

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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KIMBERLY WATTS-HOWELL,

DOCKET NO. 08-I-055

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 filed by respondent, the Wisconsin Department of Revenue (the "Department"), to dismiss the petition for review based on petitioner's failure to comply with the Commission's lawful orders and failure to prosecute her appeal pursuant to Wis. Stat. § 805.03 and Wis. Admin. Code § TA 1.39.

Petitioner represents herself and has not responded to the motion. Attorney Sheree Robertson represents the Department and has filed a notice of motion and motion to dismiss, affidavit and exhibits in support of the motion.

Having considered the entire record, including the motion, affidavit, and exhibits of the Department, the Commission hereby finds, rules and orders as follows:

**JURISDICTIONAL FACTS**

1. On April 21, 2008, petitioner filed a letter with the Commission appealing the Department's determination regarding its Notice of Assessment of additional tax due issued to petitioner. The Commission treated this letter as a petition

for review under Wis. Stat. § 73.01(5).

2. On May 16, 2008, the Department filed an answer to the petition.

3. The Commission issued a Notice of Telephone Status Conference dated September 4, 2008 notifying the parties of a telephone status conference scheduled for 11:00 a.m. on October 21, 2008 in this matter. The Notice stated that “[i]n the event a party is unable to participate in the conference, the party shall contact the Commission promptly so that the conference can be rescheduled.”

4. Petitioner did not appear at the October 21, 2008 Telephone Status Conference and did not contact the Department’s attorney or the Commission regarding her unavailability to participate in the conference. Commissioner Roger W. LeGrand presided at the October 21, 2008 Telephone Status Conference and scheduled another telephone status conference in this matter for November 20, 2008.

5. The Commission issued a Status Conference Memorandum and Order dated October 22, 2008 notifying the parties that this matter was scheduled for another telephone status conference to be held at 11:30 a.m. on November 20, 2008 and ordering them to appear at said conference. The Status Conference Memorandum and Order provided in relevant part: “Failure to comply with the terms of this order may result in any sanction authorized by law, including dismissal of the petition for review.”

6. The Telephone Status Conference was held at 11:30 a.m. on November 20, 2008 before Commissioner LeGrand. Attorney Robertson appeared on behalf of Department. Petitioner did not appear for the Telephone Status Conference and, prior to the status conference, did not contact the Commission or the Department regarding her unavailability to participate in the status conference.

7. Respondent filed a motion to dismiss the petition for failure to prosecute on December 8, 2008.

8. On December 11, 2008, the Commission issued a Briefing Order ordering petitioner to file a response to the Department's motion by January 9, 2009.

9. Petitioner did not file a brief or any response to the Department's motion or the Briefing Order.

### **RULING AND ORDER**

The Commission finds that petitioner's failure to appear at the telephone status conferences held on October 21, 2008 and November 20, 2008 and failure to comply with the Commission's orders in this matter constitute failure to prosecute the petition for review and failure to comply with the Commission's lawful orders under Wis. Stat. § 805.03 and Wis. Admin. Code § TA 1.39. Based upon these findings, the Department's motion is granted and the petition for review is dismissed.

Dated at Madison, Wisconsin, this 9<sup>th</sup> day of April, 2009.

### **WISCONSIN TAX APPEALS COMMISSION**

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David C. Swanson, Chairperson

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Roger W. LeGrand, Commissioner

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Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"