

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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WILLIAM MOSELY,

DOCKET NO. 07-I-138

Petitioner,

vs.

**RULING AND ORDER**

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**DIANE E. NORMAN, ACTING CHAIRPERSON:**

This matter comes before the Commission on the November 29, 2007 oral motion of Attorney Linda S. Mintener, on behalf of the Wisconsin Department of Revenue ("Department"), to dismiss the petition on the basis that petitioner has failed to comply with Commission orders and has otherwise failed to prosecute his petition for review, pursuant to Wis. Stat. § 805.03 and Wis. Admin. Code § TA 1.39.

Petitioner, William Mosely, appears *pro se*. Attorney Linda S. Mintener appears for the Department.

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

**FACTS**

1. On August 14, 2006, the Department issued an assessment of income tax against petitioner for tax year 2002 in the amount of \$3,354.25.

2. Petitioner filed a petition for redetermination objecting to the assessment.

3. On February 15, 2007, the Department issued its Notice of Action denying the petition for redetermination, stating in relevant part, "we have determined that [petitioner's] petition is denied since the information requested in the department's letter dated December 29, 2006 has not been provided."

4. On June 28, 2007, petitioner filed a petition for review with the Commission.

5. On July 24, 2007, the Department filed its Answer to the petition.

6. On September 5, 2007, the Commission issued a Notice of Telephone Scheduling Conference for October 18, 2007 at 10:30 a.m. The Notice states, in part:

**NOTICE TO PETITIONER**

**. . . 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. On September 11, 2007, the Commission issued a Notice rescheduling the telephone conference for October 25, 2007 at 9:30 a.m. (C.S.T.)

8. The Commission held the October 25, 2007 telephone conference. Petitioner failed to appear. The Department appeared by Chief Counsel Dana Erlandsen.

9. On October 25, 2007, the Commission issued a Status Conference Memorandum and Order setting a telephone conference for November 29, 2007 at 10:00 a.m. (C.S.T.) The Memorandum states, in part:

**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.**

10. The Commission held the November 29, 2007 telephone status conference. Petitioner again failed to appear. Attorney Mintener appeared on behalf of the Department and orally moved to dismiss the petition for review for failure to comply with Commission orders and for failure to prosecute his petition for review.

**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 two telephone conferences in this matter since petitioner filed his petition for review on June 28, 2007. Petitioner has not appeared at or participated in any of the conferences, despite the Commission's order to appear at the November 29, 2007 telephone conference and repeated warnings from the Commission that his failure to appear would subject his petition to dismissal. Petitioner has clearly failed to comply with the Commission's orders and to prosecute his petition for review, and the petition therefore is subject to dismissal under Wis. Stat. § 805.03 and Wis. Admin. Code § TA 1.39. The Department has therefore shown good cause for granting its motion to dismiss.

### **IT IS ORDERED**

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

Dated at Madison, Wisconsin, this 6th day of December, 2007.

WISCONSIN TAX APPEALS COMMISSION

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Diane E. Norman, Acting Chairperson

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David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"