

STATE OF WISCONSIN
TAX APPEALS COMMISSION

BRIAN J. AND SHAWN M. HUSSIN
2876 Curry Lane
Green Bay, WI 54311,

DOCKET NO. 04-I-169

Petitioners,

vs.

RULING AND ORDER

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

Respondent.

JENNIFER E. NASHOLD, COMMISSIONER:

This matter comes before the Commission on a June 21, 2005 oral motion by the Wisconsin Department of Revenue to dismiss on the basis that petitioners have failed to prosecute their petition for review under Wis. Stat. § 805.03.

Petitioners, Brian J. and Shawn M. Hussin, appear *pro se*. Deputy Chief Counsel Robert J. Hackman appears for the Department.

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

FACTS1

1. By notice dated December 15, 2003, the Department issued an assessment of income tax against petitioners for tax years 1999 and 2000.
2. Under date of February 5, 2004, petitioners filed a petition for redetermination objecting to the assessment.
3. On June 21, 2004, the Department issued its Notice of Action denying the petition for redetermination, stating in relevant part, "we have determined that such petition is denied since the income tax returns(s) requested for the year(s) 1999 and 2000 have not been filed."
4. On July 6, 2004, petitioners filed a timely petition for review with the Commission.
5. On July 30, 2004, the Department filed its Answer to the petition.

6. On November 17, 2004, the Commission issued a Notice of Telephone Scheduling Conference for February 9, 2005 at 11:00 a.m. The Notice states, in part:

NOTICE TO PETITIONERS

. . . If the Commission is unable to reach you . . . 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. The Commission held the February 9, 2005 telephone conference. Petitioners failed to appear. The Department appeared by Attorney Hackman.

8. On February 10, 2005, the Commission issued a Status Conference Memorandum and Order setting a telephone conference for February 16, 2005 at 10:00 a.m. The Memorandum stated, in part:

Other matters discussed:

Neither petitioner appeared for the [February 9, 2005] telephone conference. Attorney Hackman informed the Commission that Mr. Hussin stated that he and Ms. Hussin worked during the day. If petitioners are unavailable at home during the day, they must provide the Commission with a phone number where they can be reached during the day or risk having their petition with the Commission dismissed for failure to prosecute. Similarly, if petitioners are unavailable for the next scheduled conference on February 16, 2005, they should inform the Commission prior to the conference.

IT IS ORDERED

(1) 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.

9. The Commission held the February 16, 2005 telephone status conference. Petitioners again failed to appear. Attorney Hackman appeared on behalf of the Department and stated that he would file a motion to dismiss the petition for review.

10. On May 24, 2005, the Commission issued a Notice scheduling a third telephone status conference for June 21, 2005 at 2:30 p.m. The Notice stated, in part:

NOTICE IS FURTHER GIVEN That if petitioners fail to appear and participate in the June 21, 2005 telephone conference, the Commission will entertain an oral motion to dismiss by the [Department].

11. The Commission held the June 21, 2005 telephone conference. Petitioners again failed to appear. Attorney Hackman appeared for the Department and made an oral motion to dismiss on the basis that

1 Facts 1., 2., and 3. are contained in attachments to petitioners' petition for review.

petitioners failed to prosecute their petition.

APPLICABLE WISCONSIN STATUTES

805.03 Failure to prosecute or comply with procedure statutes. For failure of any claimant to prosecute or for failure of any party to comply with the statutes governing procedure in civil actions or to obey any order of court, the court in which the action is pending may make such orders in regard to the failure as are just, including but not limited to orders authorized under s. 804.12(2)(a). Any dismissal under this section operates as an adjudication on the merits unless the court in its order for dismissal otherwise specifies for good cause shown recited in the order. A dismissal on the merits may be set aside by the court on the grounds specified in and in accordance with s. 806.07. A dismissal not on the merits may be set aside by the court for good cause shown and within a reasonable time.

RULING

The Commission has held three telephone conferences in this matter since petitioners filed their petition for review on July 6, 2004. Petitioners have not appeared at or participated in any of the conferences, despite repeated warnings from the Commission that their failure to appear would subject their petition to dismissal. Petitioners have clearly failed to prosecute their petition under Wis. Stat. § 805.03. The Department has therefore shown good cause for granting its motion to dismiss.

IT IS ORDERED

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

Dated at Madison, Wisconsin, this 24th day of June, 2005.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"