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STATE OF WISCONSIN
TAX APPEALS COMMISSION

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INDIANHEAD VENDING CO., INC.
Route 1, Box 89A
Dresser, Wisconsin 54009

Petitioner,

vs.

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

Respondent.
* * * * *

DOCKET NO. I-11825
RULING AND ORDER

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
RECEIVED
OCT 8 1986
LEGAL DIVISION

This Commission was convened to hear a Summary Judgment Motion brought by the respondent, Wisconsin Department of Revenue, in the above-entitled matter. The petitioner, Indianhead Vending Co., Inc., appeared by its registered agent, Sanford Knapp; the respondent, Wisconsin Department of Revenue, appeared by its attorney, Karen A. Gast.

After considering the testimony, evidence and arguments presented, this Commission hereby finds and rules as follows:

1. On June 10, 1985 the respondent issued a notice of additional franchise/income tax assessment against the petitioner in the total amount of \$32,264.96 covering the years 1976 through 1982. Said assessment was based on information obtained from the Internal Revenue Service.

2. On July 31, 1985 the petitioner filed a petition for redetermination with the respondent objecting to the assessment on the grounds that a judgment entered in Polk County Circuit Court on May 11, 1981 satisfied all previous tax liabilities of the petitioner.

3. On January 16, 1986 the respondent denied petitioner's petition for redetermination.

4. On March 10, 1986 petitioner appealed the respondent's assessment to this Commission. The sole basis for its appeal was:

"Petitioner was the defendant in a civil lawsuit brought by the Wisconsin Department of Revenue in May 1981 wherein the Wisconsin Department of Revenue agreed as part of an in-court settlement, that the petitioner did not owe any other taxes as of that date."

5. The litigation the petitioner relies on was State of Wisconsin v. Indianhead Vending Co., Inc., Case No. 80-CV-684, Polk County Circuit Court, which was a sales tax matter commenced in December of 1980 by the respondent to restrain the petitioner from continuing to do business without a sellers permit and requiring it to remit sales taxes owed to the State of Wisconsin. The Court Order of August 11, 1981 resolved this issue by setting petitioner's sales tax liability for 1978 through 1981 and providing a method of settlement.

6. Said Court Order was based on a negotiated settlement of the issues between the parties. In its oral findings, Judge Robert O. Weisel stated: "This shall have the effect of satisfying the State of any past taxes due as of this date." The petitioner's attorney, one Warren Wood stated his understanding of the settlement as follows: "It is our understanding the effect of the payments would be the satisfaction of all judgments on the sales tax obligations in the Clerk of Courts office for Polk County."

7. The case of State of Wisconsin v. Indianhead Vending Co., Inc., 80-CV-684, Polk County Circuit Court involved only sales taxes owed by the petitioner to the State of Wisconsin for the period 1978 through 1981. The assessment in issue involves corporate franchise/income taxes for the period 1976 through 1982.

8. The petitioner's reliance on its 1981 Polk County Circuit Court litigation is misplaced. That case dealt only with sales taxes and to construe it to absolve petitioner of all tax liability would be in error and a miscarriage of justice.

9. Rule TA 1.39 Practice and Procedures provides as follows:

"Except as provided in s. TA 1.53 the practice and procedures before the commission shall substantially follow the practice and procedures before the circuit courts of this state."

10. Sec. 802.08 Wis. Stats. provides in part as follows:

"(1) A party may move for summary judgment. . . .

"(2). . . . The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

11. In the instant matter the sole basis for petitioner's appeal to this Commission is a mistaken reliance on the settlement it reached with the respondent in a sales tax dispute.

12. As the settlement reached in the sales tax dispute does not bind the respondent in the franchise/income tax dispute, which is the subject of the matter now before us, there is no genuine issue as to any material fact and the respondent,

Wisconsin Department of Revenue, is entitled to a summary judgment in its favor as a matter of law pursuant to Sec. 802.08 of the Wisconsin Statutes and TA 1.39 of the Wisconsin Administrative Code.

13. The petitioner's counter motion for a protective order is moot and will not be considered.

14. The respondent has shown good and sufficient cause for the granting of its motion.


Therefore, the respondent's Motion for Summary Judgment is hereby granted and


IT IS ORDERED

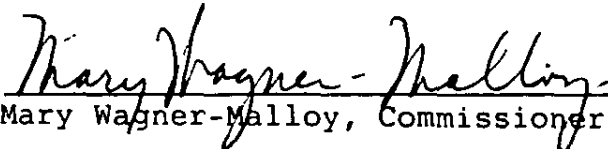
That Summary Judgment in favor of respondent is granted and respondent's denial of the petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 6th day of October, 1986.

WISCONSIN TAX APPEALS COMMISSION


John P. Morris, Chairperson


Thomas R. Timken, Commissioner


Mary Wagner-Malloy, Commissioner

Attachment: "NOTICE OF APPEAL INFORMATION"