"), appear by Mr. Steve Quataert. Attorney Kevin B. Hynes previously filed a brief in opposition to the motion on Petitioner's behalf. Having considered the entire record before it, the Commission finds, concludes, rules and orders as follows:

FINDINGS OF FACT

A. Docket Number 07-M-230

1. On or about June 25, 2007, the Department issued a 2007 real estate assessment notice for the manufacturing property located at 3000 Grandview in Waukesha, Wisconsin at issue in this matter (the “3000 Grandview Property”). (Gilmore Aff. ¶¶ 15-16, Ex. 7.)

2. On August 24, 2007, the Department received Petitioner’s objection to the 3000 Grandview Property assessment (the “3000 Grandview Objection”) on the Manufacturer’s Form of Objection to Real Estate Assessment, the two-page form provided by the State Board of Assessors (the “Board”) for such objections. (Gilmore Aff. ¶¶ 18-19, Ex. 9.)

3. The 3000 Grandview Objection was timely filed with Petitioner’s Authorization of Agent naming Cushman & Wakefield as its agent in this matter and payment of the required filing fee. (Gilmore Aff. ¶¶ 21-28, Ex. 11-14.)

4. The 3000 Grandview Objection did not include any information in the section of the form labeled “Your Estimate of What Full Value Should Be:”, including entries for the Petitioner’s estimates of the value of the 3000 Grandview Property’s land and improvements. (Gilmore Aff. ¶ 29, Ex. 9.)

5. On August 27, 2007, the Department issued to Petitioner a “Manufacturer’s Objection Acknowledgment,” in which the Department acknowledged receipt of the 3000 Grandview Objection (the “3000 Grandview Acknowledgment”). The 3000 Grandview Acknowledgment stated that the objection would be reviewed to

determine if the Board had jurisdiction, and listed three grounds on which it would dismiss the objection, including failure to state “your reasons for the objection, your estimate of full market value, and the basis for your estimate,” citing Wis. Stat. § 70.995(8)(b)(1). (Gilmore Aff. ¶¶ 30-31, Ex. 15.)

6. On October 19, 2007, the Department dismissed the 3000 Grandview Objection by issuing an Order of Dismissal, which stated: “The State Board of Assessors has determined that the objector has not provided separate opinions of value for the individual parcels appealed. Therefore the State Board of Assessors lacks jurisdiction to hear the appeal under s. 70.995(8)(a), and the appeal is dismissed.” The Order of Dismissal further stated: “APPEALS MUST BE FILED WITH THE TAX APPEALS COMMISSION WITHIN 60 DAYS OF THE DATE ON THIS ORDER, as set forth in s. 73.01(5), Stats.” (emphasis in original) (Gilmore Aff. ¶¶ 34, 36, Ex. 18.)

7. The Department refunded the filing fee previously paid by Petitioner in connection with the 3000 Grandview Objection. (Gilmore Aff. ¶¶ 38-40, 42, Ex. 20, 22.)

8. On December 19, 2007, Petitioner filed a petition for review with the Commission in this matter.

9. On June 17, 2008, the Department filed the motion to dismiss this matter at issue, with accompanying affidavit, exhibits and brief. Pursuant to the Commission’s briefing schedule, Petitioner subsequently filed a response and the Department filed a reply.

B. Docket Number 07-M-231

10. On June 18, 2007, the Department issued a 2007 real estate assessment notice for the manufacturing property located at 8200 W. Tower in Milwaukee, Wisconsin at issue in this matter (the "Tower Property"). (Gilmore Aff. ¶¶ 2-3, Ex. 1.)

11. On August 21, 2007, the Department received Petitioner's objection to the Tower Property assessment (the "Tower Objection") on the Manufacturer's Form of Objection to Real Estate Assessment, the two-page form provided by the Board for such objections. (Gilmore Aff. ¶¶ 4-5, Ex. 2.)

12. The Tower Objection was timely filed with Petitioner's Authorization of Agent naming Cushman & Wakefield as its agent in this matter and payment of the required filing fee. (Gilmore Aff. ¶¶ 6-11, Ex. 3-5.)

13. The Tower Objection did not include any information in the section of the form labeled "Your Estimate of What Full Value Should Be:", including entries for the Petitioner's estimates of the value of the Tower Property's land and improvements. (Gilmore Aff. ¶ 12, Ex. 2.)

14. On August 24, 2007, the Department issued to Petitioner a "Manufacturer's Objection Acknowledgment," in which the Department acknowledged receipt of the Tower Objection (the "Tower Acknowledgment"). The Tower Acknowledgment stated that the objection would be reviewed to determine if the Board had jurisdiction, and listed three grounds on which it would dismiss the objection, including failure to state "your reasons for the objection, your estimate of full market

value, and the basis for your estimate,” citing Wis. Stat. § 70.995(8)(b)(1). (Gilmore Aff. ¶¶ 13-14, Ex. 6.)

15. On October 19, 2007, the Department dismissed the Tower Objection by issuing an Order of Dismissal, which stated: “The State Board of Assessors has determined that the objector has not provided separate opinions of value for the individual parcels appealed. Therefore the State Board of Assessors lacks jurisdiction to hear the appeal under s. 70.995(8)(a), and the appeal is dismissed.” The Order of Dismissal further stated: “APPEALS MUST BE FILED WITH THE TAX APPEALS COMMISSION WITHIN 60 DAYS OF THE DATE ON THIS ORDER, as set forth in s. 73.01(5), Stats.” (emphasis in original) (Gilmore Aff. ¶¶ 34-35, Ex. 17.)

16. The Department refunded the filing fee previously paid by Petitioner in connection with the Tower Objection. (Gilmore Aff. ¶¶ 38-41, Ex. 20-21.)

17. On December 19, 2007, Petitioner filed a petition for review with the Commission in this matter.

18. On June 17, 2008, the Department filed this motion to dismiss this matter, with accompanying affidavit, exhibits and brief. Pursuant to the Commission’s briefing schedule, Petitioner subsequently filed a response and the Department filed a reply.

C. Docket Number 07-M-232

19. On or about June 25, 2007, the Department issued a 2007 real estate assessment notice for the manufacturing property located at 3200 Grandview in

Waukesha, Wisconsin at issue in this matter (the “3200 Grandview Property”). (Gilmore Aff. ¶¶ 15, 17, Ex. 8.)

20. On August 24, 2007, the Department received Petitioner’s objection to the 3200 Grandview Property assessment (the “3200 Grandview Objection”) on the Manufacturer’s Form of Objection to Real Estate Assessment, the two-page form provided by the Board for such objections. (Gilmore Aff. ¶¶ 18, 20, Ex. 10.)

21. The 3200 Grandview Objection was timely filed with Petitioner’s Authorization of Agent naming Cushman & Wakefield as its agent in this matter and payment of the required filing fee. (Gilmore Aff. ¶¶ 21-28, Ex. 11-14.)

22. The 3200 Grandview Objection did not include any information in the section of the form labeled “Your Estimate of What Full Value Should Be:”, including entries for the Petitioner’s estimates of the value of the 3200 Grandview Property’s land and improvements. (Gilmore Aff. ¶ 29, Ex. 10.)

23. On August 27, 2007, the Department issued to Petitioner a “Manufacturer’s Objection Acknowledgment,” in which the Department acknowledged receipt of the 3200 Grandview Objection (the “3200 Grandview Acknowledgment”). The 3200 Grandview Acknowledgment stated that the objection would be reviewed to determine if the Board had jurisdiction, and listed three grounds on which it would dismiss the objection, including failure to state “your reasons for the objection, your estimate of full market value, and the basis for your estimate,” citing Wis. Stat. § 70.995(8)(b)(1). (Gilmore Aff. ¶¶ 30, 32, Ex. 16.)

24. On October 19, 2007, the Department dismissed the 3200 Grandview Objection by issuing an Order of Dismissal, which stated: “The State Board of Assessors has determined that the objector has not provided separate opinions of value for the individual parcels appealed. Therefore the State Board of Assessors lacks jurisdiction to hear the appeal under s. 70.995(8)(a), and the appeal is dismissed.” The Order of Dismissal further stated: “APPEALS MUST BE FILED WITH THE TAX APPEALS COMMISSION WITHIN 60 DAYS OF THE DATE ON THIS ORDER, as set forth in s. 73.01(5), Stats.” (emphasis in original) (Gilmore Aff. ¶¶ 34, 37, Ex. 19.)

25. The Department refunded the filing fee previously paid by Petitioner in connection with the 3200 Grandview Objection. (Gilmore Aff. ¶¶ 38-40, 43, Ex. 20, 23.)

26. On December 19, 2007, Petitioner filed a petition for review with the Commission in this matter.

27. On June 17, 2008, the Department filed the motion to dismiss this matter at issue, with accompanying affidavit, exhibits and brief. Pursuant to the Commission’s briefing schedule, Petitioner subsequently filed a response and the Department filed a reply.

ISSUE PRESENTED

Did the State Board of Assessors properly dismiss Petitioner’s objections to the assessments at issue as defective under Wis. Stat. § 70.995(8)?

CONCLUSIONS OF LAW

1. The State Board of Assessors properly dismissed Petitioner's objections to the assessments at issue as defective under Wis. Stat. § 70.995(8).
2. The Commission does not have jurisdiction to consider these petitions for review under Wis. Stat. § 73.01(5).

RULING

I. Rules of Statutory Construction

When interpreting a statute, we assume that the legislature's intent is expressed in the statutory language. Statutory interpretation "begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry." *State ex rel. Kalal v. Circuit Court*, 271 Wis. 2d 633, 663, 681 N.W.2d 110 (2004). "Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." *Id.*; *see also*, Wis. Stat. § 990.01(1). Context and structure are also important factors, and construction should strive to avoid absurd or unreasonable results. "If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning." *Id.*

II. Wis. Stat. § 70.995(8)

The Commission's jurisdiction is set forth in Wis. Stat. § 73.01. The Commission has jurisdiction to review the Board's actions pursuant to a timely petition

for review filed by any person “who is aggrieved by a determination of the state board of assessors under s. 70.995(8)” Wis. Stat. § 73.01(5)(a).

Both parties agree that the controlling statute at issue in these matters is Wis. Stat. § 70.995(8). The relevant portions provide as follows:

(b)1. The department of revenue shall annually notify each manufacturer assessed under this section and the municipality in which the manufacturing property is located of the full value of all real and personal property owned by the manufacturer. The notice shall be in writing and shall be sent by 1st class mail or electronic mail. In addition, the notice shall specify that objections to valuation, amount, or taxability must be filed with the state board of assessors within 60 days of issuance of the notice of assessment, that objections to a change from assessment under this section to assessment under s. 70.32 (1) must be filed within 60 days after receipt of the notice, that the fee under par. (c) 1. or (d) must be paid and that the objection is not filed until the fee is paid. A statement shall be attached to the assessment roll indicating that the notices required by this section have been mailed and failure to receive the notice does not affect the validity of the assessments, the resulting tax on real or personal property, the procedures of the tax appeals commission or of the state board of assessors, or the enforcement of delinquent taxes by statutory means.

* * *

(c)1. All objections to the amount, valuation, taxability, or change from assessment under this section to assessment under s. 70.32 (1) of property shall be first made in writing on a form prescribed by the department of revenue that specifies that the objector shall set forth the reasons for the objection, the objector’s estimate of the correct assessment, and the basis under s. 70.32 (1) for the objector's estimate of the correct assessment. An objection shall be filed with the state board of assessors within the time prescribed in par. (b) 1. A \$45 fee shall be paid when the objection is filed unless a fee has been paid in respect to the same piece of property and that appeal has not been finally adjudicated. The

objection is not filed until the fee is paid. Neither the state board of assessors nor the tax appeals commission may waive the requirement that objections be in writing. Persons who own land and improvements to that land may object to the aggregate value of that land and improvements to that land, but no person who owns land and improvements to that land may object only to the valuation of that land or only to the valuation of improvements to that land.

(c)2. A manufacturer who files an objection under subd. 1. may file supplemental information to support the manufacturer's objection within 60 days from the date the objection is filed. The state board of assessors shall notify the municipality in which the manufacturer's property is located of supplemental information filed by the manufacturer under this subdivision, if the municipality has filed an appeal related to the objection.

Wis. Stat. § 70.995(8)(b)1. and (c)1.-2.

In these matters, Petitioner does not dispute that it failed to include an estimate of the correct assessment to the Board in each objection at issue. Petitioner discusses §§ 70.995(8) and 73.01(5) in its response, but does not point to any exception to the rules governing objections under § 70.995(8). As its central argument in response to the motions, Petitioner argues that the Department should be estopped from moving for dismissal, because it participated in these proceedings before the Commission between December 19, 2007 and June 17, 2008, when it filed these motions.

A party asserting the defense of estoppel must prove the existence of (1) action or inaction by the party against whom estoppel is asserted (2) which induces reliance thereon and (3) causes detriment to the party asserting the estoppel. *Dep't of*

Revenue v. Moebius Printing Co., 89 Wis.2d. 610, 634, 279 N.W.2d 213 (1979). In support of its assertion of estoppel, Petitioner alleges that it retained an appraiser to prepare appraisals of the properties at issue, and thus incurred additional costs in reliance on the Department's initial treatment of these petitions.

We reject Petitioner's assertion of estoppel. First, the Department participated in these matters for just 7 months, a relatively short period of time, before filing these motions. Petitioner asserts that this action or inaction induced its reliance, but does not explain how such reliance was significant or reasonable under the circumstances. Second, Petitioner's argument lacks specificity and is extremely vague. For example, Petitioner does not provide the name of the appraiser retained or the actual additional costs incurred.

Third, as noted by the Department, any delay by the Department in filing these motions may be attributed to Petitioner's own petitions for review. By their terms, the petitions for review filed by Petitioner in these matters appealed the Department's "final determination" in each matter, and made no mention of the Board's Orders of Dismissal. It would be inequitable to penalize the Department for initially treating these petitions in exactly the manner sought by Petitioner, that is, as petitions for review of the Board's final determinations of the assessments at issue, as opposed to appeals of the Board's Orders of Dismissal based on its lack of jurisdiction.

The requirement that an objection to an assessment of manufacturing property set forth "the objector's estimate of the correct assessment" is statutory and its

meaning is plain. Wis. Stat. § 70.995(8)(c)1. The Commission's prior decisions follow this interpretation of the statute. In *Food Service Products Co., d/b/a Moore's Food Products v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-117 (WTAC 1995), the Commission dismissed the petition for review due to lack of jurisdiction in a case involving facts very similar to the facts in this matter. The Commission later cited this interpretation with approval in *Seats, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-762 (WTAC 2004), stating:

In *Food Service*, the Commission dismissed a petition for review because the petitioner failed to insert any opinion of value on the Form of Objection. The petitioner in *Food Service* clearly failed to comply with section 70.995(8)(c)1 and, therefore, deprived the Commission of subject matter jurisdiction.

Seats, Inc., n. 6 (citations omitted).

In these matters, the Petitioner also failed to comply with the requirements of § 70.995(8)(c)1, and thus never filed a proper objection with the Board.¹ Consequently, Petitioner was not aggrieved by a determination of the Board under § 70.995(8), and the Commission therefore does not have jurisdiction to consider these petitions under § 73.01(5)(a).

¹ In these matters, we do not reach the question of whether a defect in an objection filed under § 70.995(8) is curable, because Petitioner never attempted to cure the fatal defect in the objections it filed with the Board.

IT IS ORDERED

The Department's motions to dismiss these matters are granted.

Dated at Madison, Wisconsin, this 26th day of January, 2009.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger W. LeGrand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"