

STATE OF WISCONSIN
TAX APPEALS COMMISSION

DAVID L. AND JANE A. ALEXANDER
P.O. Box 492
Hillsboro, WI 54634-0492,

DOCKET NO. 02-I-149

Petitioners,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8907
Madison, WI 53708-8907,

Respondent.

DON M. MILLIS, COMMISSION CHAIRPERSON:

This matter comes before the Commission on respondent's motion to dismiss the petition for review for lack of subject matter jurisdiction. Both parties have filed supporting papers and briefs with respect to respondent's motion. Petitioners are represented by James L. Stott, CPA. Respondent is represented by Attorney Veronica Folstad.

Based on the submissions of the parties and the entire record in this matter, the Commission finds, concludes, rules, and orders as follows:

FACTS

1. Under the date of March 20, 2000, respondent issued an income tax assessment against petitioners in the principal amount of \$6,366.39, plus \$2,108.59 in interest, for the years 1995 through 1998.

2. Petitioners filed a timely petition for redetermination with respondent.

3. Respondent denied the petition for redetermination in a Notice dated October 31, 2001. The Notice was received by petitioners on November 1, 2001.

4. Petitioners' representative prepared a petition for review to be filed with the Commission, appealing respondent's action on the petition for redetermination.

5. On December 28, 2001, petitioners' representative mailed a petition for review from the Elroy, Wisconsin, Post Office via first class mail. While the street address on the envelope used to mail the petition for review was that of the Commission, the addressee was "Wisconsin Department of Revenue."

6. That petition for review and the check for the \$25 filing fee were not received by the Commission.

7. In June of 2002, petitioners' representative called the Commission to inquire on the status of the petition for review, since the filing fee check had not been cashed. Commission staff indicated to petitioners' representative that the Commission never received the petition for review.

8. On July 1, 2002, petitioners filed the petition for review that is the subject of this proceeding.

CONCLUSION OF LAW

The Commission lacks subject matter jurisdiction over this petition for review because it was not filed with the Commission within the time specified in section 73.01(5)(a) of the Statutes for filing appeals with the Commission.

RULING

Section 73.01(5)(a) required the petition for review in this case to be filed no later than January 2, 2002.¹ This means either be physically filed with the Commission by this date or “mailed by certified mail in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight” of January 2, 2002.² Neither requirement was met.

Petitioners argue, that notwithstanding the incorrect addressee on the envelope, the petition for review should have been received in the Commission’s office by the due date. Unfortunately it was not. Because the petition for review was not filed in a timely fashion, the Commission lacks subject matter jurisdiction over the petition for review. This is not a matter for discretion; the Commission has no choice in the matter.

ORDER

Respondent’s motion to dismiss is granted, and the petition for review is dismissed.

¹ Respondent initially argued that the due date was December 31, 2001, a day that the Commission was not open for business. *See Wis. Stat. § 230.35(4)(a)*. Respondent subsequently conceded that the due date was in fact January 2, 2002. Section 801.15(1)(b) of the Statutes provides that a day on which the clerk of courts office is closed can never be the last day for an act to be done. Given that section TA 1.39 of the Commission’s rules provides that practice and procedures of the Commission shall substantially follow the practice and procedures before circuit courts, the same rule applies when the Commission’s office is closed.

² Even if the mailing sent on December 28, 2001, was sent via certified mail, it would not have met the requirements of the statute because it was not in a “properly addressed envelope.” An envelope addressed to the Department of Revenue is not properly addressed to the Commission.

Dated at Madison, Wisconsin, this 13th day of December, 2002.

WISCONSIN TAX APPEALS COMMISSION

Don M. Millis, Commission Chairperson

Thomas M. Boykoff, Commissioner

Richard F. Raemisch, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"