

STATE OF WISCONSIN
TAX APPEALS COMMISSION



SEASCAPE TECHNOLOGIES, LLC,

DOCKET NO. 21-I-424

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

JESSICA ROULETTE, COMMISSIONER:

This matter comes before the Commission on the oral motion of the Department to Dismiss for Lack of Subject Matter Jurisdiction. Petitioner, Seascape Technologies, LLC ("Seascape"), a Wisconsin limited liability company, is represented by Attorney George Goyke of Goyke & Tillisch, LLP, of Wausau, Wisconsin. Respondent, the Wisconsin Department of Revenue ("Department"), is represented by Attorney Adam Ben-Zikri, of Madison, Wisconsin.

PROCEDURAL HISTORY

On December 21, 2021, Seascape filed its petition for review in this matter. On January 18, 2022, the Department filed its answer, which included affirmative defenses of lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. On March 8, 2022, the Commission held an initial telephone status conference. On

March 9, 2022, the Commission held a telephonic hearing where it heard arguments from the parties on the issue of subject matter jurisdiction.

Based on the parties' pleadings, oral arguments, and the entire record in this matter, the Commission finds, concludes, rules, and orders as follows:

FACTS

1. On April 19, 2021, the Department issued a Notice of Employee Wage Attachment to Seascope, directing Seascope to withhold money from Robert Cerne's gross wages and send the withheld money to the Department. (Dep't Ex. 1.)
2. On July 7, 2021, the Department issued a Notice of Overdue Tax for Failure to Withhold to Seascope in the amount of \$74,148.93. (Dep't Ex. 2).
3. On November 4, 2021, the Department issued a Statement of Personal Responsibility to Seascope in the amount of \$74,148.93. (Dep't Ex. 3.)
4. On December 21, 2021, Seascope filed a petition for review with the Commission. (Commission file.)
5. On January 18, 2022, the Department filed its Answer with the Commission. (Commission file.)

APPLICABLE LAW

Wis. Stat. § 71.91(7): Withholding by employer of delinquent tax of employee.

(b) The department of revenue may give notice to any employer deriving income having a taxable situs in this state (regardless of whether any such income is exempt from taxation) to the effect that an employee of the employer is delinquent in a certain amount with respect to state taxes, including penalties, interest, and costs. Upon receipt of the

notice of delinquency, the employer shall withhold from compensation due or to become due to the employee the total amount shown by the notice. . . .

(d) The employer shall, on or before the last day of the month after the month during which an amount was withheld, remit to the department or to the person that the department prescribes that amount. Any amount withheld from an employee by an employer shall immediately be a trust fund for this state. Should any employer, after notice, willfully fail to withhold in accordance with the notice and this subsection, or willfully fail to remit any amount withheld, as required by this subsection, such employer shall be liable for the total amount set forth in the notice together with delinquent interest as though the amount shown by the notice was due by such employer as a direct obligation to the state for delinquent taxes, and may be collected by any means provided by law including the means provided for the collection of delinquent income or franchise taxes. . . .

Wis. Stat. § 73.01(4)(a): Subject to the provisions for judicial review contained in s. 73.015, the commission shall be the final authority for the hearing and determination of all questions of law and fact arising under sub. (5) and s. 72.86(4), 1985 stats., and ss. 70.38(4)(a), 70.397, 70.64, and 70.995(8), s. 76.38(12)(a), 1993 stats., ss. 76.39(4)(c), 76.48(6), 77/26(3), 77.59(5m) and (6)(b), 78.01, 78.22, 78.40, 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 177.1103, 177.1206(3), 341.405, and 341.45, subch. XIV of ch.71, and subch. VII of ch. 77. . . .

RULING

On January 18, 2022, the Department pled the affirmative defense of lack of subject matter jurisdiction in its Answer. On March 9, 2022, the Department made an oral motion to dismiss the instant petition. Both parties made oral arguments on the motion, and the Department has filed Exhibits proffered in support of its motion in the course the March 9, 2022 telephonic hearing.

Subject to judicial review, the Commission is “the final authority for the hearing and determination of all questions of law and fact” arising under certain enumerated statutes. Wis. Stat. § 73.01(4)(a). Not included in that list of enumerated statutes is Wis. Stat. § 71.91(7), which governs withholding by an employer of the delinquent tax of an employee. Under that section, where an employee owes amounts due state taxes, upon request by the Department, an employer must withhold amounts due from the employee’s compensation or be liable for the tax directly. Wis. Stat. § 71.91(7).

The Commission does not have jurisdiction over every Department of Revenue decision simply because it is a decision made by the Department. The Commission’s jurisdiction is both granted and circumscribed by Wis. Stat. § 73.01(4)(a). By not including Section 71.91(7) within the Commission’s jurisdiction, the Legislature effectively excluded it. This issue has been addressed previously. *See Kaminske v. Dep’t of Revenue*, Wis. Tax Rptr. (CCH) ¶401-638 (WTAC 2012). The Commission does not have jurisdiction over collection matters. Consequently, we hold that the Petitioner’s dispute regarding amounts due pursuant to Wis. Stat. § 71.91(7) is not subject to review by the Commission.

CONCLUSION OF LAW

The Commission’s jurisdiction is limited to questions of law and fact arising under the statutes enumerated in Wis. Stat. § 73.01(4)(a), which do not include collections matters under Wis. Stat. § 71.91(7). Because the Commission does not have

jurisdiction to hear the petition filed by Seascope in Docket Number 21-I-424, the Commission cannot hear this appeal.

ORDER

Based on the foregoing reasoning and caselaw, IT IS ORDERED that the Department's Motion to Dismiss Seascope's Petition for Review in Docket Number 21-I-424 is granted and the Petition is dismissed.

Dated at Madison, Wisconsin, this 14th day of March, 2022.

WISCONSIN TAX APPEALS COMMISSION


Elizabeth Kessler, Chair


Lorna Hemp Boll, Commissioner


Jessica Roulette, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION
5005 University Avenue - Suite 110
Madison, Wisconsin 53705

NOTICE OF APPEAL INFORMATION

NOTICE OF RIGHTS FOR REHEARING, OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternately, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, within 30 days of this decision if there has been no petition for rehearing or, within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service, or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or, the Wisconsin Statutes. The website for the courts is <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.