

STATE OF WISCONSIN
TAX APPEALS COMMISSION

GEGARE TILE, INC.,

DOCKET NO. 10-S-190

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

ROGER W. LEGRAND, COMMISSIONER:

This matter comes before the Commission on a motion filed by the Wisconsin Department of Revenue (“respondent”) to dismiss the petition for review on the grounds that the Commission lacks jurisdiction to hear Petitioner’s case under Wis. Stats. §§ 73.01(5)(a), and 73.01(4)(a), and that Petitioner failed to state a claim upon which relief could be granted, pursuant to Wis. Stat. § 802.06(2). Petitioner appears *pro se*. Respondent is represented by Attorney Julie A. Zimmer.

The facts are as follows:

1. On July 8, 2009, the Department issued a Notice of Proposed Audit Report to Petitioner. After a conference was held with the Department’s auditor and a portion of the proposed assessment was reversed for settlement purposes, the Petitioner fully agreed with the adjustments and the additional tax due on the Proposed Audit Report and the Petitioner signed it on July 23, 2009. (Exhibit 1.)

2. On August 28, 2009, the Department issued its Final Notice of Field Audit Action to Petitioner assessing the agreed-to sales and use taxes for the tax period October 1, 2004 through September 30, 2008 in the amount of \$48,334.11, including regular 12% interest. (Exhibit 2.)

3. A letter dated September 14, 2009 was sent to the Department by Petitioner requesting a redetermination of the agreed-to additional sales and use tax assessment alleging an inability to pay. (Exhibit 3.)

4. The Petitioner also filed a pre-delinquent Petition for Compromise with the Department while the appeal was pending in the Department's Resolution Unit, which resulted in the Department offering an additional reduction of the assessment as a compromise in order to resolve the assessed liability. Petitioner did not accept the Department's Compromise Offer.

5. On May 21, 2010, a Notice was issued by the Department denying the Petitioner's Petition for Redetermination. (Exhibit 4.)

6. A timely Petition for Review was filed with the Wisconsin Tax Appeals Commission by Petitioner on July 19, 2010, pleading only an inability to pay the assessed amount due. (Exhibit 5.)

DECISION AND ORDER

Wis. Stat. § 73.01(5)(a), allows anyone who is "aggrieved by a redetermination or action of the Department of Revenue" to petition to the Wisconsin Tax Appeals Commission for a review of the Department's action. Aggrieved means, "having suffered loss or injury." (Black's Law Dictionary, 43, 6th Edition 1991.) In the context of

tax appeals, it means objecting to a decision of the Department of Revenue on factual or legal grounds.

This is a sales and use tax case. Petitioner was audited by the Department on July 8, 2009, for the income tax years 2004 to 2008. (Exhibit 1.) On July 23, 2009, Petitioner, however, agreed in full with the adjustments made in the audit. (Exhibit 1, Pg. 2.) Based upon Petitioner's agreement, the Department issued an additional sales and use tax assessment. (Exhibit 2.) Gregare Tile petitioned the Department to redetermine this action. (Exhibit 3.) Apparently, there were negotiations of compromise between the parties, but there was no resolution. On May 21, 2010, the Department denied the Petition for Redetermination. (Exhibit 4.) Petitioner filed his Petition for Review with the Commission on July 19, 2010, asking for the assessment to be reduced because of inability to pay, and so that the Petitioner's company could continue doing business. (Exhibit 5.)

The Commission grants the Department's motion and dismisses the appeal on two grounds. First, under the specific legal standard, the Petitioner is not a person "aggrieved by a determination or action of the Department." On Page 2 of Exhibit 1, Petitioner signed this statement:

I agree with the adjustment and the additional tax due or overpayments and any penalties shown on the attached proposed audit report. I also understand that interest accrues until the amount due is paid or refunded and that the signing of this Notice does not waive my appeal rights.

The Petitioner did not object before the Commission to the assessment on any factual or legal grounds, but only because he sought a reduction in the amount due. The Petitioner,

thus, was not a person “aggrieved by an action or determination of the Department” under Wis. Stats. §§ 73.01(5)(a) and 73.01(4)(a).”

Second, the Petitioner does not state a claim upon which the Commission can give relief. It is clear that Petitioner wishes to compromise the agreed-upon assessment with the Wisconsin Department of Revenue. In fact, Petitioner and the Department have entered into discussions on compromise; however, they have been unsuccessful. (Affidavit of Michelle Biermeier.) In this appeal, Petitioner requests in his correspondence that the Commission be a part of these compromise efforts. Wis. Stat. § 73.01(4)(a) confers the powers and duties of the Commission. The Commission does not have the power to review petitions for compromise or subsequent agreements. Those powers are reserved to the Department of Revenue in Wis. Stats. §§ 77.62(5) and 71.92(3). Consequently, the Petitioner has not stated a claim upon which the Commission can give relief.

The petition for review is dismissed.

Dated at Madison, Wisconsin, this 11th day of March, 2011.

WISCONSIN TAX APPEALS COMMISSION

Roger W. LeGrand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: “NOTICE OF APPEAL INFORMATION”