

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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STRATEGIC BENEFITS CONSULTANTS, INC.,

DOCKET NO. 11-W-142

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE

Respondent.

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**ROGER W. LEGRAND, COMMISSIONER:**

This matter comes before the Commission on a motion to dismiss filed by the Wisconsin Department of Revenue (“the Respondent”) on June 28, 2011. Petitioner, Strategic Benefits Consultants, Inc., is a corporation whose corporate officers are David A. Allen and Deborah Bourne Allen. David A. Allen and Deborah Bourne Allen are also acting as corporate representatives in this action. Respondent, Wisconsin Department of Revenue is represented by Attorney Daniel P. Brzozowski.<sup>1</sup>

The basis for the motion is threefold:

1. Petitioners did not file a petition for redetermination in this matter pursuant to Wis. Stat. § 73.01(5)(a).

2. Petitioners did not file a petition for review with the Commission within 60 days of a final determination made by the Department as required under Wis. Stat. § 73.01(5)(a).

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<sup>1</sup> On January 31, 2012, the Department notified the Tax Appeals Commission that this case had been reassigned to Attorney John R. Evans.

3. Petitioners have not been aggrieved pursuant to Wis. Stat. § 73.01(5)(a).

The Commission grants Respondent's motion to dismiss on all three grounds.

### FACTS

1. On April 25, 2011, Petitioner filed a petition for review with the Wisconsin Tax Appeals Commission on behalf of Strategic Benefits Consultants, Inc. (Attorney Daniel P. Brzozowski "Brzozowski Aff." ¶ 10; Exh. 4.)

2. The petition for review makes reference to an "Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages" signed by Deborah Bourne Allen as President of the corporation on April 7, 2008 for the tax year 2007. (Brzozowski Aff. ¶ 3; Exh. 1.)

3. This reconciliation statement showed a tax due from Petitioner of \$1,766.34 on line 6 of the tax return. (Brzozowski Aff. ¶ 4.)

4. On September 29, 2010, the Respondent issued a Notice of Amount Due to Petitioner David A. Allen based upon the unpaid 2007 withholding tax of Strategic Benefits Consultants, Inc. (Brzozowski Aff. ¶ 7; Exh. 2.)

5. On September 29, 2010, the Respondent issued a Notice of Amount due to Petitioner Deborah Bourne Allen based upon the unpaid 2007 withholding tax of Strategic Benefits Consultants, Inc. (Brzozowski Aff. ¶ 8; Exh. 3.)

6. Petitioners, David A. Allen and Deborah Bourne Allen, are officers of Strategic Benefits Consultants, Inc. (Exhibit 4.)

7. Petitioners never filed a petition for redetermination with the Respondent challenging the personal assessments of September 29, 2010. On or about September 29, 2010, Respondent mailed the assessments of Exhibits 2 and 3 to Petitioners at their address of record in Burr Ridge, Illinois. That is the same address used by Petitioners in their filings with the Wisconsin Tax Appeals Commission, and is the address shown by DuPage County, Illinois Treasurer for taxes payable by David A. and Deborah Allen. (Exhibit 5.) The mailing was sent by regular mail but was not returned to Respondent as undeliverable.

8. Respondent filed a motion to dismiss on June 28, 2011, which is the subject of this ruling and order.

9. On August 12, 2011, Petitioners responded to the motion to dismiss and filed a motion for summary judgment.

10. On August 26, 2011, Respondent filed an amended answer and response to the motion for summary judgment.

### **DECISION**

Strategic Benefits Consultants, Inc., is an Illinois corporation with officers David A. Allen and Deborah Bourne Allen. On April 7, 2008, Deborah Bourne Allen, as President of Strategic Benefits Consultants, Inc., signed an Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages form. (Exhibit 1.) Line 6 of the form shows that there is a tax amount due of \$1,766.34 for unpaid withholding taxes of the corporation for the year 2007. This tax was not paid by the corporation and so on September 29, 2010, the Department issued personal assessments against David

A. Allen and Deborah Bourne Allen as officers of Strategic Benefits Consultants, Inc., pursuant to Wis. Stat. § 71.83(1)(b)(2).

This is a jurisdiction case. Wis. Stat. 73.01(5)(a) is the jurisdictional statute for appeals to the Commission and states in pertinent part: “Any person . . . who has filed a petition for redetermination with the Department and who is aggrieved by the redetermination of the Department of Revenue may, within 60 days after the redetermination but not thereafter, file with the clerk of the Commission a petition for review of the action of the Department of Revenue.”

Wis. Stat. § 71.88(1) gives a person 60 days to petition the Department for redetermination of an assessment. Wis. Stat. § 71.88(2) allows a person feeling aggrieved by the Department’s redetermination to appeal to the Tax Appeals Commission. If a timely petition is not filed with the Commission or, if no petition for redetermination is made within the time provided, the assessment is final and conclusive.

In this case, the petition for review was filed with the Commission on April 25, 2011. The assessment to the corporation for unpaid withholding taxes arose on April 7, 2008, the date on which the corporation filed the Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages form. The personal assessment against Petitioners David A. Allen and Deborah Bourne Allen was made on September 29, 2010. There was no petition for redetermination filed with the Department either by the corporation or by Petitioners David A. Allen and Deborah Bourne Allen personally. Since no petition for redetermination was filed, the Department took no action on one.

Petitioners argue that letters they sent to the Department of Revenue dated November 19, 2010, February 14, 2011, and March 25, 2011, constituted petitions for redetermination. The Commission finds that the February 14, 2011 letter, and the March 25, 2011 letter were outside the 60-day time limit required by Wis. Stat. § 71.88(1). With respect to the November 19, 2010 letter, the Commission notes several things: 1) The letter refers to the collection of withholding taxes dating back to the 2007 admission on the Reconciliation form (Exhibit 1), rather than the personal liability assessments against the principals dated September 29, 2010; 2) It is addressed to a representative in the Collections section, not the Compliance Bureau at the Department of Revenue; 3) The letter was drafted by principal David A. Allen who is a lawyer and who presumably would know about petitions for redetermination and timeliness requirements; 4) It is a response to collection efforts against Strategic Benefits Consultants, Inc., not to the personal assessments of September 29, 2010. From this evidence, the Commission concludes that the November 19, 2010, letter does not constitute a petition for redetermination. It does not clearly and concisely petition the Department for redetermination of the September 29, 2010 assessment as is required in the information contained in Exhibits 3 and 4 pertaining to appeals to the Department.

Petitioner David A. Allen also argues that neither he, nor the other principal, Deborah Bourne Allen, ever received the notice of assessment dated September 29, 2010, by certified mail. Wis. Stat. § 71.74(11) does not require that taxpayers be notified of assessment by certified mail, but allows notification in writing by regular mail if there is satisfactory evidence of receipt. *Lyman v. Wis. Dep't of*

*Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-917 (WTAC 2006). Mailing a document creates a presumption of receipt and self-serving allegations of a recipient are not sufficient to overturn the presumption. *Mueller v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-020 (WTAC May 3, 1982). The evidence indicates that the Allens received the assessments. Respondent's affidavit states that assessments were mailed to David and Deborah Allen at their address in Burr Ridge, Illinois, and that they were not returned as undeliverable. The Burr Ridge, Illinois address is the one used by Petitioners when they filed their petition for review, and is the address used by Kane County, Illinois, for taxes payable by David and Deborah Allen. The Commission concludes that the Allens received the assessments and that their arguments have no merit.

The petition for review was filed by petitioners on April 25, 2011. This was shortly after the Department filed levies against two of their bank accounts for the unpaid withholding taxes of the corporation. In their filings of August 12, 2011, Petitioners attempt to amend the petition for review to deal with the levy issue. The Commission has no jurisdiction over Respondent's collection of delinquent taxes, *Beck v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-275 (WTAC 1997), and so will not consider allowing an amendment of the petition to cover levy issues.

The Commission concludes that it has no jurisdiction to hear this case. The petition for review asks us to review an assessment against the corporation for unpaid withholding taxes. This was based on a 2007 withholding tax return signed by Deborah Bourne Allen on April 7, 2008. Since the corporation filed the return and admitted on Line 6 that the withholding was due, it had no reason to file a petition for

redetermination within 60 days, and thus the assessment became final and conclusive under Wis. Stat. § 71.88(2). The Department never acted on a petition for redetermination since one was never filed. Petitioner has no basis to feel “aggrieved by the redetermination of the Department of Revenue” because the Department never took action on a petition for redetermination. Thus, the petition for review filed by Strategic Benefits Consultants, Inc., must be dismissed because Petitioner never filed a petition for redetermination with the Department, never filed a petition for review within 60 days of a denial of the petition for redetermination, and is not aggrieved by an action of the Department. All three of these things are necessary to give the Tax Appeals Commission jurisdiction over an action pursuant to Wis. Stat. § 73.01(5).

There remains the question of the personal liability of Petitioners David A. Allen and Deborah Bourne Allen. Under Wis. Stat. § 71.83(1)(b)2, the Department properly assessed Petitioners David A. Allen and Deborah Bourne Allen for the unpaid 2007 withholding taxes as officers of the corporation. This assessment was dated September 29, 2010. Neither individual filed a petition for redetermination within 60 days after receipt of the Respondent’s notice of assessment of tax. The Department never acted on a petition for redetermination since none was filed. Thus, the assessment became final and conclusive under Wis. Stat. § 71.88(1). The filing of the petition for review on April 25, 2010, took place more than 60 days after the assessment became final and conclusive. To obtain jurisdiction in the Tax Appeals Commission, Wis. Stat. § 73.01(5) requires that a Petitioner:

- File a petition for redetermination within 60 days of receiving an assessment from the Wisconsin Department of Revenue.
- Feel aggrieved by the Department's redetermination, and
- File a petition for review with the Tax Appeals Commission within 60 days of the redetermination.

Petitioners have done none of these things and, therefore, the Commission lacks jurisdiction to hear the appeal. Consequently, the Commission grants Respondent's motion to dismiss the appeal for lack of jurisdiction under Wis. Stat. § 73.01(5). Since it has no jurisdiction, it also dismisses Petitioner's motion for summary judgment.

Dated at Madison, Wisconsin, this 17<sup>th</sup> day of February, 2012.

**WISCONSIN TAX APPEALS COMMISSION**

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Lorna Hemp Boll, Chair

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Roger W. Le Grand, Commissioner

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Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"