

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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TRACY MCADOO,

DOCKET NO. 10-I-006

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**ROGER W. LEGRAND, COMMISSIONER:**

This matter comes before the Commission on a Motion to Dismiss the petition for review filed by the Respondent, the Wisconsin Department of Revenue ("the Department"). The Department is represented in this matter by Attorney Julie A. Zimmer, of Madison, Wisconsin, who has filed a brief with affidavit and exhibits. The Petitioner appears *pro se* in this matter. The Petitioner has not filed a response to the Department's motion.

Having considered the entire record, including the Department's motion, affidavit, exhibits, and brief, the Commission hereby finds, rules, and orders as follows:

**FINDINGS OF FACT**

**A. Jurisdictional Facts**

1. The Department issued a Notice of Amount Due for \$4,054.78 to the Petitioner on December 20, 2008. Affidavit of Attorney Julie Lotto ("Lotto/Zimmer Aff."), ¶2, Exhibit 1.

2. The Petitioner filed a letter by fax with the Department on December 20, 2008, petitioning the Department for a redetermination of this assessment. Lotto/Zimmer Aff., ¶3, Exhibit 2.

3. The Department sent a Notice of Action by certified mail on June 2, 2009, denying Petitioner's Petition for Redetermination. The certified letter went unclaimed and was returned to the Department. Petitioner was personally served with a Notice of Action on November 12, 2009. Lotto/Zimmer Aff., ¶4, Exhibit 3.

4. The Petitioner filed a timely petition for review with the Wisconsin Tax Appeals Commission ("Commission") on January 8, 2010. Lotto/Zimmer Aff., ¶5, Exhibit 4.

5. On February 2, 2010, the Respondent sent Petitioner a copy of the Department's Answer and a letter indicating what documentation she needed to provide to the Department in order to resolve her case. The Respondent received no response from Petitioner. Lotto/Zimmer Aff., ¶6, Exhibit 5.

6. An Amended Notice of Telephone Status Conference was issued by the Commission to all parties on April 13, 2010. The following Notice to Petitioner was included:

If your area code and telephone number are not included in your petition for review or have changed since the petition was filed, AT LEAST ONE WEEK PRIOR to the time stated in this notice, you or your representative shall notify the Commission (in writing or by telephone) of the current area code and telephone number where you or your representative can be reached for the telephone conference. If the Commission is unable to reach you or your representative 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.

(Emphasis in original). Lotto/Zimmer Aff., ¶7, Exhibit 6.

7. At the first scheduled telephone status conference on June 16, 2010, the Petitioner indicated that she did not receive the Department's February 2, 2010 letter because she had moved to a different address. The Commissioner gave the parties additional time to exchange information. Lotto/Zimmer Aff., ¶8.

8. A Status Conference Memorandum and Order was issued by the Commission on June 16, 2010, which states:

(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.

Lotto/Zimmer Aff., ¶9, Exhibit 7.

9. On June 16, 2010, the Respondent resent Petitioner a copy of the Department's letter of February 2, 2010 at her new address. The Respondent received no response from Petitioner. Lotto/Zimmer Aff., ¶10, Exhibit 8.

10. The Department's February 2, 2010 and June 16, 2010 letters were not returned by the U.S. Postal Service. Lotto/Zimmer Aff., ¶11.

11. An additional telephone status conference was held in this matter on July 21, 2010 at 11:30 a.m.; however, due to technical difficulties, the Petitioner did not appear. The conference was postponed until 1:00 p.m., on that same date, in order to give the Petitioner time to figure out the technical troubles with her phone. At 1:00 p.m., Petitioner still did not appear. The Commissioner scheduled another telephone status

conference for the following week. Lotto/Zimmer Aff., ¶12.

12. A Status Conference Memorandum and Order was issued by the Commission and sent to the Petitioner on July 21, 2010, scheduling the next status conference for July 28, 2010. The Memorandum stated, “If the Petitioner does not appear, the case will be dismissed.” In addition, the Commission again ordered the following:

(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.

Lotto/Zimmer Aff., ¶13, Exhibit 9.

13. On July 28, 2010, the third telephone status conference was held. Again, the Commission’s clerk was unable to reach the Petitioner. The Respondent also tried to call her from the Department telephone and only reached Petitioner’s voice mail. The Respondent left a voice mail message that urged the Petitioner to try to reach the Commission on another telephone as soon as possible. The Petitioner again failed to appear for the status conference. Lotto/Zimmer Aff., ¶14.

14. After the Motion to Dismiss was filed by the Respondent, the Commission issued a Briefing Order on August 3, 2010, which required Petitioner to file a response to Respondent’s motion by September 2, 2010. Petitioner did not respond.

15. On September 3, 2010, the Commission sent a letter to Petitioner extending the time for response to September 17, 2010. Petitioner did not respond.

16. On September 22, 2010, the Commission sent a second letter to Petitioner asking her for a response. Petitioner did not respond.

## ORDER TO DISMISS

Section 805.03 Wis. Stats. allows a court to dismiss an action when a party fails to obey any order of the court. Rule TA 1.39 of the Tax Appeals Commission states that the practice and procedures before the Commission substantially follow the procedures before the circuit courts of the State of Wisconsin.

Petitioner has failed to comply with the Commission's orders to appear at telephone conferences on July 21 and July 28, 2010. Both of those status conferences were preceded by Status Conference Memorandums and Orders which informed Petitioner as follows:

Failure to comply with the terms of this order may result in any sanction outlined by law, including dismissal of the petition for review.

In addition, Petitioner has not filed a response to the Respondent's Motion to Dismiss. A Briefing Order was issued by the Commission on August 3, 2010 requiring a response to the Motion to Dismiss. When Petitioner made no response, two follow-up letters were sent by the Commission. The first letter dated September 3, 2010 informed Petitioner of the following:

If no response to this letter is filed, the Commission may find a failure to prosecute the appeal.

The second letter dated September 22, 2010 informed Petitioner as follows:

Unless a response is received from you forthwith, the Commission may consider dismissing your petition for failure to prosecute.

Based upon Petitioner's failure to comply with the Commission's orders to appear at

telephone conferences on July 21 and July 28, 2010, and Petitioner's failure to file a response to the Briefing Order of August 3, 2010, the Commission finds that Petitioner has failed to prosecute her appeal under Wis. Stats. § 805.03. Respondent's Motion to Dismiss is granted and Petitioner's appeal is dismissed.

Dated at Madison, Wisconsin, this 30<sup>th</sup> day of March, 2011.

**WISCONSIN TAX APPEALS COMMISSION**

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Roger W. Le Grand, Commissioner

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Thomas J. McAdams, Acting Chairperson

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"