

FILED

AUG 11 2025

Wisconsin Tax Appeals Commission

Drew Fox - Clerk

STATE OF WISCONSIN

TAX APPEALS COMMISSION

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ANDREA AND JEFFREY J. ARNDT,

DOCKET NO. 25-I-086

Petitioners,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**ELIZABETH KESSLER, COMMISSIONER:**

This case comes before the Commission for decision on Respondent's Motion to Dismiss Petitioners' Petition for Review for failure to file within the statutory time limit. The Petitioners, Andrea and Jeffrey J. Arndt, appear pro se by Mr. Arndt. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Nicole Pellerin of Madison, Wisconsin. The Department has filed a brief and affidavit in support of its Motion with the Tax Appeals Commission ("Commission"). Petitioners indicated during telephone status conference that they intended to file no responsive pleadings. For the reasons stated below, we find for the Department.

**FACTS**

1. By Notice of Action dated March 13, 2025, the Department denied the Petitioners' petition for redetermination. (Affidavit of Alexander Hans, ("Hans Aff.")

¶ 7, Ex. D.)

2. That Notice of Action was sent by USPS Certified Mail to the Petitioners. The Department asserts that that mail was received by Petitioners on Thursday, March 27, 2025, (Hans Aff. ¶¶ 8 and 9, Ex. F), while Petitioners state they received the mail on Sunday, March 30, 2025 (Petition and statement of Mr. Arndt during the telephone status conference held on August 5, 2025; Commission file).

3. Sixty days from Sunday, March 30, 2025, was Thursday, May 29, 2025.

4. On June 16, 2025, the Commission received a letter dated June 13, 2025, from Petitioners appealing the Department's Notice of Action dated March 13, 2025 (Commission file).

5. On July 11, 2025, the Department filed a Notice of Motion and Motion to Dismiss along with a Brief in Support of the Motion and an Affidavit and Exhibits in support of the Motion and Brief. The basis of the Motion to Dismiss was that the Commission lacked jurisdiction to review the Department's actions in this matter because Petitioners failed to file their petition within 60 days of receipt of the Notice of Action as required by Wis. Stat. § 73.01(5)(a). (Commission file).

### **APPLICABLE LAW**

The specific statute at issue here outlines the requirements for filing a valid and timely petition for review with the Commission:

Wis. Stat. § 73.01(5)(a): Any person who is aggrieved . . . by the redetermination of the department of revenue may, within 60 days of the redetermination . . . but not thereafter, file with the clerk of the commission a petition for review of the action of the department of revenue . . . . For purposes of

this subsection, a petition for review is considered timely filed if mailed by certified mail in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the last day for filing.

Thus, if a petitioner fails to file a petition for review within 60 days of receipt of the denial of redetermination, the Commission has no jurisdiction and must dismiss.

### ANALYSIS

A motion to dismiss will be granted if the Commission finds it does not have proper jurisdiction. Without jurisdiction to hear the matter, the Commission has no alternative other than to dismiss the action. *See Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002).

Petitioner Jeffrey Arndt indicated that he received the Notice of Action on Sunday, March 30, 2025. Although the Department has provided a sworn statement from Resolution Officer Alexander Hans of the Wisconsin Department of Revenue, describing the mailing and tracking of the Notice of Action by certified mail indicating a date of receipt three days earlier, the difference is immaterial. Using the facts most favorable to Petitioners, and assuming that Petitioners received the Notice of Action on March 30, 2025, the 60-day timeframe in which to appeal expired on Thursday, May 29, 2025. For this Commission to have jurisdiction over the matter, Petitioners needed to file their appeal with the Commission by that date. Petitioners did not file the appeal until June 16, 2025. If a petition is not filed with the Commission within the time provided in s. 73.01, the assessment becomes final and conclusive. Wis. Stat. § 71.88(2).

This is not a matter for discretion; the Commission has no choice in the

matter. *Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002).

### CONCLUSIONS OF LAW

1. The Notice became final and conclusive because Petitioners failed to file a timely Petition for Review pursuant to Wis. Stat. § 73.01(5); therefore, the Commission lacks jurisdiction to hear this appeal pursuant to Wis. Stat. § 71.88(2).

2. The Department is entitled to dismissal as a matter of law.

### ORDER

Based on the foregoing, it is the order of this Commission that the Department's Motion to Dismiss is granted and the Petition for Review is dismissed.

Dated in Madison, Wisconsin, this 11<sup>th</sup> day of August, 2025.

#### WISCONSIN TAX APPEALS COMMISSION

  
Elizabeth Kessler, Chair

  
Jessica Roulette, Commissioner

  
Kenneth P. Adler, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"

WISCONSIN TAX APPEALS COMMISSION  
101 E Wilson St, 5<sup>th</sup> Floor  
Madison, Wisconsin 53703

**NOTICE OF APPEAL INFORMATION**

**NOTICE OF RIGHTS FOR REHEARING, OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH,  
AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT**

A taxpayer has two options after receiving a Commission final decision:

***Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION***

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternately, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

**AND/OR**

***Option 2: PETITION FOR JUDICIAL REVIEW***

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, within 30 days of this decision if there has been no petition for rehearing or, within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service, or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or the Wisconsin Statutes. The website for the courts is <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.