

STATE OF WISCONSIN
TAX APPEALS COMMISSION

LOUIS MILLER AND SANA FAKHOURY
12605 W. North Street, #232
Brookfield, WI 53005,

DOCKET NO. 05-I-55

Petitioners,

vs.

RULING AND ORDER

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

Respondent.

DAVID C. SWANSON, COMMISSIONER:

This matter was heard by the Commission on November 30, 2005, in Madison, Wisconsin. Petitioners, Louis Miller and Sana Fakhoury, failed to appear in person or by representative. Respondent, Wisconsin Department of Revenue (Department), appeared by Attorney Mark S. Zimmer, who introduced exhibits and moved to dismiss the petition for review on the bases of petitioners' failure to appear at the hearing, failure to comply with the Commission's order to appear at the hearing (Wis. Stat. § 71.89(2)), and failure to prosecute their petition for review (Wis. Stat. § 805.03).

Having considered the motion of the Department and the entire record herein, the Commission finds, rules, and orders as follows:

MATERIAL FACTS

1. On November 1, 2004, the Department issued an income tax assessment against petitioners for tax years 1999, 2000, 2001, and 2002 in the total amount of \$15,869.07.

2. On January 3, 2005, petitioners filed a petition for redetermination with the Department.

3. On March 7, 2005, the Department issued a Notice of Action to petitioners denying their petition for redetermination.

4. On April 6, 2005, petitioners filed a timely petition for review with the Commission.

5. On April 6, 2005, the Commission assigned the petition a docket number and sent petitioners an acknowledgement of such, the last paragraph of which reads:

NOTE: At all times while a petition is pending before the Commission, petitioner is required to keep the Commission informed of petitioner's current address, Wis. Stat. § 73.01(5)(b), and telephone number. [Emphasis in original.]

6. On May 4, 2005, the Department filed its Answer to the petition.

7. On July 20, 2005, the Commission issued a Notice of Telephone Scheduling Conference in this matter for September 29, 2005 at 2:00 p.m. (C.S.T.).

8. At the September 29, 2005 telephone conference, petitioners appeared by Jay Estabrook, CPA, and the Department appeared by Attorney Zimmer.

9. On October 4, 2005, the Commission issued a Status Conference

Memorandum and Order setting a telephone status conference for October 27, 2005 at 2:00 p.m. (C.S.T.).

10. At the October 27, 2005 telephone conference, petitioners appeared by Mr. Estabrook and the Department appeared by Attorney Zimmer.

11. On October 31, 2005, the Commission issued a Scheduling Order Memorandum setting this matter for hearing on November 30, 2005. The Scheduling Order Memorandum stated, under "Other matters discussed:"

Mr. Estabrook stated that he has been unable to contact petitioners since September 29, 2005, and is not certain whether he is still their representative.

The Commission has determined that this case should proceed to trial. If petitioners fail to appear at trial, their petition will be dismissed on that basis.

12. Also on October 31, 2005, the Commission issued a notice that the November 30, 2005 hearing was to be held at 2:30 p.m., at the Commission's office in Madison, Wisconsin. The notice stated, in part:

NOTICE TO PETITIONERS: Petitioners are required to appear in person unless the personal appearance requirement has been waived by stipulation with counsel for the Department of Revenue. **If you fail to appear at the hearing without waiver, your petition will be subject to dismissal. If you do not plan to attend the hearing,** please notify the Commission as soon as possible. [Emphasis in original.]

13. On November 8, 2005, the envelope containing petitioners' copy of the October 31, 2005 Scheduling Order Memorandum and notice of hearing was returned to the Commission by the United States Postal Service. The envelope was marked "RETURN TO SENDER - UNKNOWN REASON - UNABLE TO FORWARD;

RETURN TO SENDER - LEFT NO FORWARDING ADDRESS."

14. Petitioners failed to appear at the November 30, 2005 hearing in person or by any representative.

APPLICABLE WISCONSIN STATUTES

71.89 Appeal procedures.

* * *

(2) No person against whom an assessment of income . . . tax has been made shall be allowed in any action either as plaintiff or defendant or in any other proceeding to question such assessment . . . unless such person shall have made full disclosure under oath at the hearing before the tax appeals commission of any and all income that the person received.

...

* * *

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

This case commenced when petitioners, through a representative, filed their petition for review on April 6, 2005. In its acknowledgement assigning a docket number to the petition, the Commission informed petitioners that they were required to keep the Commission apprised of their current address. Wis. Stat. § 73.01(5)(b).

Petitioners failed to provide the Commission with their current mailing address, and the United States Postal Service was unable to deliver the notice scheduling their case for a hearing. Petitioners' inaction demonstrates a clear failure to prosecute their petition under Wis. Stat. § 805.03.

In addition, as noted in an October 31, 2005 Scheduling Order Memorandum, petitioners failed to maintain contact with their representative. This inaction further demonstrates a failure to prosecute their petition under Wis. Stat. § 805.03.

Petitioners failed to appear at the November 30, 2005 hearing and make full disclosure regarding the assessment made against them by the Department. Their failure to appear violates the provisions of Wis. Stat. § 71.89(2) and subjects their petition to dismissal.

Based on the foregoing, the Department has 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 9th day of December, 2005.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"