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Wisconsin Tax Appeals Commission
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STATE OF WISCONSIN
TAX APPEALS COMMISSION

JAMES AND MARY LICARI *
5758 Oak Drive *
Amherst, WI 54406 * DOCKET NOS. 95-I-1401
and 95-I-1402
Petitioners, *

vs. * RULING AND ORDER

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

MARK E. MUSOLF, COMMISSION CHAIRPERSON, JOINED BY JOSEPH P. METTNER, COMMISSIONER, AND DON M. MILLIS, COMMISSIONER:

Before us in the above-entitled matter is respondent's Motion to Dismiss for lack of jurisdiction by this commission, supported by affidavit. The respondent's attorney, Neal E. Schmidt, filed a brief in support of its motion. In response, the petitioners filed, in affidavit form, a Motion to Strike the respondent's motion and brief.

Also, by letters dated June 20 and June 27, 1996, the respondent advised this commission that, because only one assessment was issued to petitioners for 1990, Docket 95-I-1402 should be dismissed as a duplicate, and the Motion to Dismiss before us will then apply to Docket No. 95-I-1401. The petitioners have not opposed the dismissal of Docket 95-I-1402 as a duplicate.

Having considered the respondent's motion, the petitioners' response, and all related filings of the parties, together with the entire record herein, we rule and

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follows:

1. By notice from the Wisconsin Department of Revenue dated November 21, 1994, an assessment of income tax was made against the petitioners in the amount of \$1,169.49.

2. On January 4, 1995, the petitioners filed a petition for redetermination with the Wisconsin Department of Revenue.

3. By notice dated June 26, 1995, mailed to petitioners by certified mail, return receipt requested, and received by petitioners on June 28, 1995, the respondent denied the petitioners' petition for redetermination of the assessment.

4. The petitioners' petition for review of the action on the petition for redetermination was mailed by certified mail on September 29, 1995 and received in the office of the Wisconsin Tax Appeals Commission on October 2, 1995.

5. The 60-day period provided for in § 73.01(5)(a), Stats., for filing a proper petition for review of the action of the respondent on the petitioners' petition for redetermination expired on August 27, 1995.

6. Although petitioners submitted with their affidavit Exhibits 4 and 5, purportedly showing that the petition for review was filed on August 29, 1995, those exhibits showed a filing date pertaining to two other dockets pending before this commission, viz., Docket Nos. 95-I-1267 and 95-I-1268, and not the above-captioned dockets which are the subject of respondent's motion to dismiss.

7. This commission lacks jurisdiction to consider

petitioners' late-filed petition for review because it was not filed within the time period specified in § 73.01(5)(a), Stats.

8. The respondent has shown good cause for the granting of its motion to dismiss Docket 95-I-1401.

9. Docket 95-I-1402 should be dismissed because it is a duplicate of Docket 95-I-1401.

ORDER

1. Docket 95-I-1402 is dismissed.

2. The respondent's Motion to Dismiss as to Docket 95-I-1401 is granted, and petitioners' petition for review is dismissed.


3. The petitioners' Motion to Strike is denied.

Dated at Madison, Wisconsin, this 16th day of July, 1996.

WISCONSIN TAX APPEALS COMMISSION



Mark E. Musolf, Chairperson



Joseph P. Mettner, Commissioner



Don M. Millis, Commissioner

ATTACHMENT:
"Notice of Appeal Information"

WISCONSIN TAX APPEALS COMMISSION

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

The following notice is served on you as part of the Commission's decision rendered:

Any party has a right to petition for a rehearing of this decision within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences the day after personal service or mailing of this decision. (Decisions of the Tax Appeals Commission are mailed the day they are dated. In the case of an oral decision, personal service is the oral pronouncement of the decision at the hearing.) The petition for rehearing should be filed with the Wisconsin Tax Appeals Commission. Nevertheless, an appeal can be taken directly to circuit court through a petition for judicial review. It is not necessary to petition for a rehearing.

Any party has a right to petition for a judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes. The petition must be filed in circuit court and served upon the Wisconsin Tax Appeals Commission and the Department of Revenue within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of law of any petition for rehearing. (Decisions of the Tax Appeals Commission are mailed the day they are dated. In the case of an oral decision, personal service is the oral pronouncement of the decision at the hearing.) The petition for judicial review should name the Department of Revenue as respondent.

This notice is part of the decision and incorporated therein.