

LEPP HERBERT 92I358 012293 TAC

Legal Division

STATE OF WISCONSIN
DEPARTMENT OF REVENUE

JAN 25 1993

RECEIVED
LEGAL DIVISION

STATE OF WISCONSIN
TAX APPEALS COMMISSION

HERBERT LEPP	*	
34 Monroe Place, #3D		
Brooklyn, NY 11201	*	DOCKET NO. 92-I-358
Petitioner,	*	
vs.	*	RULING AND ORDER
WISCONSIN DEPARTMENT OF REVENUE	*	DISMISSING PETITION
P.O. Box 8933		
Madison, WI 53708	*	FOR REVIEW
Respondent.	*	

Pursuant to notice, the above-entitled matter came on for a hearing via telephone at 3:30 p.m. (CST) on January 13, 1993 on the respondent's motion to dismiss the petition for review herein on the grounds that:

The petitioner has failed to file his 1988 and 1989 tax returns by December 2, 1992 as ordered by this Commission and has therefore failed to prosecute his case before this Commission and this Commission has the authority pursuant to sec. 805.03, Stats., to dismiss his petition for review.

The petitioner, Herbert Lepp, failed to appear in person and was unable to be reached by telephone. The respondent, Wisconsin Department of Revenue, appeared by its attorney, Lili Best Crane.

Having considered the entire record, the respondent's

motion to dismiss, and respondent's oral argument in support of the motion, this Commission hereby finds and concludes as follows:

1. On January 20, 1992, the respondent issued a dooamage assessment against petitioner in the amount of \$4,234.00.

2. On March 23, 1992, petitioner timely filed a petition for redetermination of the assessment.

3. On June 8, 1992, respondent denied petitioner's petition for redetermination.

4. On August 11, 1992, petitioner filed with this Commission a timely petition for review of respondent's denial.

5. By notice dated September 2, 1992, the Commission set a telephone scheduling conference for September 18, 1992 at 9:30 a.m.

6. On September 18, 1992, a telephone scheduling conference was held with the Commission, respondent's attorney, and petitioner, at which time the matter was adjourned to November 3, 1992, to allow the petitioner an opportunity to contact his accountant regarding the filing of returns for 1988 and 1989.

7. On November 3, 1992, a second telephone scheduling conference was held with the Commission, respondent's attorney, and petitioner. At that time, the matter was again adjourned at the petitioner's request, and the Commission ordered that if the returns were not filed by December 2, 1992, the Commission would entertain and schedule a motion by respondent for dismissal of the petition for failure to prosecute.

8. Petitioner did not file his returns on December 2,

1992 as ordered by the Commission.

9. On December 3, 1992, a third telephone scheduling conference was held with the Commission, respondent's attorney, and petitioner. Petitioner stated that he was not prepared to file his 1988 and 1989 returns at that time. The Commission informed the petitioner that it would entertain a motion by the respondent to dismiss his petition for review.

10. On December 4, 1992, respondent filed its notice of motion and motion to dismiss with the Commission.

11. On December 17, 1992, this Commission issued its notice scheduling the respondent's motion to dismiss for 9:00 a.m. on January 13, 1993. The parties could appear either in person or by telephone.

12. At 9:00 a.m. on January 13, 1993, the Commission receptionist, Darlene Skolaski, called petitioner to inform him that the Commission would not be able to hold the motion hearing at that time due to a snowstorm. Petitioner told Ms. Skolaski that he would be available at 2:30 p.m. (CST) on January 13, 1993 for the motion hearing, and respondent was notified of the change.

13. When the Commission attempted to contact petitioner at 2:30 p.m. (CST) on January 13, 1993, no one answered the phone. An attempt was made again at 2:45 p.m. (CST), at which time an answering machine activated and a message was left for the petitioner to call the Commission as soon as possible.

14. Commissioner Musolf went on the record at 3:00 p.m., again telephoned the petitioner and left a message on petitioner's

answering machine that the motion would be heard at 3:30 p.m., and then recessed the hearing to 3:30 p.m. Attorney Lili Best Crane appeared for the respondent.

15. Commissioner Musolf then resumed the hearing at 3:32 p.m. and, after being again unable to reach petitioner by telephone, adjourned for another 5 minutes to give petitioner one final chance to contact the Commission. Attorney Lili Best Crane appeared for the respondent.

16. Having received no response from petitioner, the Commission resumed the hearing at 3:37 p.m. (CST). The respondent made its motion to dismiss the petition for review based on Attorney Crane's affidavit with attached exhibits on file herein and made oral argument in support thereof.

17. The respondent has shown good and sufficient grounds pursuant to §805.03, Stats., for the granting of its motion, namely, the petitioner's failure to prosecute this action by filing his 1988 and 1989 Wisconsin income tax returns as ordered by this Commission on November 3, 1992.

Therefore,

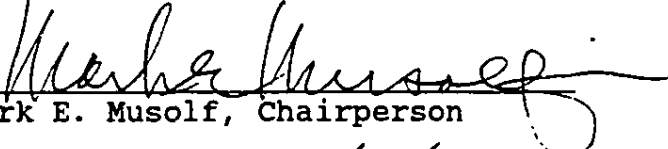
IT IS ORDERED


That the respondent's motion be granted and the petition for review be dismissed.

Dated at Madison, Wisconsin, this 22nd day of January,

1993.

WISCONSIN TAX APPEALS COMMISSION


Mark E. Musolf, Chairperson


Thomas R. Timken, Commissioner

(Approved)

Douglass H. Bartley, Commissioner

ATTACHMENT: Notice of Appeal Information