

STATE OF WISCONSIN
TAX APPEALS COMMISSION

BRIAN E. AND KATHERINE A. BATH,

DOCKET NO. 06-I-247

Petitioners,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DIANE E. NORMAN, ACTING CHAIRPERSON:

This matter comes before the Commission on the March 20, 2007 oral motion of Chief Counsel Dana J. Erlandsen, on behalf of the Wisconsin Department of Revenue ("Department"), to dismiss the petition on the basis that petitioners have failed to comply with Commission orders and have otherwise failed to prosecute their petition for review, pursuant to Wis. Stat. § 805.03 and Wis. Admin. Code § TA 1.39.

Petitioners, Brian E. and Katherine A. Bath, appear *pro se*. Chief Counsel Dana J. Erlandsen appears for the Department.

Having considered the entire record, the Commission hereby finds, rules, and orders as follows:

FACTS

1. On March 6, 2006, the Department issued an assessment of income tax against petitioners for tax year 2004 in the amount of \$5,795.73.
2. Petitioners filed a petition for redetermination objecting to the

assessment.

3. On September 11, 2006, the Department issued its Notice of Action denying the petition for redetermination, stating in relevant part, "[b]ased on the information available, the March 6, 2006 assessment properly reflects your taxable Wisconsin income as documented."

4. On September 25, 2006, petitioners filed a timely petition for review with the Commission.

5. On November 20, 2006, the Department filed its Answer to the petition.

6. On January 22, 2007, the Commission issued a Notice of Telephone Scheduling Conference for March 5, 2007 at 10:00 a.m. The Notice states, in part:

NOTICE TO PETITIONERS

. . . If the Commission is unable to reach you . . . by telephone, the conference will proceed, and the petition for review will be subject to dismissal, pursuant to Wis. Stat. §§ 802.10(7) and 805.03.

7. The Commission held the March 5, 2007 telephone conference. Petitioners failed to appear. The Department appeared by Chief Counsel Dana J. Erlandsen.

8. On March 6, 2007, the Commission issued a Status Conference Memorandum and Order setting a telephone conference for March 20, 2007 at 1:30 p.m. The Memorandum states, in part:

Other matters discussed:

The Commission attempted to contact Brian Bath at the telephone number on file with the Commission but received a busy signal from approximately 10:00-10:15 a.m. If petitioners do not make themselves available for the next-scheduled conference, the Commission anticipates entertaining a motion to dismiss.

IT IS ORDERED

(1) The parties or their representatives shall participate in the next scheduled status conference. Failure to comply with the terms of this order may result in any sanction authorized by law, including dismissal of the petition for review.

9. The Commission held the March 20, 2007 telephone status conference. Petitioners again failed to appear. Attorney Erlandsen appeared on behalf of the Department and orally moved to dismiss the petition for review.

APPLICABLE WISCONSIN STATUTES

805.03 Failure to prosecute or comply with procedure statutes. For failure of any claimant to prosecute or for failure of any party to comply with the statutes governing procedure in civil actions or to obey any order of court, the court in which the action is pending may make such orders in regard to the failure as are just, including but not limited to orders authorized under s. 804.12(2)(a). Any dismissal under this section operates as an adjudication on the merits unless the court in its order for dismissal otherwise specifies for good cause shown recited in the order. A dismissal on the merits may be set aside by the court on the grounds specified in and in accordance with s. 806.07. A dismissal not on the merits may be set aside by the court for good cause shown and within a reasonable time.

RULING

The Commission has held two telephone conferences in this matter since petitioners filed their petition for review on September 25, 2006. Petitioners have not appeared at or participated in any of the conferences, despite repeated warnings from the Commission that their failure to appear would subject their petition to dismissal. Petitioners have clearly failed to prosecute their petition under Wis. Stat. § 805.03. The Department has therefore shown good cause for granting its motion to dismiss.

IT IS ORDERED

The Department's motion is granted, and petitioners' petition for review is dismissed.

Dated at Madison, Wisconsin, this 3rd day of May, 2007.

WISCONSIN TAX APPEALS COMMISSION

Diane E. Norman, Acting Chairperson

David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"