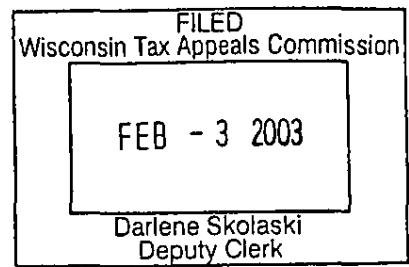
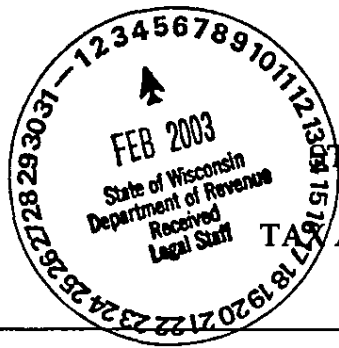


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STATE OF WISCONSIN
TAX APPEALS COMMISSION

DANIEL J. BENDER
CAROL J. BENDER
1231 Corey Avenue
Wisconsin Rapids, WI 54494,

DOCKET NO. 01-V-120
DOCKET NO. 01-V-117

Petitioners,

vs.

ORDER

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

Respondent.

On January 2, 2003, petitioners filed with the Commission a petition for rehearing of the December 11, 2002 Ruling and Order issued in these matters by the Commission.

At its January 30, 2003 meeting, the Commission considered petitioners' petition for rehearing and unanimously voted to deny the petition. The Commission found that petitioners have shown no material error of law or fact nor the discovery of new evidence sufficiently strong to reverse or modify the decision and which could not have been previously discovered by due diligence. Wis. Stat. § 227.49(3).

The Commission will take this opportunity to clarify confusion about the timeliness of the petition for rehearing. The Commission's Ruling and Order was served on the parties by depositing it in the U.S. Mail on December 11, 2002. The petition for rehearing was filed on January 2, 2003, the date the petition for rehearing was received by the Commission in the mail.

Respondent argues that the petition for rehearing was not timely because December 31, 2002, was the 20th day following service of the Ruling and Order and, therefore, the last day to file the petition for rehearing. Respondent points out that December 31, 2002, was not a Saturday, Sunday or legal holiday under section 895.20 of

the Wisconsin Statutes. Therefore, respondent argues, December 31, 2002, can be the last day for filing a petition for rehearing.

In a small claims matter, the Commission previously held that December 31 can never be the last day for filing a petition for review with the Commission. *Accounting Consultants, Inc. v. Dep't of Revenue*, Docket No. 02-R-01-SC (WTAC Oct. 18, 2002). This decision was based on the fact that the Commission's offices are closed on December 31—a state employee holiday under section 230.35(4) of the Statutes—and that 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 filing with the circuit court. Since section TA 1.39 of the Commission's Administrative Rules provides that practice before the Commission shall substantially follow the practices and procedures before circuit courts of this state, the Commission held that the same rule should apply to filing with the Commission.

The Commission now holds that the same rationale and rule applies to the filing of a petition for rehearing with the Commission. Since the 20th day following service of the Ruling and Order fell on December 31, 2002, the due date for filing the petition for rehearing was January 2, 2003.

In responding to arguments from respondent, petitioners assumed that the 20-day period for filing the petition for rehearing began to run the day after petitioners received the Commission's Ruling and Order. While we can understand why there might be confusion on this point, petitioners are mistaken.

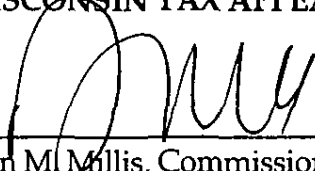
Section 227.49(1) provides that a petition for rehearing is due within 20 days after service of the final order. In this case, service occurred when the Commission deposited the Ruling and Order in the U.S. Mail. This is different from the rule governing a petition for review filed with the Commission. For more than 50 years, the Commission and its predecessor, the Board of Tax Appeals, has consistently held that the time for filing a petition for review with the Commission begins to run after *receipt* of the notice of action from respondent. See, *Mobile Transport System, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-293 (WTAC 1997).

IT IS ORDERED

That petitioners' petition for rehearing in the above-entitled matters is hereby denied.

Dated at Madison, Wisconsin, this 3rd day of February, 2003.

WISCONSIN TAX APPEALS COMMISSION



Don M. Millis, Commission Chairperson

pc: Daniel J. and Carol J. Bender
Attorney Steven D. Robinson
Attorney Michael J. Buchanan

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"