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STATE OF WISCONSIN

TAX APPEALS COMMISSION

COMPUTERVISION CORPORATION
100 Crosby Drive
Bedford, MA 01730

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DOCKET NO. 93-S-626

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Petitioner,

*

vs.

*

RULING AND ORDER

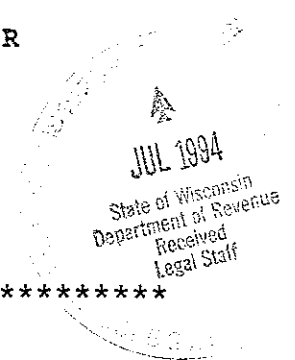
WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8933
Madison, WI 53708

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Respondent.

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MARK E. MUSOLF, COMMISSION CHAIRPERSON:

The respondent has moved for dismissal of this matter for lack of standing and/or failure to state a claim upon which relief may be granted and/or failure to timely file a petition for redetermination and/or failure to timely file a petition for review.

A hearing was held on the motion on May 26, 1994. Briefs have been filed by Attorney Robert C. Stellick, Jr., for respondent and Christine A. Finnigan for petitioner. Because the facts pertaining to the alleged failure to timely file a petition for review are in dispute, this ruling considers only the other grounds for dismissal, with the parties reserving further hearing and argument as appropriate on the timeliness issue as to the petition for review.

FACTS

- 1. Computervision Corporation (originally called Prime

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Computer; hereafter called "Prime") filed a claim for refund with the respondent on or about March 31, 1992.

2. By letter to Prime dated March 1, 1993, respondent granted in part and denied in part the claim for refund filed by Prime.

3. By letter dated April 23, 1993, Asset Tax Management Corporation (ATM), on behalf of Tri-Clover, Inc. (T-C), filed a petition for redetermination of the respondent's partial denial of Prime's claim for refund.

4. On August 23, 1993, ATM obtained a power of attorney to represent Prime and subsequently provided the same to the respondent.

5. By letter dated October 6, 1993, addressed to ATM, respondent denied the petition for redetermination filed by ATM on behalf of T-C.

6. ATM, on behalf of petitioner, filed a petition for review of the respondent's denial of the petition for redetermination (filed by ATM on behalf of T-C). The timeliness of this filing remains in dispute.

WISCONSIN STATUTE INVOLVED

77.59 (6) Except as provided in sub. (4)(a), a determination by the department is final unless, within 60 days after receipt of the notice of the determination, the taxpayer, or other person directly interested, petitions the department for a redetermination. * * * (Emphasis added.)

RULING

It is clear from undisputed testimony and documentary

evidence that the April 23, 1993 petition for redetermination was filed by ATM on behalf of Tri-Clover, Inc., not on behalf of petitioner. However, neither ATM nor Tri-Clover, Inc., was a "person directly interested" within the meaning of § 77.59(6), Stats. In spite of this, ATM, as representative of the petitioner in this appeal, insists that in filing the April 23, 1993 petition for redetermination it was representing not only Tri-Clover, Inc., but also the petitioner.

Nothing in the evidentiary record supports this contention. The documentary evidence overwhelmingly shows that in filing the petition for redetermination with respondent on April 23, 1993, ATM acted at all times on behalf of Tri-Clover, Inc., rather than on behalf of petitioner.

While the record does show that a power of attorney was obtained four months later and filed with respondent prior to its denial of ATM's petition for redetermination on behalf of Tri-Clover, Inc., this does not cure the lack of filing by petitioner or anyone then representing petitioner on April 23, 1993. To rule otherwise would vitiate the statutory deadline by in effect permitting another party, namely petitioner, to file a petition for redetermination after the deadline.

Nor do any of the exhibits show that ATM was acting on behalf of petitioner rather than Tri-Clover, Inc., in filing the petition for redetermination. Even Exhibits 13a and 14a cited by petitioner are confusing and inconclusive on the point, and Exhibit 15 is a fax transmittal from ATM to respondent which refers

specifically to a claim for refund filed on behalf of "our client, Tri-Clover" with only a passing reference to the petitioner.

But the determinative document is the April 23, 1993 petition for redetermination. That petition was filed by Tri-Clover, Inc., not by petitioner, and the respondent properly denied it, citing § 77.59(6), Stats., and this commission's decision in Jackson County Iron Company v. WDOR, 9 WTAC 283 (Docket No. S-3779, 1972).

We therefore rule that no petition for redetermination was timely filed by the petitioner as required by § 77.59(6), Stats., causing the respondent's determination dated March 1, 1993 to become final by operation of law.

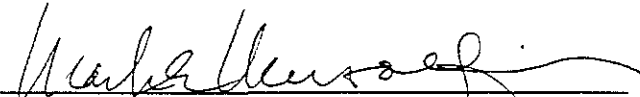
The respondent has accordingly shown grounds for the granting of its motion to dismiss.

ORDER

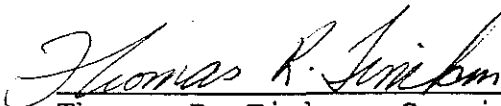
The respondent's motion to dismiss the petition for review is granted.

Dated at Madison, Wisconsin, this 21st day of July, 1994.

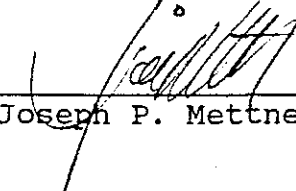
WISCONSIN TAX APPEALS COMMISSION



Mark E. Musolf, Chairperson



Thomas R. Timken, Commissioner



Joseph P. Mettner, Commissioner

ATTACHMENT: "Notice
of Appeal Information"