

FARM LOAN SERVICE INC S11608 080586 TAC

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STATE OF WISCONSIN
TAX APPEALS COMMISSION
MADISON, WISCONSIN

* * * * *
FARM LOAN SERVICE, INC.
6414 Copps Avenue - Suite 202
Madison, Wisconsin 53716

Petitioner,

vs.

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

Respondent.
* * * * *

DOCKET NO. S-11608
RULING AND ORDER

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
REC'D
AUG 31 1984
LEGAL DIVISION

Upon notice of motion to dismiss properly served by respondent, such motion having been heard by this Commission, petitioner appearing by its General Counsel, Alasdair McCormick, respondent appearing by Allyn Lepeska, its duly authorized attorney, who after introducing various exhibits into the record moved to dismiss for petitioner's failure to file a timely petition for review under s.73.01(5)(a), Stats., this Commission makes the following:

FINDINGS OF FACT

1. On June 21, 1984 respondent issued a notice of assessment of additional sales and use taxes for the period January 1, 1979 - June 30, 1982 in the total amount of \$46,245.00 including interest.
2. On August 17, 1984 petitioner filed a timely petition for redetermination of said assessment.

3. On August 14, 1985 respondent issued a notice of action denying the petition for redetermination which notice was received by petitioner on August 15, 1985.

4. Petitioner submitted a petition for review of respondent's denial of redetermination of the assessment to this Commission which was received on October 14, 1985, but was not filed until October 15, 1985 on which date the required filing fee was received.

5. On November 4, 1985 respondent filed with this Commission a notice of motion to dismiss the petition for review on the grounds that it was filed one day late and, therefore, that this Commission lacked jurisdiction to hear this appeal under s.73.01(5)(a), Stats. Said notice was properly served upon petitioner.

6. On December 13, 1985 this Commission gave written notice to the parties that hearing on respondent's motion to dismiss was scheduled for January 30, 1986.

7. On January 21, 1986 petitioner filed a voluntary petition in the U.S. Bankruptcy Court for the Western District of Wisconsin under Chapter 11 of Title 11 of the United States Code.

8. This Commission and respondent were advised orally of the bankruptcy filing by petitioner's general counsel on January 30, 1986 at the hearing on respondent's motion to dismiss, which was presented to this Commission.

9. That upon being so advised this Commission directed the parties to file written briefs as to whether this Commission's jurisdiction to hear and decide the respondent's motion was

subject to the "automatic stay" provisions of Title 11 of the U.S. Code, s. 362(a)(1).

10. The 60th and last day for filing a timely petition with this Commission was on October 14, 1985, and the petition filed on October 15, 1985 was not timely filed.

11. Respondent has shown good and sufficient cause for granting of its motion.

CONCLUSIONS OF LAW

1. The petition for review was not timely filed under s.73.01(5)(a), Stats. and the assessment thus became final and conclusive as of October 14, 1985 under s.71.12(1), Stats., applicable by operation of s.77.59(6)(b), Stats. Thus, this Commission lacks jurisdiction to hear the appeal.

2. The "automatic stay" provisions of 11 U.S.C. s.362 do not apply to this Commission's determination that it has no jurisdiction to continue administrative tax proceedings.

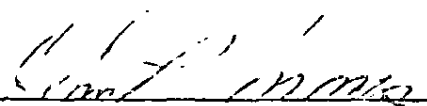
Therefore,

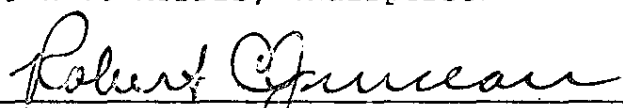
IT IS ORDERED

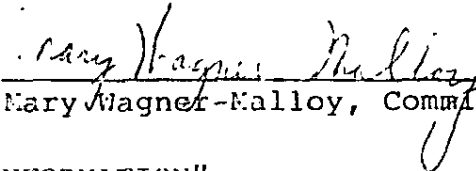
That the petition for review filed in the above captioned matter is dismissed.

Dated at Madison, Wisconsin,
this 5th day of August, 1986.

WISCONSIN TAX APPEALS COMMISSION


John P. Morris, Chairperson


Robert C. Junceau, Commissioner


Mary Wagner-Kalloy, Commissioner

Attachment: "NOTICE OF APPEAL INFORMATION"

STATE OF WISCONSIN
TAX APPEALS COMMISSION

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FARM LOAN SERVICE, INC.,
Petitioner,
vs.
WISCONSIN DEPARTMENT OF REVENUE,
Respondent.
* * * * *

DOCKET NO. S-11608
O P I N I O N

This case presents the novel question as to the applicability of the "automatic" stay provisions of the Bankruptcy Code, 11 U.S.C. s.362 to this Commission's hearing on a motion by respondent to dismiss a petition for review for being untimely filed. The attempted filing of the petition herein preceded the bankruptcy filing by 3 months, and the notice of motion and scheduling of the hearing thereon preceded such filing by approximately one and one-half and two months. Only the hearing on the motion occurred after the petition was filed.

Interestingly, petitioner argued in favor of the stay in its brief filed after the hearing on the motion but changed its position apparently after reviewing respondent's brief and conceded without explanation that this Commission lacks jurisdiction to consider the petition for review.

Such concession notwithstanding, however, absent a withdrawal of the petition, this Commission is constrained to rule on its jurisdiction to entertain the motion to dismiss given our knowledge of the bankruptcy filing.

The purpose of the "automatic stay" provisions of 11 U.S.C. § 362 have been explained by our Wisconsin Supreme Court as follows:

One of the purposes of setting up the entire bankruptcy court system and its rules is to afford some protection to the party filing for bankruptcy. In general, the filing of a ch. XI petition operates to protect the debtor from harassment and from frustration of his rehabilitation by prejudicial dismemberment and diminution of his assets during the pendency of the ch. XI proceeding. In addition, the bankruptcy rule providing that the filing of a ch. XI petition shall operate as a stay of any action against the debtor of his property reinforces the exclusive jurisdiction of the bankruptcy court by protecting the debtor from harassment of lawsuits initiated in other forums. If the debtor were subject to suit in various courts without restriction, the mere cost of defending could be debilitating, and a judgment could be fatal. The rule providing for a stay facilitates an expeditious and economical arrangement by precluding fractionalization and thereby consolidating most claims within the insular proceedings of the ch. XI court.

Schmidt v. Judd, 113 Wis. 2d 68, 70.

The stay provision applies to "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor".

11 U.S.C. § 362(a)(1).

Here the only post-bankruptcy petition activity was the hearing on the motion to dismiss.

Actions or proceedings in violation of the automatic stay are void. Kald v. Feuerstein, 308 U.S. 433, 438, 60 S. Ct. 343, 345, 84 L. Ed. 370 (1940); In re Victoria Grain Co., 45 B.R. 2, 6 (Bkrcty. D. Minn., 1984) (citing 13 cases in accord); Schmidt v. Judd, 113 Wis. 2d 68 (1982).

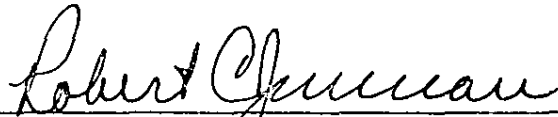
The stay provisions apply to a proceeding "against the debtor". Respondent cites Cathey v. Johns-Manville Sales Corp., 711 F. 2d 60, 61 (6th Cir. 1983) for the proposition that "against the debtor" must be determined from an examination of the debtor's status at the initial proceeding, and argues that the initial quasi-judicial proceeding here was petitioner's attempt to file its petition and therefore the stay does not apply. While respondent correctly cites Cathey for its legal proposition, we disagree with respondent's proffered application to this case. We believe that the debtor's status at the initial administrative proceeding in this case refers to the initial assessment, which is an action or proceeding against the debtor. His filing of an appeal is, somewhat parallel to the judicial appeal filed by the debtor in Cathey, a continuation of or attempt to continue the proceeding by appeal.

In our view, however, while the assessment proceeding is initially "against the debtor," the hearing on the motion is neither a "commencement" nor a "continuation" of such assessment proceedings, but rather serves to determine whether petitioner has the legal right to continued administrative proceedings to contest the assessment. Since we determine that as of October 14, 1985 the assessment became final and conclusive against petitioner, we do not view the hearing on the motion as a "continuation" of the assessment proceedings. Our right to conduct any assessment proceedings terminated by operation of law on October 14, 1985. That post-bankruptcy petition hearing was not, in our opinion, subject to the automatic stay under

11 U.S.C. § 362(a)(1). The assessment proceedings terminated upon the petitioner's failure to timely file the petition for review which preceded the bankruptcy filing, and we had no jurisdiction to entertain the assessment challenge.

The policy of the bankruptcy act is in no way violated by our determining that the assessment became final and conclusive under state law prior to the bankruptcy filing. Being final, the assessment must be collected which action or proceeding is another matter beyond this Commission's jurisdiction.

Submitted by:

A handwritten signature in cursive script, reading "Robert C. Junceau", is written over a horizontal line.

Robert C. Junceau, Commissioner