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LEGAL DIVISION

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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JAMES L. MAYER  
816 Dorbe  
Eau Claire, WI 54701

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Petitioner,

vs.

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

Respondent.

DOCKET NO. 91-W-404

RULING AND ORDER ON

MOTION TO DISMISS FOR

FAILURE TO COMPLY WITH

ORDER COMPELLING

DISCOVERY AND FOR COSTS

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Pursuant to notice, this Commission convened by telephone, pursuant to §804.12(5), Stats., at 2:45 p.m., on August 24, 1992, and heard the respondent's motion to dismiss for failure to comply with its order compelling discovery and to award respondent the reasonable costs of bringing the motion in the above-entitled matter.

At the hearing, the respondent made a motion to dismiss the petitioner's petition for review on the grounds that he had failed to comply with this Commission's order of March 17, 1992, and also requested the awarding of reasonable costs in bringing its motion.

The petitioner, James L. Mayer, appeared in person. The respondent, Wisconsin Department of Revenue, appeared by its attorney, Linda M. Mintener.

Based on the record before us, this Commission finds and rules as follows:

### FINDINGS OF FACT

1. By notice dated March 21, 1991, respondent issued a withholding tax assessment in the amount of \$7,713.99 to petitioner as an officer of Vanguard Process Systems.

2. On May 20, 1991, petitioner filed with respondent a petition for redetermination of the withholding tax assessment.

3. By notice dated September 20, 1991, respondent denied the petitioner's petition for redetermination.

4. On October 3, 1991, petitioner filed with this Commission a petition for review of respondent's denial.

5. On January 28, 1992, respondent sent to petitioner its first request for admissions, production of documents, and interrogatories relating to the withholding tax at issue herein.

6. On January 29, 1992, respondent received a call from petitioner stating, *inter alia*, that he would not respond to the discovery requests. Petitioner called respondent's office again on January 29, 1992 and left a message with a secretary that he was not going to respond to the discovery requests.

7. On February 14, 1992, petitioner wrote to respondent stating, *inter alia*, that he would not respond to the discovery requests until he was provided with free legal advice.

8. On February 18, 1992, respondent wrote to petitioner stating that if he did not respond to the discovery requests with appropriate answers, a motion to compel discovery would be brought.

9. On February 20, 1992, petitioner telephoned respondent and stated, *inter alia*, that he would not answer the

discovery requests question by question but would write a letter to respondent. The respondent explained to petitioner that if proper answers to the discovery requests were not received by February 28, 1992, a motion to compel discovery would be brought, and that if the Tax Appeals Commission granted said motion to compel and entered an order for him to respond to the discovery requests which he did not comply with, his appeal could be dismissed.

10. On March 2, 1992, respondent wrote to petitioner, informing him that the time to respond to the discovery had passed, and that a motion to compel discovery was being prepared and would be filed with the Tax Appeals Commission unless respondent received responses to its discovery requests before said motion was filed.

11. On March 5, 1992, respondent filed with the Tax Appeals Commission its Notice of Motion and Motion to Compel Discovery.

12. On March 9, 1992, respondent received a letter from petitioner again stating that he would not respond to discovery requests until his requirements have been met.

13. On March 17, 1992, a telephone motion hearing was held by this Commission. The petitioner appeared in person, as did the respondent by its attorney, Linda M. Mintener. Once again, the petitioner refused to comply with respondent's discovery requests and was specifically cautioned by the Commission that his continued refusal could result in the dismissal of his petition for review.

14. On March 17, 1992, this Commission issued its order

to compel discovery, granting petitioner 60 days to respond to the respondent's discovery requests.

15. Respondent sent a letter to the petitioner on May 18, 1992, stating that the additional 60-day period granted him to respond had passed, and that this motion would be brought if complete responses were not received by the respondent within 7 days.

16. On May 20, 1992, the respondent received a telephone call from the petitioner in response to respondent's May 18, 1992 letter to him, at which time he stated that he would not answer respondent's discovery requests, and that was his final word on the issue.

17. At both motion hearings, the petitioner's verbal responses were replete with inappropriate, four-letter-word obscenities directed at respondent's attorney.

18. The 60-day time period allowed in this Commission's March 17, 1992 order for petitioner to answer the respondent's discovery requests has now expired.

19. The respondent is unable to either settle or prepare this case for trial due to the petitioner's complete failure to respond in any way to the respondent's discovery requests.

20. The respondent has filed with this Commission an affidavit and itemization of its costs in bringing this motion, which total \$260.07. We find said amount to be reasonable in relation to the efforts made.

21. The respondent has shown good cause for the granting

of its motion and request for reasonable costs.

Therefore,

**IT IS HEREBY ORDERED**

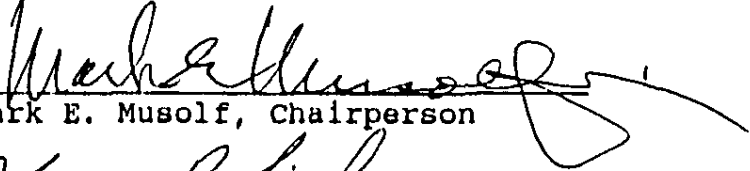
That pursuant to the authority contained in §804.12(2), Stats., the respondent's motion to dismiss the petitioner's petition for review for failure to comply with this Commission's discovery order is hereby granted.


**IT IS FURTHER ORDERED**

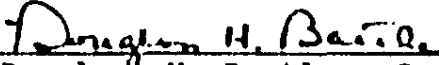
That pursuant to §804.12(1)(c), Stats., the petitioner is ordered to pay the respondent the costs of bringing this motion in the total amount of \$260.07.

Dated at Madison, Wisconsin, this 14th day of September, 1992.

**WISCONSIN TAX APPEALS COMMISSION**

  
Mark E. Musolf, Chairperson

  
Thomas R. Timken, Commissioner

  
Douglas H. Bartley, Commissioner

ATTACHMENT:  
"Notice of Appeal Information"