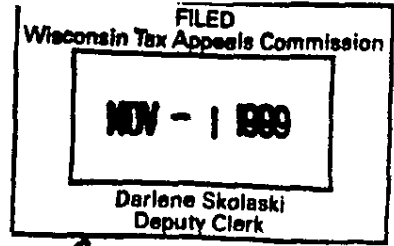


DeBano



STATE OF WISCONSIN
TAX APPEALS COMMISSION

TELEMARK POINTE OWNER'S ASSOCIATION
Hwy M
Cable, WI 54821,

2007

Docket No. 99-S-08

*distributed
to WFA Sup's
3/13/00*

Petitioner,

vs.

RULING AND ORDER

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

Respondent.



DON M. MILLIS, COMMISSIONER:

This matter comes before the Commission on respondent's motion to dismiss the petition for review arguing that the petition for review was not filed in a timely manner. Both parties have filed submissions in support of their respective positions on respondent's motion. Petitioner is represented by Clark & Clark Law Offices, by Attorney Scott W. Clark. Respondent is represented by Attorney Linda M. Mintener.

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

FACTS

1. Under the date of September 1, 1994, respondent issued a sales and use tax assessment against petitioner in the principal amount of

\$3,104.60, plus interest, penalties and late fees. The assessment was mailed to petitioner at the following address:

FRED VORTANZ
TELEMARK POINTE OWNER'S ASSOCIATION
HWY M
CABLE WI 54821

2. Under the date of October 24, 1994, Attorney Karen A. Case, one of petitioner's prior attorneys, filed with respondent a petition for redetermination objecting to the sales tax assessment. In the petition for redetermination, Attorney Case asked respondent to "direct any further correspondence in connection with this matter" to her "in accordance with the Power of Attorney attached hereto." Attached to the petition was a power of attorney signed by William V. Papaik and dated October 7, 1994.

3. Part 5 of the power of attorney dated October 7, 1994, provided the following options for petitioner to designate the recipient of further notices and written communications from respondent: the taxpayer, taxpayer's attorney-in-fact, or both. Petitioner checked the attorney-in-fact box and left the taxpayer box empty.

4. Subsequently, Attorney Case withdrew from representation of petitioner. Attorney Catherine M. Doyle replaced Attorney Case.

5. In March of 1996, respondent received a new power of attorney, dated March 28, 1996, from petitioner that designated Attorney

Doyle's law firm as petitioner's attorney-in-fact.¹ In part 5 of the March 28, 1996, power of attorney, petitioner designated *both* petitioner and petitioner's attorney-in-fact as recipients of further notices and other written communications.

6. Both powers of attorney listed petitioner's address as Hwy M, Cable, WI 54821.

7. During the audit of petitioner, respondent's auditor dealt exclusively with Fred Vortanz. Mr. Vortanz was an employee of Lake Properties, Inc., ("Lake Properties") the company that acted as petitioner's manager and agent until November 4, 1998.

8. On July 10, 1998, Lake Properties petitioned for bankruptcy. Thereafter, petitioner became dissatisfied with Lake Properties' performance. On September 28, 1998, petitioner gave notice to Lake Properties that it was exercising its option to cancel the management agreement between petitioner and Lake Properties on the 90th day following service of the notice.

9. On November 6, 1998, petitioner and Lake Properties entered into an agreement to terminate their management agreement as of November 4, 1998. Effective on November 4, 1998, petitioner retained Universal Services Corporation to provide management services.

¹ Mr. Papaik was apparently president of Lake Properties, Inc., a company that acted as petitioner's manager and agent up until November 4, 1998. Both powers of attorney described Mr. Papaik as president, but did not indicate that he was president of Lake Properties. Both powers of attorney suggest that Mr. Papaik was president of petitioner.

10. The termination agreement provided, in part, as follows:

Lake Properties will cooperate with the new management company in turning over to the new management company keys, documents and any other materials that belong to [petitioner].

11. Under the date of November 4, 1998, respondent issued a notice of action letter denying the petition for redetermination. The notice of action letter was sent via certified mail, return receipt requested, to:

TELEMARK POINTE OWNER'S ASSOCIATION
FRED VORTANZ
HWY M
CABLE, WI 54821

The notice of action letter was received on November 6, 1998, by Lake Properties. The notice of action letter was physically received by Universal Services on or about December 30, 1998.

12. At no time prior to filing the petition for review with the Commission did petitioner provide notice to respondent that it had severed its relationship with Lake Properties and Mr. Vortanz. One of respondent's conferees did become aware that Mr. Vortanz was no longer associated with petitioner several weeks after the November 4, 1998, notice of action letter was mailed.

13. The petition for review was filed with the Commission, via personal delivery, on January 6, 1999.

CONCLUSIONS OF LAW

1. For purposes of section 73.01(5)(a) of the Statutes, receipt of the notice of action letter by Mr. Vortanz at Lake Properties was tantamount to receipt by petitioner because, at the time the notice of action letter was issued, respondent did not have actual knowledge that neither Mr. Vortanz nor Lake Properties was authorized to act on petitioner's behalf.

2. The petition for review was not timely filed because it was received by the Commission more than 60 days after receipt by petitioner.

RULING

The sole issue raised by respondent's motion to dismiss is whether petitioner filed the petition for review in a timely manner. A taxpayer aggrieved by respondent's action on a petition for redetermination must file a petition for review with the Commission not later than the 60th day following receipt of the notice of action letter. Wis. Stats. § 73.01(5)(a); *Mobile Transport Systems, Inc. v. Dep't of Revenue*, 1997 Wisc. Tax LEXIS 6 at 5-6 (WTAC 1997). Because Lake Properties, petitioner's agent of record, received the notice of action letter on November 6, 1998, the 60th day to appeal respondent's determination was January 5, 1999. Therefore, the petition for review was one day late and the Commission lacks subject matter jurisdiction over the petition for review.

Petitioner argues, however, that it did not receive the notice of action letter until the end of December 1998, when the notice of action letter was

physically received by Universal Services. Therefore, according to petitioner, the petition for review was filed well within the 60-day appeal period.

While Lake Properties may have lost actual authority to act as petitioner's agent on the day the notice of action letter was issued, there was no way for respondent to know this. It was not until several weeks after the notice of action letter was issued that respondent had any idea that the person with whom respondent had been dealing was no longer petitioner's agent. While Lake Properties and Mr. Vortanz may not have had actual authority to receive the notice of action letter on behalf of petitioner, as far as respondent was concerned they had the apparent authority to do so. Until respondent had actual knowledge to the contrary, respondent could reasonably conclude that receipt of the notice of action letter by Mr. Vortanz at Lake Properties constituted receipt by petitioner.

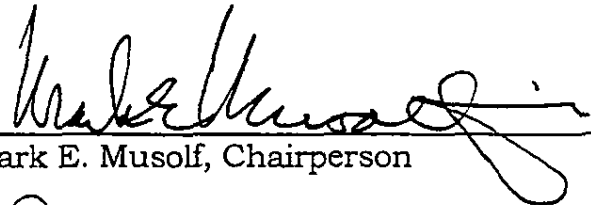
Petitioner points out that the March 28, 1996, power of attorney requests that all notices be sent to both petitioner and Attorney Doyle. Petitioner claims that Attorney Doyle never received the notice of action letter and, therefore, argues that the notice of action letter was flawed. Even if we assume that Attorney Doyle did not receive the notice of action letter, this fact would not change the result. Where a power of attorney designates both a taxpayer and the attorney-in-fact as the recipient for future notices, the statute of limitations runs from the time a notice is received by the taxpayer, not the attorney-in-fact. *Mobile Transport Systems, supra*, at 5-6.

ORDER

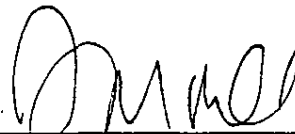
Respondent's motion is granted, and the petition for review is dismissed.

Dated at Madison, Wisconsin, this 1st day of November, 1999.

WISCONSIN TAX APPEALS COMMISSION



Mark E. Musolf, Chairperson



Don M. Millis, Commissioner

(Not Participating.)

Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"