

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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NATHANIEL AND PATRICIA JOHNSON,

DOCKET NO. 11-I-284

Petitioners,

vs.

RULING & ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**THOMAS J. MCADAMS, COMMISSIONER:**

This matter comes before the Commission on the Department's Motion to Dismiss. This case concerns an assessment the Department issued against the Johnsons on June 10, 2005, for \$364,554 in income taxes for the periods ending December 31, 1998, through December 31, 2003. As of November 4, 2011, the amount due was \$607,681.83, including penalties and interest. The Department argues that the Commission lacks jurisdiction to review this matter as the Johnsons did not in 2005 file a petition for redetermination with the Department. The Petitioners are represented by Ms. Mary Orr, of Milwaukee. The Department is represented by Chief Counsel Dana J. Erlandsen. As the Petitioners failed to file the petition for redetermination in the 60-day period following assessment as required by law, the Commission lacks jurisdiction and the appeal must be dismissed.

## FACTS<sup>1</sup>

1. The Department conducted an audit of the Johnsons and issued an assessment on June 10, 2005, in the amount of \$364,554. (Second Affidavit of Dana J. Erlandsen, Exhibit A).
2. By letter from the Wisconsin Department of Revenue dated August 1, 2006, the Petitioners were informed that their audit in the amount of \$424,137.45 including interest was final. (January 31, 2012, Affidavit of Dana J. Erlandsen).
3. By letter dated May 6, 2009, the Petitioners' representative at the time was informed of the history regarding the Petitioners' 1998 - 2003 taxes. (*Id.*)
4. The Petitioners never filed a petition for redetermination with the Wisconsin Department of Revenue. (*Id.*)
5. The Respondent has issued levies against the Petitioners. (*Id.*)
6. The Petitioners were given notice on September 19, 2011, that Tax Warrant No. 66-11250001 was filed with Milwaukee County. (*Id.*)
7. The latest statement of account available dated November 4, 2011, shows a balance due of \$607,681.83, which includes penalties and interest. (*Id.*)
8. The Petitioners' Petition for Review requesting forgiveness of their debt was received in the office of the Wisconsin Tax Appeals Commission via first class mail on September 29, 2011. (*Id.*)

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<sup>1</sup> The facts are taken from the affidavits submitted by the Department. We have, however, made edits for form and punctuation. The Petitioners did not submit any proposed facts, but we quote below from the letters the Petitioners sent to the Commission.

9. The Commission's September 30, 2011, letter informed the Petitioners that the Commission does not generally have the authority to hear matters that have been judged final and are in collections with the Department. (*Id.*)

10. The Petitioners' latest request for compromise was denied by letter dated October 18, 2011, from the Department of Revenue's Central Collection Section Chief. (*Id.*)

### INTRODUCTION

The Department audited the Petitioners in 2005 for the 1998 to 2003 income tax period. The Petitioners apparently did not file a return for 1998. The Department's exhibits show that the Petitioners had substantial net incomes during those years, ranging from \$440,597 in 1998 to \$838,253 in 2003. The Department has issued levies against the Petitioners, and the Petitioners were given notice on September 19, 2011, that a tax warrant was filed with Milwaukee County. The Johnsons filed a petition for compromise with the Department in 2011, offering to settle for \$4,246, but that offer was rejected on October 18, 2011. The Petitioners filed this appeal with the Commission on September 29, 2011.

### LAW AND BACKGROUND

A motion to dismiss will be granted if the Commission finds it does not have proper jurisdiction. Without jurisdiction to hear the matter, the Commission has no alternative other than to dismiss the action. *See Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002).

The specific statutes at issue here outline the requirements for filing a valid and timely petition for review with the Commission:

Wis. Stat. § 73.01(5)(a): Any person ...who has filed a petition for redetermination with the department of revenue and who is aggrieved by the redetermination of the department of revenue may, ...**within 60 days after the redetermination but not thereafter,** file with the clerk of the commission a petition for review of the action of the department of revenue...

[emphasis added.]

In response to the Department's motion, the Petitioners' representative wrote a letter to the Commission on February 9, 2012. The letter states verbatim that the Petitioners' request for a tax appeal in this case was made for the following reasons:

- Unaware of the right to appeal.
- In 2005 notification was sent to the Johnson's regarding the initial Field Audit.
- Mr. and Mrs. Johnson's objections to the findings of the field audit, and tax representative suggested mailing in tax information.
- 2006, paper work sent regarding offer of compromise.
- The attorneys never discussed Tax Appeal options with the Johnson's in 2007 and 2009.

The Petitioners sent in numerous pages of receipts with their appeal to the Commission. The Department responded to the letter on March 15, 2012. The Department pointed out that the Johnsons had no right to appeal in 2007 and 2009, so their representative could not be faulted on this. Further, as to 2005, the Department pointed out that alleged mistakes by a preparer are not a defense to the underlying merits of an income tax assessment. *Kryshak v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶203-084 (WTAC 1989).

The Petitioners then sent another letter to the Commission on April 10, 2012,

stating that the Petitioners do, in fact, now contest that in 2005 notification was sent to them in regards to the initial field audit. The Petitioners wrote that they did not in fact have a tax representative in 2005, but the Department's agent suggested that they take an appeal and the Johnsons then sent in their tax information for the period from 1998 to 2003. The April 10 letter to the Commission also stated that Mr. and Mrs. Johnson's physical health has declined greatly. In sum, the April 10 letter states that the Johnsons are requesting that the remaining balances on their taxes be forgiven and eliminated and that all money that has been paid, and or taken thru bank levies, be acceptable as final payment and that this matter be resolved and closed.

On April 27, 2012, the Department wrote another letter to the Commission with another affidavit in response to the Petitioners' claims which points out that the Johnsons were in fact sent a notice of the field office assessment on June 10, 2005, and that Mrs. Johnson signed a return receipt card for the notice of assessment on June 13, 2005, and that notice contained information on the Johnsons' right to appeal.

### **DECISION**

The Department has moved to dismiss this case because the Petitioners failed to exhaust their administrative remedies in 2005 by requesting a redetermination from the Department. The Department points out that, without that step, the Commission lacks jurisdiction to hear this appeal. After reviewing the motions and the affidavits, we conclude that the Department is correct that this appeal must be dismissed. The first part of this section will summarize the statutory jurisdiction the Commission has. The second part will respond to the Petitioners' arguments.

### A. The Commission's Jurisdiction

There are arguably two jurisdictional concerns here. The first relates largely to timing. The Commission's jurisdiction is statutory, and, "where a method of review is prescribed by statute, the prescribed method is exclusive." *Jackson County Iron Co. v. Musolf*, 134 Wis. 2d 95, 101, 396 N.W.2d 323 (1986). Upon receiving a notice of assessment from Respondent, a person may, within 60 days after receipt of the notice, petition Respondent for redetermination of the assessment. Wis. Stat. § 71.88(1)(a). The Respondent is required to act on a petition for redetermination within six months after it is filed. *Id.* The Commission has jurisdiction to review actions of Respondent pursuant to a timely petition for review filed by any person "who has filed a petition for redetermination with the department of revenue and who is aggrieved by the redetermination of the department of revenue...." Wis. Stat. § 73.01(5)(a). Except for certain claims for refund, "if no petition for redetermination is made within the time provided the assessment, refund, or denial of refund shall be final and conclusive." Wis. Stats. §§ 77.59(6)(b) and 71.88(2)(a). A long line of cases holds that the taxpayer must timely file a petition for redetermination in order to obtain Commission review. As recently as *Hussain v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-359 (WTAC 2010), the Commission has held that it lacks jurisdiction over a petition for review where the Petitioner has failed to timely file a petition for redetermination with Respondent. *See also Lyman v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-917 (WTAC 2006).

The second concern relates to subject matter. The Commission does not have jurisdiction over the Department's collection of delinquent taxes. *Beck v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-275 (WTAC 1997).

### **B. The Petitioners' Response**

We summarize the Petitioners' response to the Department's motion to make the following claims. First, the Petitioners seem to claim that they were unaware of their right to appeal. Second, the Petitioners point out that back in 2005 the Petitioners objected to the findings of the audit. Third, the Petitioners state that in 2006 they filed an offer in compromise with the Department. Finally, the Petitioners argue that they were unaware of their ability to appeal to this Commission in 2007 and in 2009.

We find, however, that none of these claims establishes that this Commission, in fact, has jurisdiction to hear this appeal. For reasons that are not clear on this record, a petition for redetermination was never filed in 2005, and, as the excerpt from the statute above shows, such a filing is a requirement for the Commission to have the ability to hear this case. Second, the Petitioners state that they filed an offer in compromise, but, even if they did, that filing does not grant jurisdiction to the Commission. In fact, under Wis. Stat. § 71.92, the Commission has no role in collection matters such as compromises. Finally, as the Department points out, the relevant time period for an appeal was entirely in 2005, not in 2007 or in 2009. The Petitioners' statutory rights to seek relief within the Department by way of a redetermination (and then from this Commission) both expired in 2005. The Department, in response to the last letter from the Petitioners, submitted an affidavit showing that notice of the assessment was signed

for by Mrs. Johnson in 2005. The Petitioners have not introduced anything to rebut the Department's submission, and therefore, for purposes of the Motion to Dismiss, we accept that fact as proven.

In sum, there is no fact properly in dispute and the Department has shown that it is entitled to a dismissal of the petition as a matter of law.

### **DECISION AND ORDER**

We find the Petitioners failed to file a petition for redetermination as required by state statutes and, thus, this Commission lacks jurisdiction in this matter. The Department is, therefore, entitled to dismissal as a matter of law. Based on the foregoing, it is the order of this Commission that the Department's Motion to Dismiss is granted.

Dated at Madison, Wisconsin, this 30<sup>th</sup> day of July, 2012.

### **WISCONSIN TAX APPEALS COMMISSION**

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Lorna Hemp Boll, Chair

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Roger W. LeGrand, Commissioner

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Thomas J. McAdams, Commissioner

cc: Nathaniel and Patricia Johnson  
Ms. Mary Orr  
Chief Counsel Dana Erlandsen

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"