

STATE OF WISCONSIN
TAX APPEALS COMMISSION

**ADOLPH AND MARGARET RUHLE
(BOTH DECEASED),**

**DOCKET NOS. 96-I-764,
02-I-268-SC
thru 02-I-271-SC¹**

Petitioners,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE

Respondent.

JENNIFER E. NASHOLD, CHAIRPERSON:

These matters come before the Commission on a motion filed by respondent, Wisconsin Department of Revenue ("Department"), to dismiss the petitions for review based on petitioners' failure to prosecute their appeals. Wis. Stat. § 805.03; Wis. Admin. Code § TA 1.39. Alternatively, the Department requests that we grant the motions for summary judgment filed in these cases, or, at minimum, grant the fully briefed motion for summary judgment in Docket No. 02-I-269-SC.

Petitioners are deceased and are not represented. Petitioners had been

¹ With the exception of Docket No. 96-I-764, these cases were originally treated as small claims cases. A July 28, 2003 Commission Order in other federal retiree cases, which the Commission has made part of the record in these cases, states, "The parties agree that all dockets on Attachment A and listed in respondent's letters dated February 7, 2003 and March 3, 2003 can be considered as regular claims, not small claims." Because there was no "Attachment A" attached to the July 28, 2003 Order, it is assumed that the Commissioner who issued that Order was referring to the "Appendix A" attached to a May 30, 2003 Order in the same cases as those for which the July 28, 2003 Order was issued. The May 30, 2003 Order, including Appendix A, is made part of the record in these cases. Appendix A includes all of the above-captioned cases currently before the Commission. Thus, all of these cases are treated as large claims cases.

represented in proceedings before the Department and Commission by the law firm of O'Neil, Cannon & Hollman, DeJong S.C. ("O'Neil firm") until that firm was excused from further representation in these matters by a Commission Order dated June 27, 2006. The Department is represented by Attorney Robert C. Stellick, Jr., who filed a brief and an affidavit in support of his motion to dismiss.

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

FACTS

Jurisdictional Facts

Docket No. 96-I-764

1. By notice dated February 13, 1995, the Department issued petitioners an assessment for income tax in the amount of \$2,896 for tax years 1989-1993.

2. Petitioners filed a petition for redetermination dated March 21, 1995.

3. The Department issued its Notice of Action on July 22, 1996, denying the petition for redetermination.

4. On July 31, 1996, petitioners filed a petition for review with the Commission.

Docket Nos. 02-I-268-SC through 02-I-271-SC

5. In Docket 02-I-268-SC, the Department, by notice dated April 14, 1997, issued petitioners an assessment for income tax in the amount of \$1,369.42 for tax years 1994 and 1995. Petitioners filed a petition for redetermination with the

Department dated April 25, 1997.

6. In Docket No. 02-I-269-SC, the Department, by notice dated May 15, 1997, issued petitioners an assessment for income tax in the amount of \$655.08 for tax year 1996. Petitioners filed a petition for redetermination with the Department dated June 26, 1997.

7. In Docket No. 02-I-270-SC, the Department, by notice dated December 20, 1999, issued petitioners an assessment for income tax in the amount of \$1,301.67 for tax years 1997 and 1998. Petitioners filed a petition for redetermination with the Department dated January 11, 2000.

8. In Docket No. 02-I-271-SC, the Department, by notice dated March 25, 2003, issued an assessment to Margaret J. Ruhle for income tax in the amount of \$224.50 for tax year 2000. Ms. Ruhle filed a petition for redetermination with the Department on April 2, 2002.

9. On July 8, 2002, the Department issued a Notice of Action for each of the petitions for redetermination in Docket Numbers 02-I-268-SC through 02-I-271-SC, denying each of the petitions for redetermination.

10. On August 20, 2002, petitioners filed petitions for review in Docket Nos. 02-I-268-SC through 02-I-271-SC.

Other Material Facts Related to All Docket Numbers

11. With the exception of Docket No. 02-I-269-SC, in general, these cases concern assessments issued to petitioners for failure to include federal pension amounts in their Wisconsin income for Wisconsin income tax purposes.

12. Docket No. 02-I-269-SC involved an adjustment made because of petitioners' subtraction of federal itemized deductions of \$9,562.68 from the federal adjusted gross income reported on their Wisconsin Form 1 return for the 1996 tax year, resulting in an assessment in the amount of \$655.08.

13. Motions for summary judgment were filed in these cases.² Of the motions filed, only that filed in Docket No. 02-I-269-SC was fully briefed. Based on communications by counsel for the Department and petitioners, respectively, by Order dated August 25, 2004, the Commission suspended further briefing in Docket Numbers 96-I-764, 02-I-268-SC, 02-I-270-SC and 02-I-271-SC and the dockets were included on the parties' list of "PETITIONERS TO BE BOUND BY OUTCOME OF REPRESENTATIVE DOCKETS." Docket No. 02-I-269-SC was awaiting decision by the Commission when a general settlement on federal retirees was reached March 10, 2005 between the Department and the O'Neil firm, which settlement also included petitioners. Based on this general settlement, the Department agreed to withdraw its motion for summary judgment in Docket No. 02-I-269-SC by letter dated March 10, 2005.

14. On June 19, 2006, the O'Neil firm filed a motion to be excused from further representation, based on the affidavit included in the motion from Luan Unger, paralegal. The affidavit stated that petitioners were deceased and that settlement documents were mailed to petitioners in care of their daughter, Cynthia Ruhle, at her last known address on June 2, 2005. The Unger affidavit also attached the March 15,

² In light of the Commission's ruling, the motions for summary judgment are not relevant and the details of these motions are therefore not included in the finding of facts.

2006 letter of Ms. Ruhle's attorney, Attorney Jeffrey Davison, which indicated that there was no estate ever opened for decedents and thus no one with authority to sign the settlement agreement sent to Ms. Ruhle.

15. The Commission issued an Order on June 27, 2006 granting the O'Neil firm's motion to withdraw from representation and setting a telephone conference for July 24, 2006, sending the Order to Ms. Ruhle.

16. At the July 24, 2006 conference, Ms. Ruhle informed the Commission and Department that her sister, Judy Meyers, was the appropriate person to contact regarding these cases. Based on that representation, the Commission issued an Order on July 26, 2006 ordering the parties to provide, by August 15, 2006, a telephone number where Ms. Meyers could be reached and setting the matter for a status conference on August 29, 2006. The Order further states:

4. If petitioners' representative fails to participate in the telephone status conference, the Commission shall issue an order dismissing the petitions for review in these matters on the basis of petitioners' representative having failed to prosecute the petitions, and the cases shall be closed.

17. The Order was sent to Ms. Meyers at 7210 89th Ave. Kenosha, WI 53142. A phone number for Ms. Meyers was provided by Ms. Ruhle.

18. On August 29, 2006, neither Ms. Meyers nor anyone else participated in the telephone conference on behalf of petitioners. The same day, Attorney Stellick sent a letter to Ms. Meyers with a copy to the Commission and left two telephone messages on Ms. Meyers' answering machine. The letter specifically informed Ms. Meyers that if she failed to contact the attorney for the Department, the

latter would file a motion to dismiss the case for failure to prosecute. He received no response from Ms. Meyers nor from anyone else regarding the case, nor was his August 29 letter returned to the Department.

19. On October 20, 2006, the Department filed a Notice of Motion and Motion to Dismiss, affidavit with exhibits, and brief in support of the motion to dismiss on the basis that petitioners have failed to prosecute their appeals. Alternatively, the Department requested that the Commission grant the motions for summary judgment previously filed in these cases, or at least grant the fully briefed motion in Docket No. 02-I-269-SC.

20. On November 1, 2006, the Commission issued a Briefing Order ordering that petitioners file a response to the Department's motion no later than December 1, 2006. The Order was sent to Ms. Meyers. No response was filed, nor did the Commission receive any further communication from anyone purporting to represent petitioners.

RULING

Wisconsin Statutes § 805.03 provides as follows:

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. . . .

Wisconsin Statutes § 804.12(2)(a) provides for a number of sanctions for failure to prosecute or comply with procedure, including dismissal of the action or proceeding. In addition, Wis. Stat. § 802.10(7) states that "[v]iolations of a scheduling or pretrial order are subject to ss. 802.05, 804.12 and 805.03."

Petitioners are deceased and, according to Attorney Davison's letter, there is no one authorized to act on their behalf. Even if there were someone authorized to do so, there appears to be no one interested in pursuing these cases on behalf of petitioners. Petitioners' former counsel, the Department and the Commission have provided numerous opportunities for petitioners' children, Ms. Ruhle and Ms. Meyers, to pursue their appeals before the Commission. Despite being ordered to appear for status conferences and to respond to the Department's motion to dismiss, and despite being informed that their appeals could be subject to dismissal for failure to appear, petitioners' children have failed to prosecute this case and have failed to abide by the Commission's orders. Indeed, for several years, there has been no action on behalf of petitioners to move these cases forward in any way.

Accordingly, the petitions for review are dismissed in these cases for failure to prosecute and failure to follow the Commission's orders.

IT IS ORDERED

The Department's motion is granted, and petitioners' petitions for review are dismissed.

Dated at Madison, Wisconsin, this 1st day of March, 2007.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"