

STATE OF WISCONSIN
TAX APPEALS COMMISSION

WILLIAM E. AND KATHLEEN A. JAKEL, JR.
5714 Old Sauk Road
Madison, WI 53705-2502,

DOCKET NO. 03-I-305

Petitioners,

vs.

RULING AND ORDER

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

Respondent.

This matter comes before the Commission on its own motion to dismiss the petition for review for failure to prosecute and for violation of the Commission's orders.

Petitioners appear *pro se*. Respondent appears by Attorney Michael J. Buchanan.

Based upon the record in this matter, the Commission hereby finds, concludes, and orders as follows:

On September 23, 2002, respondent issued an income tax assessment against petitioners in the total amount of \$2,602.49. The years at issue are 2000 and 2001.

Petitioners filed a timely petition for redetermination with respondent. On October 27, 2003, respondent issued a notice of action letter denying the petition for redetermination.

On November 3, 2003, petitioners filed a petition for review with the Commission. The petition for review consisted of a copy of the notice of action letter with

the following handwritten notation: “NOTE This is currently in litigation.” Petitioner William E. Jakel, Jr., signed the petition for review.

The reference to “litigation” in the petition for review apparently refers to petitioners’ prior appeal before the Commission, *Jakel v. Dep’t of Revenue*, Docket No. 02-I-06-SC (“*Jakel I*”).

In *Jakel I*, the Commission issued an oral decision affirming the determination of respondent that Mr. Jakel’s termination payments received from the State Farm Insurance Company in 1997 through 1999 should be taxed as ordinary income, not as capital gains.

Petitioners filed a petition for review of the Commission’s decision in *Jakel I* to the Dane County Circuit Court. On February 24, 2003, the Circuit Court affirmed the Commission’s decision in *Jakel I*.¹

Petitioners then filed a notice of appeal of the Circuit Court’s decision in *Jakel I* with the Court of Appeals. Petitioners’ appeal was pending before the Court of Appeals when they filed their petition for review with the Commission in the present case.

Petitioners failed to submit the required \$25 filing fee along with their petition for review filed with the Commission. On November 3, 2003, the Commission sent a letter to petitioners alerting them to the filing fee requirement and including the following paragraph:

Accordingly, the \$25 filing fee made payable to the Wisconsin Tax Appeals Commission should be forwarded to the Commission **no later**

¹ *Jakel v. Dep’t of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-713 (Dane Co. Cir. Ct. 2003).

than November 14, 2003. In the event no filing fee is paid, your petition may be subject to dismissal based on your failure to comply with [section 73.01(5)(a)] of the statutes. [Emphasis in original.]

Petitioners did not remit the required filing fee in response to the November 3, 2003 letter from the Commission.

In a notice dated February 20, 2004, the Commission set a telephone scheduling conference in this matter for April 20, 2004. The notice contained the following paragraph:

Unless included with the petition for review, the petitioner or a representative shall notify the Tax Appeals Commission, in writing or by telephone, of the area code and telephone number where petitioner or a representative can be reached for the conference at the time stated in this notice. If the Commission is unable to reach the petitioner or representative by telephone, the conference will proceed as above, and the petition for review will be subject to dismissal, pursuant to Wis. Stat. §§ 802.10(7) and 805.03. [Emphasis in original.]

Petitioners did not provide the Commission with their telephone number in preparation for the April 20, 2004, telephone scheduling conference. The Commission held the April 20, 2004, telephone scheduling conference as scheduled and used petitioners' listing in the telephone directory in an attempt to contact petitioners.

Petitioners did not participate in the April 20, 2004, telephone status conference.

On April 21, 2004, the Commission issued an order that provided, in part:

IT IS ORDERED

That, by May 20, 2004, petitioners submit their \$25 filing fee to the Commission, as no filing fee has been paid to date. A check should be payable to the "Wisconsin Tax Appeals Commission." Failure to pay may result in sanctions, including consideration of dismissing this appeal.

* * *

IT IS FURTHER ORDERED

That a petitioner or petitioners' representative shall participate in the next telephone status conference in this matter. Failure to do so may result in sanctions, including dismissal on the basis of failure to comply with an order of the Commission or failure to prosecute or both.

Petitioners did not participate in the next status conference that was held on June 15, 2004. Moreover, petitioners have not remitted the required \$25 filing fee.

In an unpublished decision dated April 22, 2004, the Court of Appeals affirmed the decisions of the Commission and the Circuit Court in *Jakel I*.² Petitioners did not file a petition for review of the Court of Appeals' decision with the Wisconsin Supreme Court.

Petitioners may have simply filed their petition for review in the present case merely to preserve their rights with respect to 2000 and 2001 while *Jakel I* was pending before the Dane County Circuit Court and the Court of Appeals. Regardless of their motivations, petitioners' failure to participate in both scheduling conferences and their failure to remit the required filing fee constitute a failure to prosecute and multiple violations of the Commission's orders. Therefore, the Commission, on its own motion, will dismiss the petition for review pursuant to sections 802.10(7) and 805.03 of the Statutes.

² *Jakel v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-753 (Ct. App. 2004).

ORDER

The petition for review is dismissed.

Dated at Madison, Wisconsin, this 17th day of June, 2004.

WISCONSIN TAX APPEALS COMMISSION

Don M. Millis, Commission Chairperson

Jennifer E. Nashold, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"