

DIAMBRA RAOUL S10902 061885 TAC

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STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
RECEIVED
JUN 19 1985
LEGAL DIVISION

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RAOUL DIAMBRA
1621 Skeels Avenue
Eau Claire, Wisconsin

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8933
Madison, Wisconsin 53708

Respondent.

* * * * *

DOCKET NO. S-10902
RULING AND ORDER ON
MOTION TO DISMISS
PETITION FOR REVIEW

Pursuant to this Commission's notice, this Commission convened in Room 271 of the Eau Claire County Courthouse, 731 Oxford Avenue, Eau Claire, Wisconsin at 2:00 p.m. on May 20, 1985 for the purpose of hearing respondent's motion for an order dismissing the petition for review in the above-entitled matter on the following grounds:

". . . for an order dismissing the petition for review for the reason that the Wisconsin Tax Appeals Commission lacks jurisdiction under sec.73.01(4), Stats., to review issues of law and fact related to the collection of delinquent taxes and, therefore, lacks jurisdiction to review the alleged grievances of the petitioner."

The petitioner, Raoul Diambra, appeared in person and was represented by Attorney Peter E. Grosskopf of Thornton, Black, Washowski & Grosskopf, S.C., 310 Water Street, Eau Claire, Wisconsin 54701; the respondent, Wisconsin Department of Revenue, appeared by its attorney, Veronica Folstad, who introduced an exhibit and then moved for dismissal on the above stated grounds. The petitioner

objected to the granting of the motion. The parties offered arguments in support of and in opposition to the motion.

Having considered the pleadings, the record, the motion and the arguments of the parties thereon, this Commission finds as

FINDINGS OF FACT

1. That on or about March 22, 1984, petitioner received a "Notice of Hearing" issued by the Wisconsin Department of Revenue requesting petitioner to appear at the Department's Eau Claire offices for the purposes of determining payment of delinquent tax in the amount of \$12,133.73.

2. That under date of June 26, 1984, petitioner filed an objection to said "Notice of Hearing" with the Appellate Bureau of the Wisconsin Department of Revenue and termed said objection a "Petition for Redetermination."

3. The following assessments were made against the partnership of Buonincontro, Krmpotich & Diambra:

June 1, 1983	Withholding Tax	\$ 581.90
June 9, 1983	Sales & Use Tax	6,978.44
July 15, 1983	Withholding Tax	1,073.20
Aug. 15, 1983	Sales & Use Tax	1,461.20

The partnership did not file a timely petition for redetermination to any of the above notices.

4. Each of the above assessments were entered on the Chippewa County delinquent tax role against Buonincontro, Krmpotich & et al, also known as Buonincontro Krmpotich Diambra, by the Wisconsin Department of Revenue, as follows:

<u>WARRANT NO.</u>	<u>TYPE OF TAX</u>	<u>PERIOD</u>	<u>DATE FILED</u>	<u>AMOUNT DUE</u>
09-00151607	Sales	Var. 1983	01-18-84	\$1,650.20
09-00151601	Withholding	Ann 1982	01-18-84	824.55
09-00151652	Withholding	Var. 1983	03-14-84	1,420.73
09-00151553	Sales	Var. 1983	11-09-83	9,202.31

that there is presently due and owing on said warrants the combined sum of \$15,918.57 including interest computed to June 30, 1985.

5. That under date of September 6, 1984, the Department of Revenue informed the petitioner that the aforementioned "Petition for Redetermination" could not be accepted as a petition for redetermination under secs.71.12(1) or 77.59(6), Stats., because the issues presented related to the collection of delinquent taxes.

6. That under date of September 26, 1984, the petitioner filed a petition for review with the Wisconsin Tax Appeals Commission.

7. The respondent has shown good cause for the granting of its motion.

8. Under the provisions of s.73.01(4), Wis. Stats., the petitioner failed to file a proper petition for review. The Wisconsin Tax Appeals Commission lacks jurisdiction to review the issues of law and fact related to the collection of delinquent taxes, therefore, cannot review the alleged grievances of the petitioner.

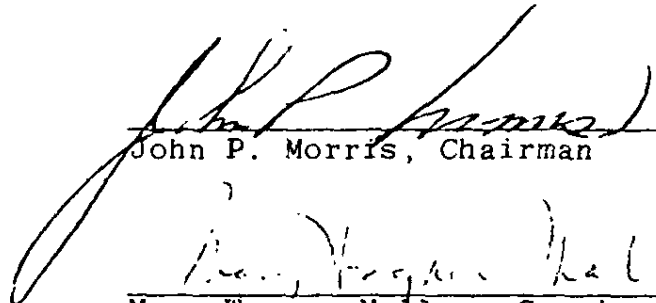
Therefore,

IT IS ORDERED

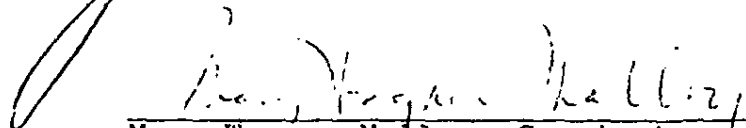
That the petition for review in the above-entitled matter be dismissed.

Dated at Madison, Wisconsin, this 18th day of June,
1985.

WISCONSIN TAX APPEALS COMMISSION



John P. Morris, Chairman



Mary Wagner-Malloy, Commissioner



Thomas R. Timken, Commissioner

Attachment: "NOTICE OF APPEAL INFORMATION"