

WATERS KARL DEBORAH 111887 092386 TAC



The petitioners, Karl E. and Deborah K. Waters, appeared by Karl E. Waters and by their attorney, Daniel Wenzel, of Brynelson, Herrick, Bucaida, Dorschel & Armstrong; the respondent, Wisconsin Department of Revenue, appeared by its attorney, Linda Roberts.

The respondent made motion to dismiss the petition for review on the grounds stated above. The petitioner objected to the granting of the motion. The parties offered oral argument and submitted written briefs in support of and in opposition to the motion.

Having considered the pleadings, the record, the motion and the arguments of the parties thereon, this Commission finds as

#### **FINDINGS OF FACT**

1. By notice dated April 29, 1985, the respondent made an assessment of income tax against the petitioner Karl E. Waters in the amount of \$3,724.56, including interest.

2. By notice dated April 29, 1985, the respondent made an assessment of income tax against the petitioner Deborah K. Waters in the amount of \$1,269.73, including interest.

3. The petitioners' attorney claimed by affidavit that he mailed a "Joint Petition of Karl E. Waters and Deborah K. Waters" to the respondent on May 8, 1985, which he intended to be the petitioners' petition for redetermination in these matters. The respondent claims and presented testimony that it never received the joint petition that the petitioners' attorney

claimed to have properly mailed.

4. On January 15, 1986, the petitioners filed documents identified as a joint petition for redetermination of the income tax assessments with the respondent.

5. On April 9, 1986, the petitioners' joint petition for review relating to the respondent's assessments of income tax was received and filed in the office of the Wisconsin Tax Appeals Commission.

6. The sole issue for this Commission to determine is whether the petitioners properly petitioned the respondent within 60 days after receipt of the respondent's notices of additional assessment as required by s. 71.12(1)(a), Stats.

7. The burden is on the petitioners to prove by clear and satisfactory evidence that they mailed to the respondent their joint petition for redetermination, pursuant to sec. 71.12(1)(a), Stats., and that the respondent actually received their joint petition within 5 days, pursuant to sec. 71.10(13), Stats. The petitioners failed to meet their burden of proof.

#### WISCONSIN STATUTES INVOLVED

Section 71.12(1)(a), Stats., provides:

(1)(a) Except for refunds set off under s. 71.105 in respect to which appeal is to the agency to which the debt is owed and except for refunds set off under s. 46.225 in respect to which a hearing is held before the circuit court, any person feeling aggrieved by a notice of additional assessment, refund, or notice of denial of refund may, within 60 days after receipt of the notice, petition the department of revenue for redetermination. The department shall make a redetermination on the petition within 6

months after it is filed.

Section 71.10(13), Stats., provides:

(13) Documents and payments required or permitted by this chapter shall be considered furnished, reported, filed or made on time, if mailed in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the date prescribed for such furnishing, reporting, filing or making, provided such document or payment is actually received by the department within 5 days of such prescribed date. (Emphasis added)

The 60-day period provided for in sec. 71.12(1)(a), Stats. for filing proper petitions for redetermination with the respondent expired on June 28, 1985.

The petitioners having failed to file timely petitions for redetermination with the respondent relating to the assessments made against them, said assessments became final and conclusive on June 28, 1985, pursuant to sec. 71.12(1)(c), Stats.; therefore, this Commission lacks jurisdiction to hear the matters of which the petitioners complain in their petition for review.

The respondent has shown good cause and sufficient grounds for the granting of its motion.

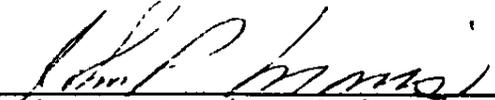
Therefore,

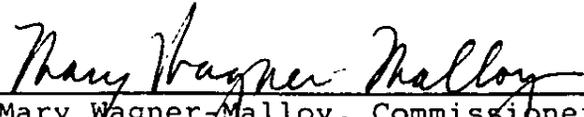
**IT IS ORDERED**

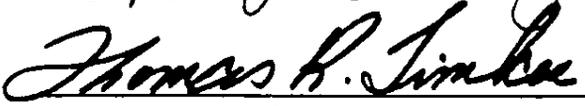
That the petition for review in the above-entitled matters be and the same is hereby dismissed.

Dated at Madison, Wisconsin, this 23rd day of  
September, 1986.

WISCONSIN TAX APPEALS COMMISSION

  
\_\_\_\_\_  
John P. Morris, Chairperson

  
\_\_\_\_\_  
Mary Wagner-Malloy, Commissioner

  
\_\_\_\_\_  
Thomas R. Timken, Commissioner

pc: Petitioners  
Representative  
Respondent

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"