

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF REVENUE

In the Matter of a Denial of a
Tax Clearance Certificate of
Walter Koepsell, 1625 Yuma
Lane, Plymouth, MN 55447,
MN. ID #390-44-4558

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law judge Bruce D. Campbell from the Minnesota Office of Administrative Hearings at 9:00 a.m, on July 22, 1986, in Minneapolis, Minnesota.

Appearances: Patrick J. Finnegan, Attorney, Minnesota Department of Revenue, Centennial Office Building, P.O. Box 64451, St. Paul, Minnesota 55164, appeared on behalf of the Minnesota Department of Revenue (Department); and Walter Koepsell (Taxpayer or Respondent), 1625 Yuma Lane, Plymouth, Minnesota 55447, appeared on his own behalf without assistance of counsel.

The record herein closed on July 22, 1986, at the close of the hearing.

Notice is hereby given that, pursuant to Minn. Stat. 14.61 the final decision of the Commissioner of Revenue shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with T.J. Triplett, Commissioner, Department of Revenue, Centennial Office Building, P.O. Box 64451, St. Paul, Minnesota 55164.

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether the Commissioner of Revenue should refuse to grant a tax clearance certificate to Walter Koepsell as a consequence of delinquent taxes owing the State of Minnesota pursuant to Minn. Stat. A 60A.17 (1984), as amended, 1986 First Special Session Laws Ch.1; Art. 7, a 3

Based upon all of the proceedings herein, the Administrative Law judge makes the following:

FINDINGS OF FACT

1. Walter Koepsell has an insurance agent's license issued by the

Minnesota Department of Commerce. That license is currently due for renewal.

2. On March 19, 1985, Respondent was notified of a change in taxes owing for the calendar year 1981 by the federal government. DR Ex.2. The tax liability resulted from a inclusion of approximately \$9,000 in additional gross income for the taxable year 1981. While the Respondent received notice of the action by the federal government, he did not request an appeal of the assessment as authorized in the communication from the Internal Revenue Service.

3. As a consequence of the action by the IRS regarding the Respondent's federal tax liability for 1981, Mr. Koepsell's Minnesota tax liability for that year was adjusted by the Department by including approximately \$9,000 in taxable income for that tax year. The Notice of Additional Assessment was issued by the Minnesota Department of Revenue-Income Tax Division on June 20, 1985. DR Ex. 2.

4. With the Notice of Additional Assessment, Mr. Koepsell received a form on which he could file a protest of the additional tax assessed. That form indicated his right to protest within the Department and his right to appeal any adverse decision by the Department regarding his protest to the Minnesota Tax Court within 60 days of the Department's final adverse determination. DR Ex . 2.

5. On August 1, 1985, Mr. Koepsell filed his protest with the Department and that protest began an internal administrative proceeding in which the tax was contested by the Respondent.

6. By letter dated December 31, 1985, the Department denied the Respondent's protest and that letter terminated the internal administrative proceeding. DR Ex. 3. The letter statement was sent to Mr. Koepsell at his last known address and Respondent received mail at that address sent subsequent to December 31, 1985. In its letter, the Tax Examiner stated the position of the Department that the Respondent's tax liability would not be adjusted until the IRS changed its audit report.

7. The letter notification by the Department did not contain a statement that it was a final determination of the administrative proceeding which commenced the period for appeal to the Tax Court. TR Ex. 2.

8. The period for filing an appeal with the Tax Court without payment of taxes owing, without the special permission of the Tax Court, is 60 days from the date of the final determination.

9. Although Mr. Koepsell denies having received the letter determination by the Department and the letter notification does not contain a statement

that the determination therein contained commences the running of the appeal period to the Tax Court, Mr. Koepsell had actual notice of the position of the Department regarding the final disposition of his administrative protest more than 60 days prior to the date of the hearing herein.

10. No administrative or judicial proceeding is currently pending regarding Mr Koepsell's liability for the taxes herein.

11, As a consequence of Findings 9 & 10, supra, the appeal period for contesting the taxes without payment has run.

12, Mr. Koepsell currently has delinquent taxes with interest and penalty projected to the date of the hearing in the amount of \$1,507.63. DR Ex. 1.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Revenue and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. 60A.17 (1984), as amended, 1986 First Special Session Laws Ch.1, Art, 7, 3.

2, The Department gave proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law or rule.

3. The Respondent possesses an insurance agent's license which is currently subject to renewal.

4. As a consequence of Minn. Stat. sec. 60A.17 (1984), as amended, 1986 First Special Session Laws Ch 1, Art. 7, 3, the Commissioner may not issue a tax clearance certificate to an individual who has assessed against Vim delinquent taxes, as statutorily defined.

5. The Department has assessed against the taxpayer delinquent taxes in an amount exceeding \$500.

6. Although the Respondent contests his liability for the taxable amount, the delinquent taxes are not the subject of a pending administrative or court action contesting the amount or validity of the liability, the appeal period to contest the tax liability without payment has expired and the Respondent has not entered into a payment agreement with the Department.

7. As a consequence of Conclusions 5 & 6, supra, the Commissioner of Revenue may not issue a tax clearance certificate to the Respondent. Minn. Stat. 60A.17 (1984), as amended, 1986 First Special Session Laws Ch.1, Art. 7 , 3.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Revenue not issue a tax clearance certificate to Walter Koepsell and that he inform the Commissioner

of Commerce that the Respondent owes the state delinquent taxes in an amount in excess of \$500.

Dated this 24th day of July, 1986.

BRUCE D. CAMPBELL
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded

MEMORANDUM

The Respondent in this proceeding initially wished to contest his liability for the taxes owed. The Administrative Law judge ruled at the hearing at the Respondent's liability for the taxes was not on issue in this proceeding. To contest the validity of the tax assessment the taxpayer would have been required to appeal the Department's adverse administrative determination regarding his tax liability to the Tax Court. He did not do so and, as a consequence, there is currently pending no administrative or judicial proceeding in which the tax assessment is contested.

It could be argued that the period for filing an appeal with the Tax Court has not run since the letter notification of the Department to the taxpayer did not contain a statement that it was a final administrative determination which commenced the running of the appeal period previously brought to his attention. It could be argued that considerations of due process require the Department to inform the taxpayer of his appeal rights, including the time when the appeal period begins to run. A more restricted position would require the Department to make a statement in what it considers to be its final administrative determination of a protest that it is, in fact, the final resolution of the matter. Absent some such statement by the Department, a taxpayer is virtually unable to perfect a timely appeal.

The Administrative Law Judge, however, finds that consideration of this issue is not required in this proceeding since the taxpayer admitted on the record that he had actual notice of the final position of the Department more

than 60 days prior to the hearing herein. Hence, even under the most liberal construction of the law, the 60 day appeal period has expired.

Although the Administrative Law Judge does not find that Respondent's due process rights have been violated, it would be appropriate for the Department either to use a form notice for a final resolution of an administrative protest in which the appeal rights of the taxpayer are set forth or, at least, to include a statement in the determination that it is the final action by the Department which commences the time for appeal to the Tax Court. The Supreme Court of Wisconsin, in Sunnyview Village v. State Department of Administration, 104 Wis.2d 396, 311 N.W.2d 632, 640 (1981), well stated the applicable concerns:

We acknowledge, as did those courts, that it is important that citizens not be defeated in their redress of grievances by the maze of governmental entities. A person aggrieved by an administrative decision should not have to guess which governmental entity to name and serve as a respondent in proceedings for a Judicial review. We recommend that government entities adopt the practice of providing with their administrative decisions information on how to process proceedings for review, including which governmental entity to be named and served as respondent.

The circuit court wisely commented as follows:

The problem is that persons outside the government have great difficulty finding their way through the governmental Maze to locate the proper agency, division or bureau.

This Court believes that it would be a proper and fair public policy to require every state agency issuing an order or decision to include in that order or finding a summary of the time to appeal and identification of the proper party to the appeal.

. . . This Court believes that access to judicial review of administrative policies should be made as easy as possible for the people involved and that the governmental agencies involved should aid and assist in giving the average citizen the necessary information so a timely review is easily available.

As discussed at the hearing, the taxpayer, however, has not lost his right to appeal the determination of the Department regarding his tax liability. He may pay the tax under protest, seek a refund, and appeal the denial of that refund to the Tax Court. Under that circumstance, he would be entitled to a tax clearance certificate since the tax would be the subject of a court action contesting the amount or validity of the liability. Absent such an action by the taxpayer, the law is clear. He has been assessed delinquent taxes, as statutorily defined, which are not the subject of an administrative or court action contesting their validity. This hearing, authorized under Minn. Stat.

60A.17 (1984), as amended, 1986 First Special Session Laws Ch.1, Art. 7, 3, is not the appropriate forum for contesting that liability.

B.D.C.

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