

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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**JACK ROSGA,**

**DOCKET NO. 07-I-099**

Petitioner,

vs.

**DECISION AND ORDER**

**WISCONSIN DEPARTMENT OF REVENUE,**

Respondent.

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**ROGER W. LEGRAND, COMMISSIONER:**

This matter comes before the Commission on a Stipulation of Issue and Facts with exhibits filed by the parties on March 20, 2008 (the "Stipulation"). Petitioner is represented by Attorney Don G. DiDio, and Respondent, the Wisconsin Department of Revenue (the "Department"), is represented by Attorney Sheree Robertson.

On March 21, 2008, the Commission issued a briefing order under which Petitioner was to file his brief no later than May 5, 2008. No later than 45 days from the filing of Petitioner's brief, Respondent was to file its brief, and no later than 15 days after the filing of Respondent's response, Petitioner was to file a reply brief. Respondent filed a brief in support of its position; however, Petitioner did not file either a brief or a reply.

As and for its Findings of Fact, the Commission generally adopts the Statement of Facts included in the Stipulation, subject to revised references to exhibits and certain other revisions made for form and consistency:

## STATEMENT OF FACTS<sup>1</sup>

### *Jurisdictional Facts*

1. Petitioner electronically filed with Respondent a 2005 Wisconsin individual income tax return as a full-time resident. On Line 42 of Petitioner's 2005 Wisconsin individual income tax return, he claimed \$19,762.00 in estimated tax payments. On Line 50 of Petitioner's 2005 Wisconsin individual income tax return he claimed an overpayment of \$8,782.00 which, according to Line 52 of his return, Petitioner wanted applied to his 2006 estimated tax. (Stip. Ex. 1.)

2. Under the date of June 5, 2006, Respondent issued to Petitioner a Notice of Adjustment to his Wisconsin income tax return with an assessment showing the adjustments made to Petitioner's 2005 Wisconsin individual income tax return. The reason given for the adjustment was that Petitioner did not make any estimated tax payments to Respondent in 2005. (Stip. Ex. 2.)

3. On or about October 12, 2006, Joseph E. Lindahl (hereinafter "Mr. Lindahl"), a Certified Public Accountant, filed with Respondent on Petitioner's behalf, an objection to the Notice of Adjustment dated June 5, 2006, which was considered Petitioner's Petition for Redetermination. Petitioner's Petition for Redetermination

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<sup>1</sup>The Commission specifically does not adopt ¶20 of the parties' original Statement of Facts, which provides as follows: "The payments that Respondent received in 2005 from the Coakley Bros. Co. under the wage certification for Petitioner are not 2005 estimated income tax payments." Although the parties included this statement in the Stipulation, the Commission does not accept it as a stipulated fact, because it depends upon a conclusion of law that is the ultimate issue submitted to the Commission for decision in this matter.

stated in part, "Due to some prior year's unpaid tax due, Coakley Bros. Co. was instructed to withhold WI income tax from payment to him and remit these amounts directly to the WI Department of Revenue. The amounts withheld in 2005 were to be applied to his 2005 estimated taxes." (Stip. Ex. 3.)

4. The Respondent issued to Petitioner a Notice of Action letter dated March 28, 2007, denying his Petition for Redetermination because Petitioner did not deposit with it 2005 estimated tax payments. (Stip. Ex. 4.)

5. On or about May 8, 2007, on behalf of Petitioner, Mr. Lindahl filed with the Commission a Petition for Review objecting to Respondent's determination on Petitioner's Petition for Redetermination. (Stip. Ex. 5.) On November 6, 2007, Mr. Lindahl informed the Commission in a letter dated November 2, 2007, that Attorney DiDio would be representing Petitioner. On or about November 14, 2007, Respondent received an undated, handwritten communication from Attorney DiDio indicating that he was representing Petitioner.

6. Respondent filed with the Commission an Answer to Petitioner's Petition for Review. (Stip. Ex. 6.)

#### *Evidentiary Facts*

7. Petitioner and Lydia Rosga, his wife who is now deceased, had income tax delinquencies with the Respondent for the tax years 1989 and 1990 and 1992 through 1994. Petitioner's wife Lydia Rosga died on May 3, 2003.

8. Prior to 1989 and at the present, Petitioner is an independent contractor for the Coakley Bros. Co. in Milwaukee, Wisconsin, and was compensated by the company for the trucking services he performed.

9. On October 9, 2001, the Respondent initiated a wage certification in the amount of \$191,309 for the delinquent income taxes that Petitioner and Lydia Rosga owed to it. Under the wage certification, Respondent initially required the Coakley Bros. Co. to remit 25% of Petitioner's monthly compensation. However, at the request of Attorney DiDio, which was made in November 2002, Respondent, in January 2004, reduced the monthly rate percentage from 25% to 15%.

10. From late 2001 to early August 2005, Respondent received payments from the Coakley Bros. Co. under the wage certification, which were applied against income tax delinquencies of Petitioner and Lydia Rosga for the tax years 1989 and 1990 and 1992 through 1994.

11. On or about February 4, 2005, Attorney Don DiDio, on behalf of Petitioner, filed with Respondent a Petition for Compromise of Delinquent Tax. At the time Petitioner's Petition for Compromise of Delinquent Tax was filed, his income tax delinquencies had been paid down to approximately \$43,500. Petitioner requested that the amount be compromised to \$500.

12. The wage certification that Respondent initiated on October 9, 2001, with the Coakley Bros. Co. was in effect while Petitioner's Petition for Compromise of Delinquent Tax was pending before Respondent. The Respondent's Field Compliance

Directive 05: F.1 provides in part that if collection action was initiated before the filing of a petition for compromise of delinquent tax, the collection action continues until final disposition of the petition.

13. Petitioner, Mr. Lindahl and/or Attorney DiDio did not ask Respondent if the wage certification was still in effect while Petitioner's Petition for Compromise of Delinquent Tax was pending before it.

14. By letter dated March 3, 2005, Kristin Hilliker-Hartung (hereinafter "Ms. Hilliker-Hartung"), a Field Chief for Respondent's Compliance Bureau, informed Attorney DiDio that Petitioner's Petition for Compromise of Delinquent Tax was rejected. (Stip. Ex. 7.)

15. In 2005, Respondent received from the Coakley Bros. Co., under the wage certification, the following payments that were applied against Petitioner and Lydia Rosga's income tax delinquencies:

Check No. 050690 dated January 31, 2005, in the amount of \$2,495.02.

Check No. 050955 dated February 28, 2005, in the amount of \$3,013.02.

Check No. 051140 dated March 31, 2005, in the amount of \$2,257.80.

Check No. 051349 dated April 30, 2005, in the amount of \$2,918.37.

Check No. 051610 dated June 2, 2005, in the amount of \$3,741.89.

Check No. 051804 dated July 6, 2005, in the amount of \$3,879.02.

Check No. 052008 dated August 3, 2005, in the amount of \$1,457.22.

(Stip. Ex. 5.)

16. In a June 29, 2005 telephone conversation with Catherine Bink (hereinafter "Ms. Bink"), the Director of Respondent's Compliance Bureau, Attorney DiDio requested that Respondent reconsider its decision rejecting Petitioner's Petition for Compromise of Delinquent Tax, which was granted.

17. By letter dated July 18, 2005 to Attorney DiDio from Ms. Bink, the verbal agreement she reached with him in a July 8, 2005 telephone conversation regarding compromising Petitioner's income tax delinquencies, which at that time had been paid down to approximately \$23,000, is summarized. Per Ms. Bink's letter, Respondent agreed to accept a compromise payment of \$5,000 on Petitioner's income tax delinquencies plus Petitioner was required to file a 2004 Wisconsin individual income tax return. Petitioner complied with the terms of the compromise agreement as set forth in Ms. Bink's letter. (Stip. Ex. 8.)

18. It is Petitioner's contention that the payments that the Respondent received in 2005 are Petitioner's estimated tax payments.

19. Petitioner, Joseph Lindahl and/or Attorney DiDio did not complete and file with Respondent a form, voucher and/or written instructions showing that Petitioner was depositing estimated income tax payments in 2005. The Respondent has no record that Petitioner made 2005 estimated income tax payments.

20. It is also Petitioner's contention that he was unaware that the wage certification was still in effect while his Petition for Compromise of Delinquent Tax was pending before Respondent.

21. The Statements of Delinquent Tax Account that Respondent sent via United States Postal Service mail, which are addressed to Petitioner and Lydia Rosga, show that the certification payments received were applied against Petitioner's income tax delinquencies. The Statements of Delinquent Tax Account are dated February 7, 2005, March 7, 2005, May 2, 2005, June 6, 2005, July 4, 2005, August 1, 2005, and September 5, 2005. The Statements of Delinquent Tax Account show how the wage certification payments were applied and the account balance after each payment was applied. (Stip. Ex. 8.)

22. Attorney Don DiDio had conversations with James Schleicher, a Revenue Agent for the Wisconsin Department of Revenue, regarding compromising the income tax delinquencies of Petitioner. Attorney DiDio contends that Mr. Schleicher suggested that Petitioner file a petition to compromise after his tax delinquencies had been paid down from \$140,000 to \$50,000. After Petitioner's tax delinquencies were less than \$50,000, Attorney DiDio filed on behalf of Petitioner a petition to compromise delinquent tax. Attorney DiDio asked that the delinquent amount be compromised to \$500.

### **ISSUE**

As stipulated by the parties, the issue in this matter is "[w]hether Petitioner deposited 2005 estimated tax payments with Respondent."

### **DECISION**

Section 71.09(2), Wis. Stats., requires individuals who have income other than wages to deposit estimated tax deposits with the respondent. Petitioner claimed an

estimated tax payment credit on his 2005 Wisconsin individual income tax in the amount of \$19,762. That was the amount paid to the Department in 2005 by Coakley Brothers Company on Petitioner's behalf. At the time of nearly all of the payments, there was a wage certification pending against Petitioner for delinquent taxes initiated by the Department in 2001.

Neither Petitioner, nor his accountant or attorney, ever filed instructions showing that Petitioner was depositing estimated income tax paperwork in 2005. Respondent has no record of petitioner making estimated tax payments for 2005. Consequently, the Department disallowed the \$19,762 estimated tax credit claimed on line 42 of Petitioner's 2005 income tax return.

On July 8, 2005, Petitioner and Respondent reached an oral agreement to compromise Petitioner's delinquent tax liability. The Department agreed to accept a compromise payment of \$5,000 on Petitioner's delinquent income tax liabilities. This agreement was memorialized in a letter from the Department to Attorney DiDio dated July 18, 2005. (Stip. Ex. 8.) Petitioner complied with the terms of the compromise agreement.

All of the payments made by Coakley Bros. Co. to the Department on Petitioner's behalf in 2005 predated the parties' compromise agreement, except for the last payment at issue, which was made on August 3, 2005 when Coakley Brothers paid \$1,457.22 to the Department on Petitioner's behalf. This payment was erroneously applied to the back tax delinquency that had been satisfied pursuant to the compromise



agreement. The Commission finds that the payment of \$1,457.22 made on August 3, 2005 may not be applied to the previously settled delinquency, and thus should have been treated as a deposit of Petitioner's 2005 estimated tax.

**ORDER**

The Department's action on the Petitioner's petition for redetermination is affirmed in part and reversed in part, as follows:

1. The Department's action of March 28, 2007 disallowing the \$19,762.00 estimated tax credit claimed by Petitioner is affirmed as to the payments at issue made prior to July 8, 2005; and

2. The Department's action of March 28, 2007 disallowing the \$19,762.00 estimated tax credit claimed by Petitioner is reversed as to any payment at issue made on or after July 8, 2005, including the payment of \$1,457.22 made on August 3, 2005.

Dated at Madison, Wisconsin, this 19<sup>th</sup> day of November, 2008.

**WISCONSIN TAX APPEALS COMMISSION**

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David C. Swanson, Chairperson

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Roger W. LeGrand, Commissioner

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Thomas J. McAdams, Commissioner

**ATTACHMENT: "NOTICE OF APPEAL INFORMATION"**