
ELIJAH M. RASHAED,

Petitioner,

v.

Case No. 11-CV-12891

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DECISION AND ORDER

OCT 26 2011

BACKGROUND

On August 12, 2011, Elijah Rashaed filed a petition for judicial review of a ruling and order of the Wisconsin Tax Appeals Commission (“Commission”). In addition to his petition for judicial review, Mr. Rashaed also seeks declaratory judgment relief, and relief under 42 U.S.C. § 1988. The July 13, 2011 order from which Mr. Rashaed now seeks review granted the Wisconsin Department of Revenue’s (“Department”) motion for summary judgment and dismissed Mr. Rashaed’s petition for review relating to his personal liability for unpaid sales and use taxes of a retail clothing store, M&S, Inc., over a certain period of time.

On September 1, 2011, the Department filed with this court: (1) a Motion to Dismiss the declaratory judgment portion of Mr. Rashaed’s petition and the request for relief under 42 U.S.C. § 1988 for lack of competency to proceed and lack of personal jurisdiction, and (2) a Motion to Change Venue to Dane County. On September 7, 2011, the court issued a briefing schedule for the pending motions so that Mr. Rashaed would have the opportunity to respond. The briefing schedule was as follows: the Department’s brief was due on or before September 23, 2011; Mr. Rashaed’s response was due on or before October 7, 2011; the Department’s reply was due on or before October 14, 2011. The court has not received any submissions in response to the briefing schedule. The court is left to assume that the Department rests on its moving brief, filed on September 1, 2011; however, there has been no response in opposition. Based on a review of the applicable law, the Department’s submission, and for the reasons set forth below, the court

grants the Department's motion to change venue to Dane County. Accordingly, the court does not reach the Department's motion to dismiss.

ANALYSIS

Although the Department spends the majority of its brief addressing the merits of its motion to dismiss, the procedural issue of its motion to change venue is dispositive of the entire action pending in this court, so the court will address the motion to change venue first. The Department asserts that this action must be transferred to Dane County. The taxation provisions of the Wisconsin Statutes provide, in pertinent part:

[A]ll appeals from decisions of the tax appeals commission with respect to the taxes imposed by this subchapter [general sales and use tax] shall be appealed to the circuit court for Dane county.

Wis. Stat. § 77.59(6)(b). The underlying petition for judicial review in this case pertains to a July 13, 2011 order of the Tax Appeals Commission upholding the imposition of derivative liability on Mr. Rashaed for an assessment of personal liability relating to unpaid sales taxes of M&S, Inc. The venue statute uses mandatory language. When venue is improper, the appropriate response is a motion for a change of venue, not a motion to dismiss. *Johnson v. Berge*, 2003 WI App 51, ¶ 9, 260 Wis. 2d 758, 659 N.W.2d 418. The focus in an improper venue case is on the effect of non-compliance with a statutory requirement. *Id.* ¶ 10.

In this case, there is a clear statutory requirement that appeals from decisions of the Tax Appeals Commission related to general sales and use taxes be appealed to the circuit court for Dane county. Because Mr. Rashaed improperly filed this petition with the circuit court for Milwaukee County, this court must grant the motion for change of venue to Dane County.

CONCLUSION

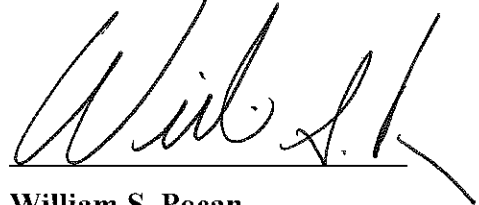
Based on a review of the applicable law and the Department's submission, this court finds that petition for judicial review filed by Mr. Rashaed was filed in Milwaukee County contrary to the mandatory venue provision of Wis. Stat. § 77.59(6)(b), governing Tax Appeal Commission decisions pertaining to sales and use tax determinations. The court hereby GRANTS the Department's Motion to Change Venue. Accordingly, this court is unable to

address the accompanying Motion to Dismiss, and will leave all further determinations to the circuit court with proper venue, Dane County.

SO ORDERED.

Dated this 26th day of October, 2011, at Milwaukee, Wisconsin.

BY THE COURT:

A handwritten signature in black ink, appearing to read "William S. Pocan", written over a horizontal line.

**William S. Pocan
Circuit Court Judge**

THIS IS A FINAL ORDER OF THE COURT FOR THE PURPOSES OF APPEAL