

KAMER ELIZABETH 911516 041493 TAC

STATE OF WISCONSIN
TAX APPEALS COMMISSION

RECEIVED
LEGAL DIVISION

ELIZABETH KAMER
2145 Norhardt Drive
Brookfield, WI 53005

Petitioner,

vs.

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

Respondent.

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* DOCKET NO. 91-I-516
* RULING AND ORDER
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The above-entitled matter was presented to this Commission upon facts and exhibits contained in a written stipulation entered into by and between the petitioner, Elizabeth Kamer, by her representative, Larry J. Soukup, of Virchow, Krause & Company, and the respondent, Wisconsin Department of Revenue, by its attorney, Veronica Folstad.

Having considered the record before it, this Commission hereby finds and decides as follows:

FINDINGS OF FACT

As and for its Findings of Fact, this Commission adopts the following as stipulated to by the parties, deleting only references to exhibits:

1. That by notice from the Wisconsin Department of Revenue dated May 8, 1991, a denial of refund of income taxes was issued to petitioner denying a refund claim for the year 1989 in the amount of \$4,545.00, including interest.

2. That on May 21, 1991, the petitioner filed a petition for redetermination with the Wisconsin Department of Revenue objecting to the denial of refund for the year 1989.

3. That by notice dated Thursday, October 3, 1991, mailed to petitioner by certified mail, return receipt requested, and received by petitioner on Friday, October 4, 1991, the respondent denied the petitioner's petition for redetermination of the refund denial.

4. That on Thursday, October 3, 1991, a copy of the aforementioned notice was deposited in the U.S. Postal Service, by ordinary mail, with proper postage and addressed to petitioner's representative, Mr. Larry J. Soukup. That the aforementioned notice was logged in as received in Mr. Soukup's offices on Monday, October 7, 1991.

5. That under date of February 5, 1991, the petitioner filed a "Power of Attorney" form with the Department of Revenue designating Mr. Larry J. Soukup as petitioner's attorney-in-fact.

6. That the petitioner's petition for review of the action on the petition for redetermination was received in the office of the Wisconsin Tax Appeals Commission on December 6, 1991. That the petition was mailed by certified mail and postmarked December 5, 1991. A copy of said petition is included as part of these proceedings as a record of the file in possession of the Wisconsin Tax Appeals Commission.

7. That the issue for decision by the Wisconsin Tax Appeals Commission is whether the 60 day filing period provided for

perfecting an appeal with the Wisconsin Tax Appeals Commission pursuant to sec. 73.01(5)(a), Wis. Stats., expired on Tuesday, December 3, 1991, 60 days after the service of said notice on petitioner by certified mail, or whether the statutory filing period is determined by reference to the date of mailing and receipt of the Department's notice by the petitioner's representative.

As an additional fact, based upon Exhibit 4 of the parties' stipulation of facts, this commission finds as follows:

8. That the power of attorney referenced above in Finding 5. was submitted using respondent's form, A-222, which specifically authorized Mr. Soukup, the petitioner's attorney-in-fact "to perform on behalf of the taxpayer the following acts..." which, among others listed includes "To receive notices, assessments, determinations, redeterminations, tax forms, billings, refunds, communications and correspondence containing confidential information" (emphasis added).

RULING

The 60-day period provided in Sec. 73.01(5)(a), Wis. Stats., is determined by reference to the date of mailing and receipt of the respondent's notice on October 7, 1991 by the petitioner's representative/attorney-in-fact. The filing of the petition for review by certified mail postmarked December 5, 1991 was therefore timely.

The respondent relies on two U. S. Tax Court decisions as controlling the outcome here, Richard T. Gallion and Audrey R.

Gallion vs. United States of America, 68-1 USTC ¶9213, and John R. Campbell and Dorothy J. Campbell vs. United States of America, 69-2 USTC ¶9730.

We reject respondent's position for two reasons. First, the Internal Revenue Code language relied on by the Gallion and Campbell courts expressly required "mailing by certified mail...to the taxpayer of [the] notice..." (emphasis added). There is no such specific directive language in sec. 73.01(5)(a), Stats., with respect to the respondent's notice of action.

Second, even without such directive language in the statute, the respondent's administrative rule, TAX 1.13(4)(b), WAC provides that such power of attorney form "shall clearly express the scope of the authority granted the taxpayer's representative..." Having so clearly expressed the same to include the power to receive a particular notice, the petitioner's attorney-in-fact stands in the taxpayer's "place and stead" for such purpose. See, "Attorney in fact," Black's Law Dictionary, 5th Ed., p. 118. The representative is therefore entitled to the same treatment as the taxpayer for notice purposes.

Accordingly, where statutory notices are received at different times because one notice method is used for the taxpayer and another for the attorney-in-fact, the later date of receipt controls because both must be treated as having been given to the taxpayer.

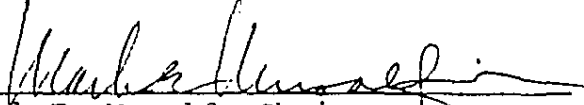
ORDER


The respondent's motion to dismiss is denied.

Dated at Madison, Wisconsin, this 14th day of April,

1993.

WISCONSIN TAX APPEALS COMMISSION


Mark E. Musolf, Chairperson


Thomas R. Timken, Commissioner

(Approved)
Douglass H. Bartley, Commissioner