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KULAS MICHAEL R 89S505 041690 TAC

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

\* \* \* \* \*

MICHAEL R. KULAS  
1646 South Layton Blvd.  
Milwaukee, Wisconsin 53215

Petitioner,

vs.

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

Respondent,

\* \* \* \* \*

DOCKET NO. 89-S-505  
RULING AND ORDER

STATE OF WISCONSIN  
DEPARTMENT OF REVENUE  
APR 17 1990  
**RECEIVED**  
LEGAL DIVISION

Thomas R. Timken, Chairperson

Appearances:  
For Petitioner: Attorney Wilford W. Elliott  
For respondent: Attorney Kevin Cronin

The above-entitled matter came on to be heard by this Commission at the State Office Building in Green Bay, Wisconsin at 9:00 a.m. on April 11, 1990 pursuant to a Notice of Motion and Motion brought by the Wisconsin Department of Revenue to dismiss the petition for review on the alleged grounds that the petitioner failed to file a proper petition for review with this Commission with 60 days after receipt of the respondent's notice of denial of the petition for redetermination as required by Sec. 73.01(5)(a) of the Wisconsin Statutes.

Based on the record before it, this Commission hereby rules and decides as follows:

1. Under date of June 24, 1988 the respondent,

Wisconsin Department of Revenue, issued a sales and use tax assessment against the petitioner, Michael R. Kulas, in the total amount of \$6,675.69 covering the years 1974-1982.

2. On August 19, 1988 the petitioner filed a timely petition for redetermination of said assessment with the respondent.

3. On June 14, 1989 the petitioner, Michael R. Kulas, executed a Wisconsin Department of Revenue, - Power of Attorney, - appointing Wilford W. Elliott as his attorney-in-fact to represent him before the Wisconsin Department of Revenue on sales and use tax matters for the period involved.

4. That by notice dated August 16, 1989, mailed to the petitioner, Michael R. Kulas, by certified mail, return receipt requested, and received by him on August 17, 1989, the respondent granted in part and denied in part the petitioner's petition for redetermination.

5. Although the record is unclear as to whether a copy of the power of attorney referred to in paragraph #3 above was filed by the petitioner with the respondent, it is clear that a copy of the respondent's partial denial of August 16, 1989 was mailed to Attorney Wilford W. Elliott, which he received on August 21, 1989.

6. On October 20, 1989 a petition for review of the respondent's action was received by this Commission which was executed by Attorney Wilford W. Elliott. The last paragraph of that petition states:

"Wilford W. Elliott has been authorized by petitioner

to prepare and sign this appeal and to act in behalf of the petitioner."

7. Although the 60 day period provided for in Section 73.01(5)(a) of the Wisconsin Statutes for filing a proper petition for review expired on October 16, 1989 as far as the petitioner himself, Michael R. Kulas, is concerned, it did not expire for his authorized attorney-in-fact, Wilford W. Elliott, until October 20, 1989. Thus, the petition for review received on October 20, 1989 is timely and this Commission has jurisdiction to review the alleged grievances of the petitioner.

8. The respondent has not shown good and sufficient grounds for the granting of its motion.

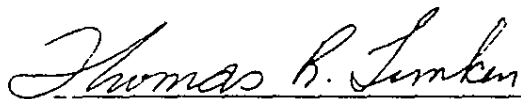
Therefore,

IT IS ORDERED

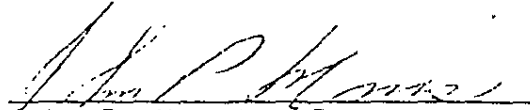
That the respondent's motion to dismiss the petitioner's petition for review is hereby denied.

Dated at Madison, Wisconsin, this 16th day of April, 1990.

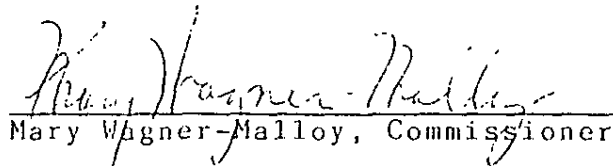
WISCONSIN TAX APPEALS COMMISSION



Thomas R. Timken, Chairperson



John P. Morris, Commissioner



Mary Wagner-Malloy, Commissioner

Attachment: "NOTICE OF APPEAL INFORMATION"