

STATE OF WISCONSIN
TAX APPEALS COMMISSION

ROBERT D. POLASEK
P. O. Box 11371
Shorewood, WI 53211,

**DOCKET NOS. 02-I-226,
02-I-227, 03-I-178, and 03-I-179**

Petitioner,

vs.

RULING AND ORDER

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

Respondent.

THOMAS M. BOYKOFF, COMMISSIONER:

These cases come before the Commission on the motion of respondent, Wisconsin Department of Revenue ("Department"), to dismiss petitioner's petitions for review in Docket Nos. 02-I-226 and 02-I-227 on the grounds that petitioner has made false representations to the Commission by repeatedly promising he would take certain actions and failed to follow through; requesting and receiving additional time from the Commission to meet with a Department Resolution Officer to present evidence and failed to do so, causing further delay under Wis. Stat. § 805.03; and failing to follow orders of the Commission under Wis. Stat. §§ 805.03 and 802.05(3)(b)2.

The Commission, on its own motion, moves to dismiss petitioner's petitions for review in Docket Nos. 03-I-178 and 03-I-179 on the same grounds as stated by the Department, as well as petitioner's failure to prosecute his cases under § 805.03.

Petitioner appears *pro se* and has not responded to the Department's motion, after having been given the opportunity to do so. Attorney Michael J. Buchanan represents the Department and has submitted an affidavit, exhibits, and a brief along with the motion.

After reviewing the entire record, the Commission hereby finds, rules, and orders as follows:

FACTS

Jurisdictional Facts

1. **(Docket No. 02-I-226.)** Under date of December 11, 2000, the Department issued a \$1,645.17 assessment to petitioner for income tax year **1995**, consisting of income tax, interest, and penalties. The assessment was based on an earlier income tax adjustment made by the Internal Revenue Service ("IRS"). Petitioner filed a petition for redetermination with the Department, dated January 30, 2001 on its first page and February 19, 2001 on its second page. The Department denied that petition for redetermination in a Notice of Action dated May 6, 2002, stating in part: "Information has not been received to support your objection . . ." to the assessment. On July 22, 2002, petitioner filed a petition for review with the Commission which stated, in part: "For the year 1995, an office audit assessment was reviewed and settled as a final disposition on November 2, 1998. This final settlement . . . of \$1,211.88 was entered and agreed to as full payment of the correct adjusted income taxes due." No documentation has been filed with the Commission substantiating this statement.

2. **(Docket No. 02-I-227.)** Under date of December 4, 2000, the

Department issued a \$7,126.82 assessment to petitioner for income tax years **1996 and 1997**, consisting of income tax, interest, penalties, and fees. Petitioner filed a petition for redetermination with the Department, dated January 30, 2001 on its first page and February 19, 2001 on its second page. The Department denied that petition for redetermination in a Notice of Action dated May 6, 2002, stating in part: "Information has not been provided to support your objection" On July 22, 2002, petitioner filed a petition for review with the Commission, stating that he "did not live, work or have any residence in the State of Wisconsin during any of the years 1996 and 1997."

3. **(Docket No. 03-I-178.)** Under date of August 26, 2002, the Department issued a \$14,066.90 assessment to petitioner for income tax years **1999 and 2000**, consisting of income tax, interest, penalties, and fees. Petitioner filed a petition for redetermination with the Department dated October 11, 2002. The Department denied the petition for redetermination in a Notice of Action dated March 24, 2003, stating in part: "This action is being taken because you did not appear for the conference scheduled to discuss this matter or provide the documentation requested in prior correspondence." Petitioner then filed a petition for review with the Commission on June 19, 2003, stating that he "did not live, work or have any residence in the State of Wisconsin during . . . 1999 and 2000. In addition, the amounts in this tax assessment are based on high estimates of earnings which are incorrect. Petitioner also requests an in person review of these items which has not been performed."

4. **(Docket No. 03-I-179.)** Under date of August 19, 2002, the Department issued a \$3,731.83 assessment to petitioner for income tax year **1998**,

consisting of tax and interest. Petitioner filed a petition for redetermination with the Department dated October 11, 2002. The Department denied the petition for redetermination in a Notice of Action dated March 24, 2003, stating in part: "This action is being taken because you did not appear for the conference scheduled to discuss this matter or provide the documentation requested in prior correspondence." Petitioner then filed a petition for review with the Commission on June 19, 2003, stating in part: "For the year 1998, an office audit assessment was reviewed and settled as a final disposition on October 28, 2002. This final settlement was entered and agreed to as full payment of the correct adjusted income taxes due. Petitioner also requests an in person review of this item which has not been performed." No substantiation of any settlement has been provided.

5. The Commission held 11 telephone status conferences ("telephone conference") for these cases from November 13, 2002 through February 25, 2004. Shortly after each telephone conference, presiding Commissioner Boykoff summarized it in a written Status Conference Memorandum and Order ("Conference Memorandum"), a copy of which was mailed to both parties. The telephone conferences were held on the following dates: (1) **2002**: November 13; (2) **2003**: February 25; April 22; June 24; August 12; October 14; November 25; and December 16; and (3) **2004**: February 11; February 17; and February 25.

Docket No. 02-I-226; Tax Year 1995

6. Petitioner received an income tax adjustment for the year 1995 from the IRS. He did not contest that adjustment, and it became final and conclusive. Since

Wisconsin taxation begins with federal taxable income, the Department made an identical adjustment to petitioner's Wisconsin taxable income.

7. During the November 13, 2002 telephone conference, and in its November 14, 2002 Conference Memorandum, the Commission ordered petitioner, within 10 days, to provide the Department's attorney with copies of materials related to petitioner's asserted resolution of the tax issues with the Department for tax year 1995. Petitioner did not do so.

8. During the February 25, 2003 telephone conference, and in its February 26, 2003 Conference Memorandum, the Commission ordered petitioner to discuss with the Department's Resolution Officer what petitioner believed to be documentation of a settlement with the IRS for tax year 1995. He subsequently met with the Resolution Officer, but did not bring any documentation as ordered.

9. The Department originally sent petitioner an estimated assessment for tax year 1995 because he had failed to file a Wisconsin income tax return for that year, but it withdrew the estimated assessment, without prejudice, when petitioner filed a 1995 Wisconsin income tax return. Subsequent to this filing, the Department received notice of the adjustment that the IRS made to petitioner's 1995 federal income tax return, and the Department then issued an identical assessment to petitioner.

10. During the November 25, 2003 telephone conference, and in its November 26, 2003 Conference Memorandum, the Commission ordered petitioner to schedule an appointment with the Department's Resolution Officer to discuss petitioner's appeal of the 1995 assessment. He met with the Resolution Officer but did

not discuss the 1995 assessment with her.

11. Petitioner has presented no evidence or argument whatsoever to the Department (other than the Department's cancellation, without prejudice, of its estimated assessment for 1995) that the Department's identical adjustments to those made by the IRS to petitioner's 1995 Wisconsin income tax return were in error.

12. Commissioner Boykoff asked petitioner during numerous telephone conferences to state his objection to the Department's 1995 income tax assessment. Petitioner never presented any reply, evidence or argument as to why the Department's 1995 assessment is in error.

13. During the December 16, 2003 telephone conference, and in its December 17, 2003 Conference Memorandum, the Commission ordered petitioner to withdraw his appeal for the 1995 assessment, as he said he would. He did not do so.

14. During the February 11, 2004 telephone conference, petitioner admitted that he had not complied with the Commission's Order, and again promised that he would send a letter to the Commission withdrawing his appeal for tax year 1995. In its Conference Memorandum, the Commission ordered petitioner to send a letter on February 11, 2004 to the Commission withdrawing his appeal for tax year 1995. He did not do so.

15. During the February 17, 2004 telephone conference, petitioner admitted that he had failed to comply with the Commission's Order. Petitioner stated that he had a February 19, 2004 appointment with an attorney. In its February 18, 2004 Conference Memorandum, the Commission ordered that petitioner and his attorney

participate in the next telephone conference; that petitioner have his attorney send a properly completed power of attorney document to the Commission and the Department; and, if petitioner did not retain an attorney, that he send the Commission a letter withdrawing his appeal for tax year 1995, as he said he would long ago. The Conference Memorandum stated: "Mr. Polasek has been ordered to do the above several times and he said he would comply but has not complied."

16. During the February 25, 2004 telephone conference, petitioner again admitted that he had not complied with the Orders of the Commission. Petitioner stated that he had met with an attorney on February 19, 2004, but that he had not retained an attorney. Petitioner failed to obey the Commission's order from the February 17, 2004 telephone conference and February 18, 2004 Conference Memorandum that he comply with his promise to withdraw his appeal for tax year 1995 if he did not retain an attorney.

Docket No. 02-I-227; Tax Years 1996 and 1997

17. Petitioner received a Wisconsin estimated income tax assessment for tax years 1996 and 1997 because he failed to file Wisconsin income tax returns for either of those years. Petitioner originally stated that he was not a Wisconsin resident during either of those years.

18. During the November 13, 2002 telephone conference, petitioner was ordered to provide the Department's attorney with the names of the states where he claimed to be a resident for 1996 and 1997. Petitioner subsequently wrote to the Department's attorney and claimed that he was a resident of Virginia during 1996 and a

resident of Pennsylvania during 1997.

19. During the February 25, 2003 telephone conference, petitioner stated that he had documentation to substantiate his residency for 1996 and 1997. In its February 26, 2003 Conference Memorandum, the Commission ordered petitioner to provide that substantiation to the Department's Resolution Officer. Petitioner did not do so.

20. During the April 22, 2003 telephone conference, petitioner stated that he had filed a Virginia income tax return for 1996 and a Pennsylvania income tax return for 1997, but that he needed more time to obtain copies of those documents from those states' revenue agencies. In its April 22, 2003 Conference Memorandum, the Commission ordered petitioner to present those documents to the Department's Resolution Officer as soon as he received them.

21. During the June 24, 2003 telephone conference, petitioner stated that he had not yet received the tax returns he had requested from the respective states, and again requested additional time to get the documents. In its June 25, 2003 Conference Memorandum, the Commission ordered petitioner (1) to telephone the tax departments in Virginia and Pennsylvania and learn the name of a person or unit within each agency to write to for copies of his 1996 and 1997 income tax returns; (2) to write to the proper person or unit in each department by July 11, 2003 and request the appropriate state income tax return; and (3) to provide those documents to the Department's Resolution Officer as soon as he received them.

22. During the August 12, 2003 telephone conference, petitioner stated

that he received the copy of his 1996 Virginia income tax return, but that he still had not received a copy of his 1997 Pennsylvania income tax return even though he said he had requested it. Petitioner again requested additional time to get his 1997 Pennsylvania income tax return. In its August 14, 2003 Conference Memorandum, the Commission ordered petitioner, by August 20, 2003, to bring to the Department's Resolution Officer a copy of the 1996 Virginia income tax return and a copy of his letter to the Pennsylvania Tax Department.

23. Petitioner provided a copy of a purported 1996 Virginia income tax return that he claimed he received from Virginia. Both the Department's Resolution officer and the Department's attorney in these cases reviewed that document. Based upon their each having handled income tax returns for over 15 years, they determined that the purported income tax return petitioner provided did not come from Virginia, because it contained no identifying marks or validation marks that any state or federal tax agency would apply to an original income tax return during processing.

24. The Department's attorney contacted the Virginia Department of Taxation and was told that petitioner did not file any tax return with Virginia for 1996.

25. The Department's attorney also contacted the Pennsylvania Department of Revenue and was told that petitioner has never filed any Pennsylvania income tax return.

26. At no time during these proceedings has petitioner provided any documents or other evidence to substantiate his original claim that he was not a resident of Wisconsin in 1996 and 1997.

27. During the October 14, 2003 telephone conference, when presented with the information from the Virginia and Pennsylvania tax agencies, petitioner stated that he would file 1996 and 1997 Wisconsin income tax returns, and that he did not want to proceed to an evidentiary hearing. In its October 15, 2003 Conference Memorandum, the Commission ordered petitioner to complete 1996 and 1997 Wisconsin income tax returns and send them directly to Attorney Buchanan, and that his failure to do so would result in these cases being dismissed because of his failure to prosecute the appeals and failure to comply with an order of the Commission.

28. During the November 25, 2003 telephone conference, petitioner stated that he had mailed completed 1996 and 1997 Wisconsin income tax returns directly to Attorney Buchanan.

29. During the December 16, 2003 telephone conference, Attorney Buchanan stated that he still had not received petitioner's 1996 and 1997 Wisconsin income tax returns. Petitioner stated that he had completed the two tax returns and mailed them to Attorney Buchanan, but that they had been returned to him by the U. S. Postal Service for no reason he could understand. Petitioner agreed to send the two tax returns to Attorney Buchanan. In its December 17, 2003 Conference Memorandum, the Commission ordered petitioner to send the 1996 and 1997 income tax returns to Attorney Buchanan by December 19, 2003. The Conference Memorandum again stated that if petitioner did not do as ordered, the Commission would take appropriate action on the grounds that he has not fulfilled his obligations and promises to the Department and that he has failed to properly prosecute his appeals.

30. During the February 11, 2004 telephone conference, petitioner stated that he had not mailed the two tax returns to Attorney Buchanan. At that conference, petitioner first stated that he was represented by Wallace Vitez, a Wisconsin attorney. Attorney Buchanan pointed out that no such person was listed in the current Wisconsin Lawyer Directory (2004), and petitioner admitted that he had not retained an attorney. In its Conference Memorandum, the Commission ordered petitioner to send his 1996 and 1997 income tax returns to Attorney Buchanan, as he had previously agreed to do, on February 11, 2004.

31. During the February 17, 2004 telephone conference, petitioner again admitted that he had failed to comply with the Commission's Orders. Petitioner then stated that he had a meeting scheduled with a Wisconsin attorney on February 19, 2004, but that he did not know the attorney's name. In its February 18, 2004 Conference Memorandum, the Commission ordered petitioner (1) to have his attorney send a power of attorney document to the Commission and Attorney Buchanan and (2) to have his Wisconsin attorney participate in the next telephone conference. The Conference Memorandum further ordered that if petitioner did not retain an attorney, that he send his 1996 and 1997 Wisconsin income tax returns directly to Attorney Buchanan.

32. During the February 25, 2004 telephone conference, petitioner appeared without any attorney. He stated that he had met with an attorney (whom he did not name), but that he had not retained an attorney. Petitioner also stated that he had not mailed his 1996 and 1997 Wisconsin income tax returns to Attorney Buchanan. The Commission then stated that it would entertain a motion by the Department to

dismiss these appeals on the grounds petitioner has failed to prosecute his appeals, has repeatedly failed to obey orders issued by the Commission, and on any other grounds deemed appropriate.

Docket No. 03-I-178; Tax Years 1999 and 2000
and Docket No. 03-I-179; Tax Year 1998

33. These cases and tax years came before the Commission on June 19, 2003, when petitioner filed his petitions for review. Since that date, five telephone conferences have been held during which petitioner's 1998, 1999, and 2000 tax years were discussed, along with his tax years 1995, 1996, and 1997.

34. The telephone conferences which included these appeals paralleled the discussions of petitioner's earlier appeals. Petitioner variously (1) asserted that he and the Department reached a settlement regarding tax year 1998, but had no substantiation; (2) claimed he was not a resident of Wisconsin during 1999 and 2000, but offered no proof; (3) stated his intention to hire an attorney, but did not follow through and do so; and (4) stated that he could prove his assertions, but didn't provide any substantiation to the Department or the Commission.

35. Petitioner also failed to comply with Commission orders which applied to all four of his appeals; for example, that he meet with Department personnel to review documents he said he possessed (and did not), and that he retain counsel (which he did not), as he said he would.

RULING

During eleven telephone conferences—from November 13, 2002 to February 25, 2004—petitioner has repeatedly broken promises to provide information and has not complied with many Commission orders. The Commission and the Department have patiently waited for him to substantiate his statements with tangible records, and the Commission has, perhaps more generously than it should have, allowed him time to fulfill his promises and comply with Commission orders. However, these cases have not progressed toward any resolution since the time petitioner filed them with the Commission.

One example illustrates petitioner's nimble non-effort to resolve these cases. For income tax years 1996 and 1997, petitioner asserted that he was a nonresident of Wisconsin, but he offered no proof. He asserted that he filed income tax returns with Virginia and Pennsylvania, but he had no copies. The Commission gave him time to obtain copies, but he only produced a document which appears to be invalid or forged. He said he was trying to obtain copies of the income tax returns, but he did not offer copies of letters or names of people in those states whom he either wrote to or spoke to.

Based upon petitioner's assertion that he filed income tax returns with Virginia and Pennsylvania, Attorney Buchanan contacted the tax department in each state. He received a letter back from each state indicating that petitioner had not filed any income tax returns there.

Petitioner then shifted gears and said he would file 1996 and 1997 Wisconsin income tax returns with the Department. The Commission gave him time to

prepare and submit the returns, but he violated Commission orders setting time requirements.

Petitioner next said he had completed and mailed the tax returns to Attorney Buchanan, but that—for some unknown reason—the U. S. Postal Service returned them. He then promised he would, and was ordered by the Commission to, send the tax returns to Attorney Buchanan. Petitioner did not comply, and offered no explanation of his failure to comply.

Petitioner's statements and promises were frivolous, and some were not truthful. It appears to the Commission that he has instituted or maintained these proceedings primarily for delay. His positions in these appeals have proven to be frivolous or groundless or both.

ORDERS

1. The petitions for review in these matters are dismissed based upon petitioner's failure to prosecute and causing delay pursuant to Wis. Stat. §§ 805.03 and 802.05(3)(b)2, and for his failure to comply with orders of the Commission pursuant to Wis. Stat. § 802.10(7).

2. Petitioner is assessed an additional \$500 pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 16th day of April, 2004.

WISCONSIN TAX APPEALS COMMISSION

Don M. Millis, Commission Chairperson

Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"