

STATE OF WISCONSIN
TAX APPEALS COMMISSION

ROSE MENNELLA,

DOCKET NO. 08-I-108

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DAVID C. SWANSON, COMMISSIONER:

This case comes before the Commission on the motion of the Wisconsin Department of Revenue (the "Department") to dismiss the petition for review on the basis that there are no issues remaining for decision by the Commission in this matter. Petitioner appears *pro se* and has filed a petition for review with supporting exhibits and, in response to the Department's motion, a motion to grant the relief sought in the petition for review with a supporting affidavit. Attorney Sheree Robertson represents the Department and has filed a notice of motion and motion to dismiss with an affidavit and exhibits in support of the motion, an answer in the alternative, and a reply to Petitioner's motion with a supporting affidavit.

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

FINDINGS OF FACT

1. By notice to Petitioner dated September 7, 2007, the Department

issued an assessment of income tax against Petitioner for tax years 2003 through 2005, inclusive (the “period at issue”), in the total amount of \$3,874.89, including tax and interest computed to November 9, 2007 (the “assessment”). The Department issued the assessment as an assessment in the alternative under Wis. Stat. § 71.74(9) due to a disagreement between Petitioner and her former spouse concerning the taxability of certain alimony payments made by Petitioner to her former spouse during the period at issue. (Dept. Ex. 1; Pet. for Review.)

2. On October 9, 2007, Petitioner filed with the Department a petition for redetermination of the assessment.

3. On March 20, 2008, the Department received a letter from Petitioner stating that her payment of \$1,112.22 was “not related to the dispute w[ith] my ex-spouse pertaining to 2004 alimony/spousal support payments that I made to him.” (Affidavit of Sheree Robertson dated Aug. 5, 2008, ¶6, Ex. 4.) According to the Department, Petitioner paid the \$1,112.22 discussed in the letter and at issue in the assessment by a personal check enclosed with the letter received on March 20, 2008. (*Id.*)

4. By Notice of Action dated May 5, 2008, the Department denied the petition for redetermination. (Dept. Ex. 3.)

5. On July 7, 2008, Petitioner filed a petition for review with the Commission, with supporting exhibits.

6. In the petition, Petitioner requests judgment in her favor, as well as judgment against her former spouse, including “proper punitive and compensatory

damages.” (Pet. for Review, p. 2.)

7. On August 5, 2008, the Department filed a notice of motion and motion to dismiss the petition for review with an affidavit and exhibits in support of the motion, and an answer in the alternative. In the notice of motion, the Department notified the Commission that it had cancelled “the portion of the assessment in the alternative dated September 7, 2007, related to the deductibility/taxability of the payments that Petitioner made pursuant to a divorce decree for the years at issue.” The Department further noted that Petitioner had remitted to the Department “a check in the amount of \$1,112.22 which was her payment for the portion of the assessment in the alternative related to the underpayment of interest adjustment that she agreed was owed by her.” (Dept. Not. of Motion, ¶2; Robertson Aff., ¶6, Ex. 4.)

8. On September 8, 2008, Petitioner filed a response stating in relevant part:

4. The March 2007 payments \$848 and \$1018; \$1,112.22 [sic] respectively that are referred to in the respondent’s motion to dismiss were not subject to assessments in the alternative. Moreover they were applied to the payment of taxes on adjusted income that was owed by the Petitioner for 2003 & 2004 Amended tax returns that the Petitioner filed on behalf of Dairy Source, Inc. a company that the Petitioner individually owns. Those taxes or payments were not subject to the Petition for review.

5. At all times Petitioner agrees that the Department of Revenue acted under § 71.74(9), Wis. Stats., and does not allege any error or wrongdoing.

Wherefore, the Petitioner is in agreement that there are no remaining issues before the Wisconsin Tax Appeals Commission. The Petitioner requests that an order be

entered granting the relief sought so that the record is clear that the Petitioner has no further liability for the subject assessment in the alternative in the subject Petition for review filed July 7, 2008.

9. On September 22, 2008, the Department filed a reply with a supporting affidavit.

RULING

Section 73.01(5)(a) of the Wisconsin Statutes requires that a petitioner be “aggrieved by the redetermination” of the Department of the assessment at issue in order to file a petition for review with the Commission. If the petitioner is not aggrieved by the Department’s redetermination, then the Commission has no jurisdiction to hear an appeal under § 73.01(5)(a), Stats.

In this case, Petitioner is not aggrieved by the Department’s redetermination, because the parties have settled the case. The Department has cancelled the portion of the assessment to which Petitioner objected, and Petitioner has paid the remaining amount of the assessment claimed by the Department. In her response to the Department’s motion, Petitioner states that she “is in agreement that there are no remaining issues before the Wisconsin Tax Appeals Commission.” Despite that admission, Petitioner seeks the additional relief described in her petition for review, which apparently includes findings and judgments adverse to her former spouse.

Petitioner’s former spouse is not a party to this action, and the Commission has no authority to join him thereto. This action involves only the

assessment against Petitioner. The Commission finds that Petitioner has stated a claim for which no relief can be granted and over which the Commission has no jurisdiction, and thus concludes that dismissal of this petition for review is appropriate.

ORDER

The Department's motion to dismiss the petition for review is granted, the Petitioner's motion is denied, and the petition for review is dismissed.

Dated at Madison, Wisconsin, this 12th day of December, 2008.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger W. LeGrand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"