STATE OF WISCONSIN

TAX APPEALS COMMISSION

AMI ENTERTAINMENT, INC.,

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DOCKET NOS. 19-S-237
AND 20-S-041

LORNA HEMP BOLL, COMMISSIONER:

This case[1] consists of two docket numbers, as it has come before the Commission via two different procedural routes. In both dockets, the Petitioner, AMI Entertainment, Inc. ("AMI"), appears by Attorney Joseph A. Pickart, of Husch Blackwell, Milwaukee, Wisconsin, and the Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Kelly A. Altschul.

This case is now poised for potential summary judgment based upon technical issues. Both parties have filed materials in support of their respective positions. As this case has a complicated background, we begin with only those facts needed to resolve the summary judgment issue.

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[1] While there are currently two Docket Nos., there is really only one "case" before the Commission, albeit arriving at the Commission via two different procedural avenues. As such, references to these dockets will be "case" (singular).

FACTS

While the actions of both parties have compounded over time to generate needless complication and contention, we will focus on the events necessary to resolve the procedural issues only. The facts are gleaned from affidavits rather than a stipulation, so some commentary regarding the credibility of some of these facts is included in footnotes. Questionable facts are included only to provide some of the timeline and background.

1. On May 28, 2015, the Department issued a Notice of Field Audit Action ("Assessment") for the tax period January 1, 2008, through December 31, 2014, assessing AMI for sales and use tax due of $479,775.75, interest of $215,658.48, negligence penalties of $119,943.95, and a late filing fee of $560.00, for a total assessment of $815,938.18. (Affidavit of Joseph A. Pickart ("Pickart Aff."), ¶ 2, Ex. A.)

2. The Assessment included a voluminous schedule detailing the calculations of the amount due, which is labeled as "COMPUTATION AND SUMMARY OF ADDITIONAL SALES & USE TAX, INTEREST & PENALTY." The total amount of "additional" tax assessed is listed as $815,938.18. (Pickart Aff., Ex. A, Sub-exhibit A-B at p. 4.)

3. Petitioner did not contest the assessment. Instead, in August 2015, Petitioner paid $868,974.16 as payment of the May 2015 Assessment. (Pickart Aff., Ex. B Request to Admit No. 2.) The amount paid is equal to the total amount of the Assessment, $815,938.18, plus a "delinquent tax collection fee" of $53,035.98. (Petitioner's Brief in Support of Motion for Summary Judgment, p. 3.)

4. On May 9, 2017, Petitioner filed a Claim for Refund, which was received at the Department of Revenue on May 11, 2017. (Pickart Aff., Ex. C; also, Affidavit of Brandon Eichelkraut, Revenue Agent for the Department ("Eichelkraut Aff."), Ex. A.) The transmittal letter, which outlines the Claim for Refund, begins as follows:

> On behalf of AMI Entertainment, Inc. ("AMI"), we timely file this claim for refund against the Department of Revenue (the "Department") to recover that amount of additional tax, interest, and penalties paid by AMI as a result of a field audit by the Department for the period January 1, 2008 through December 31, 2014. The May 28, 2015 Notice of Field Audit Action identified additional sales & use tax, interest and penalty in the amount of $815,938.18 as of July 27, 2015 ("Notice"). The Notice has been attached as Exhibit A. AMI paid $868,974.16 in August 2015.
>
> AMI objects to, disagrees with, and is aggrieved by the additional sales and use tax, interest and penalty the Department has assessed against it.

(Pickart Aff., Ex. C.)

5. On May 12, 2015, a Revenue Agent, tasked with entering claims for refund into the Department's WINPAS system, entered the May 9, 2017 Claim for Refund into the WINPAS system. The Revenue Agent interpreted the first paragraph of Attorney Pickart's letter to mean that Petitioner's claim for refund of the "additional tax" was for $53,035.98, the difference between the amount that Petitioner paid to the Department in August 2015 ($868,974.16) and the amount assessed by the May 28, 2015 Notice of Field Audit Action ($815,938.18). Accordingly, he entered the case into the Department's

system as a claim for refund in the amount of $53,035.98. (Eichelkraut Aff., ¶¶ 5 and 7, Ex. B.)

6. The original Claim for Refund, filed on May 9, 2017, did not include a Form A-222 Power of Attorney. It consisted of a two-page transmittal letter outlining Petitioner's Claim for Refund, a copy of the Notice of Field Audit Action, and copies of papers supporting the Department's audit, amounting to 225 additional pages. (Pickart Supp. Aff., ¶ 2.[2])

7. In completing the setup, because there was no Form A-222 included with the original Claim for Refund, the Revenue Agent did not check the box indicating the existence of a Power of Attorney for the Petitioner. (Eichelkraut Aff., ¶ 8.)

8. On May 23, 2017, the same Revenue Agent at the Department of Revenue received Petitioner's supplement to its original Claim for Refund. The supplement, dated May 19, 2017, consisted of a brief transmittal letter, a Form A-222, and another copy of the audit documents that had also been attached to the original March 9 filings.[3] (Eichelkraut Aff., Exs. B and C.)

9. The entirety of the body of the transmittal letter reads as follows:

> On behalf of AMI Entertainment, Inc. we timely filed a claim for refund against the Department of Revenue on May 9, 2017. We did not include a Power of Attorney Form, so we are

[2] Exhibit A of the Eichelkraut Affidavit, as submitted, consists only of Petitioner's Claim for Refund letter and the audit Notice without copies of the supporting papers, but the Department claims the submission was 454 pages, or twice what Petitioner states was submitted. (Eichelkraut Aff., ¶ 5.) We note that several additional copies of the audit papers were submitted by the Department, which perhaps were those intended to be attached to Eichelkraut Exhibit A.

[3] The Department disingenuously criticizes the Petitioner for the volume of documents filed; in fact, only approximately five of the pages filed by Petitioner were attributable to Petitioner, the remainder being copies of the Department's actions being appealed. (Pickart Supp. Aff., ¶ 3.)

> including one at this time. For your convenience, enclosed is a copy of the refund claim we previously filed.
> Please contact the undersigned if you have any questions.
> (emphasis added)

(Eichelkraut Aff., Ex. C, p. 1.)

10. Although the Power of Attorney Form may not have been initially located at the front of the Department's Exhibit C with the transmittal letter,[4] its existence was announced with the language quoted above, and the Power of Attorney can now be found approximately 15 pages into Exhibit C among the pages of calculations. (Eichelkraut Aff., Ex. C.)

11. It is evident that the Power of Attorney Form A-222 was, however, seen by the Department when received, because it was individually date-stamped "May 23, 2017," just as was the transmittal letter of Petitioner's supplemental filing. This is the date on which the Department admits receipt of Petitioner's supplement to the Claim for Refund. (Eichelkraut Aff., Ex. C.)

12. Upon receipt of the May 19, 2017 supplement, the Revenue Agent did not reopen the Department's WINPAS system and therefore did not make any modifications to any of the previously entered information. Instead, he simply added the supplement to the original paper Claim for Refund in an inbox to await assignment to an auditor. (Eichelkraut Aff., ¶¶ 10-13.)

[4] It seems unlikely that the Power of Attorney was sent buried among the Department's calculations rather than immediately following the letter which announced it and which was date-stamped in identical fashion.

13. During his handling of the Claim for Refund supplement, the Revenue Agent claims he did not notice the POA form, so he never checked the POA box in the Department's system. He also never noted that the system entry did not reflect the full amount of the refund being sought; thus, the system continued to indicate the amount of the refund claim was $53,035.98.[5] (*Id.*)

14. Petitioner's Form A-222, designated Attorney Joe Pickart and Attorney John C. Healy of Husch Blackwell as the Taxpayer's attorneys-in-fact for the tax type and years at issue in this appeal. (Eichelkraut Aff., Ex. C.)

15. Part 5 of Form A-222 begins, "send notices and other written communications to:" after which the box for Attorney-in-Fact is checked and the box for Taxpayer is not checked. The checkboxes are followed by this language:

> I understand, agree, and accept: If the Attorney-in-Fact box is checked, any notices and written communications will be sent to only the attorney-in-fact, except as required by statute. . . . Notice to the attorney-in fact is notice to the taxpayer and vice versa.

(Pickart Aff., Ex. C; Eichelkraut Aff., Ex. C.)

16. Nearly six months later, on November 15, 2017, the Department assigned the case to an Auditor. The Auditor claims in her affidavit that she never noted that the system entry did not reflect the full amount of the refund being sought; thus, the system continued to indicate the amount of the refund claim was $53,035.98. The Auditor also claims that, although she personally had the file under review for nearly six months,

[5] This testimony is not credible, as the affiant could not have failed to see a Form A-222 that he, in all likelihood, date-stamped. At the very least, in receiving the supplement, it is unlikely that he did not read the cover letter announcing the existence of the Power of Attorney.

she "was not aware" of the POA form, so she never checked the POA box in the Department's system.[6] (Affidavit of Cecilia Bajoon, Revenue Auditor ("Bajoon Aff."), ¶¶ 6-8, 11-12.)

17. On May 10, 2018, one day before the expiration of the one-year in which the Auditor understood her Notice to be due, the Auditor issued a timely Notice of Field Audit Action ("Denial Notice"). (Bajoon Aff., ¶ 10, Ex. D.)

18. Prior to sending out the Denial Notice, the Auditor's supervisor, James MacKenzie, reviewed the auditor's audit and approved the Denial Notice. In his Affidavit, regarding his review of the Auditor's work, Mr. MacKenzie claims he "saw no reason to believe" that the Claim for Refund was for any amount other than $53,035.98. Mr. Mackenzie also claims he "was not aware" that Petitioner had designated attorneys-in-fact with a Form A-222.[7] (Affidavit of James Mackenzie, ¶¶ 3-4, 6.)

19. The front page of the Denial Notice states, "Pursuant to sec. 77.59(4)(a), you are hereby notified that the Claim for Refund of $53,034.98 is denied for the following reasons: Please see Denial Explanations page for more information about your claim." Page 2, which contains the Denial Explanations, expressly indicates, "The

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[6] We question the veracity or competence of this witness, who swears, "While auditing AMI Entertainment, Inc.'s claim for refund I never came across any indication that the claim for refund was for anything other than $53,035.98." It is simply not credible that she did not realize that the entire assessment was being refuted. The first two pages explain the basis of the Claim for Refund in very clear terms. It also is not credible that someone responsible for reviewing the refund claim for a period of nearly six months was "not aware" of the POA which was announced very clearly on the front page of the supplemental filing.

[7] As with the Revenue Agent's and Auditor's affidavits, we find this witness's testimony not credible or competent. No reasonable person reviewing the file would fail to read the first two pages which outline the Petitioner's objections to the entire Assessment. Likewise, the supplement transmittal letter makes the existence of a power of attorney very clear. With only approximately 5 pages actually attributable to the Petitioner, the rest being copies of the Department's own audit, it is not credible that these two facts were missed.

final determination at the time of the field audit remains the same" followed by an itemization of the various aspects of the original audit findings. (Bajoon Aff., Ex. D.)

20. The May 10, 2018 Denial Notice was sent directly to AMI's corporate address. (Pickart Aff., Ex. D, Request for Admission No. 3.)

21. The Petitioner does not refute receiving the Denial within a reasonable time of its May 10, 2018 issuance.

22. The Denial Notice was not sent to AMI's counsel as requested on the Form A-222, nor was it sent to his law firm. (Pickart Aff., Ex. D, Request for Admission No. 3.)

23. Over one year after the issuance of the Notice and more than two years after filing the Claim for Refund, Attorney Pickart learned of the existence of the Denial and followed up with Mr. MacKenzie, who, on June 12, 2019, provided a copy of the Denial Notice to Attorney Pickart. (Pickart Supp. Aff., ¶ 6.)

24. On June 17, 2019, and June 21, 2019, Attorney Pickart contacted the Department to inquire about the status of Petitioner's Claim for Refund, specifically asking whether the "balance" of the Refund Claim, i.e., $815,938.18 (the full amount less the amount listed as denied on Page 1 of the Denial Notice) had yet been refunded to his client. (Pickart Aff., Ex. G.)

25. On June 25, 2019, Mr. MacKenzie responded with a letter in which he indicated, on behalf of the Department, a refusal to allow any reconsideration. At this point, the Department asserted that the Taxpayer had not made a timely request for a

redetermination within 60 days of the Denial, so the matter was closed with the full refund denied.

26. Upon receipt of the Denial Notice, Attorney Pickart followed up with a letter dated June 28, 2019, which, like the original Claim for Refund, disputed the conclusions of the original assessment and the subsequent Denial Notice. This letter was sent well within 60 days of Attorney Pickart's receipt of the Denial Notice. (Pickart Aff., Ex. I.)

27. On July 25, 2019, the Department issued an untitled notice "Re: Buyer's Claim for Refund of Sales and Use Tax, Date of Receipt: May 11, 2017." The Notice included appeal information and denied the entire Claim for Refund. The new (Second) Notice states, "Pursuant to sec. 77.59(4)(a), Wis. Stats., you are hereby notified that the Refund Claim for $868,974.16 is denied for the following reasons: Please see Denial Explanations page for more information about your claim." The Denial Explanations Page is identical to the one attached to the initial May 10, 2018 Denial. (Pickart Aff., Ex. J.)

28. Having objected to the initial Denial Notice on June 28, 2019, Attorney Pickart interpreted the Second Notice as a Redetermination, which he appealed directly to the Commission on September 20, 2019, within 60 days of his receipt of the Second Notice. That appeal became Docket No. 19-S-237. (Commission file.)

29. As a procedural precaution, Attorney Pickart also petitioned the Department for a redetermination of the Second Notice, also within 60 days of his receipt of the Second Notice, in the event the Second Notice was intended as a completely new

determination. Once that Petition was denied, he also appealed that denial to the Commission. That appeal became Docket No. 20-S-041. (Commission file.)

30. Once both cases were docketed at the Commission, both sides moved for summary judgment. (Commission file.)

The Parties' Positions

Petitioner argues that, because the Department failed to notify Attorney Pickart, the duly appointed Power of Attorney on Petitioner's Form A-222, of the Denial within one year of the refund claim, the entire refund claim should be deemed granted. In the alternative, Petitioner argues that the Denial only expressly denied $53,035.98, so the remaining amount of the refund claim should be deemed granted.

Department argues that, despite the dollar amount highlighted on the Denial, the Department denied any refund, not just the $53,035.98. The Department further asserts that sending the Denial only to the Taxpayer/Petitioner was sufficient, and, because the Petitioner failed to appeal the Denial within 60 days of receipt of the Denial, the Denial is final, leaving Petitioner with no further recourse.

DECISION

The dispositive issue is the Department's argument (in its section b. iii.) that the initial Denial Notice, which was only sent directly to the Taxpayer and not to its Power of Attorney, became final because the Petitioner did not request a redetermination within 60 days of receipt of the Denial. The nuance in what would be a simple late filing

case is the existence of a properly executed Form A-222 designating Attorney Pickart[8] as Petitioner's attorney-in-fact. Petitioner's selections on the form further indicated that Attorney Pickart and Attorney John C. Healy of Husch Blackwell were to be the exclusive recipients of notices and communications from the Department.

The Commission has addressed the issue of 60-day time limits in several cases involving petitioners represented by counsel established through powers of attorney.

In *Kulas v. Dep't of Revenue,* Docket No. 89-1-505 (WTAC 1991) (erroneously unpublished on CCH but cited in and appended to *Pomasl v. Dep't of Revenue,* Wis. Tax Rptr. (CCH) ¶ 401-677 (WTAC 2013)), the issue was an unsigned and undated Power of Attorney form. After finding the form deficient, the Commission held that the 60-day period in which to appeal from a redetermination had begun when the taxpayer received the Notice. That period had expired before the appeal was filed, so the Commission dismissed for lack of jurisdiction. *Id.*

The Commission in *Kulas* cited, among other cases, the federal court of appeals decision *Gallion v. United States,* 68-1 USTC ¶ 9213, 389 F.2d 522 (5th Cir. 1968). *Gallion* turned on a power of attorney which directed notices be sent to the representative in care of the taxpayer's address. Notice had been sent to the taxpayer at that address. The court, using the taxpayer's receipt as the starting date, dismissed the appeal as untimely. Because the taxpayer had received the notice at its address as it had requested

[8] As noted earlier, Attorney Healy was also named as attorney-in-fact; however, it does not appear that Attorney Healy was involved in any of these events to any noteworthy extent.

(although not directed to counsel), the court said, in essence, no harm no foul since the addresses were the same. The *Gallion* court also pointed out that the statute in question required notice "to the taxpayer," and concluded that, because that statute did not allow for "mailing to someone else, even if so requested or directed," receipt by the taxpayer was what mattered.

The Commission in *Kulas* observed that the statutory language in *Gallion* required notice "to the taxpayer" specifically and that the court in *Gallion* had properly refused to add "or by other person designated by him" to it. The *Kulas* decision then noted, in what may be dicta,[9] that a taxpayer could not direct that notices be sent to someone else.

In the Wisconsin case of *Mobile Transport Systems, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-293 (WTAC 1997), the Commission dismissed an appeal that was filed within 60 days of the attorney's receipt but beyond 60 days from the taxpayer's receipt. In that case, though, the Power of Attorney form requested notices to be sent to both the taxpayer and the representative, so the taxpayer had requested and expected to receive the notice directly. The *Mobile Transport* decision then went a step farther to cite *Kulas* for the proposition that "the 60-day appeal period runs from the time the taxpayer receives the notice of redetermination, not from the time its attorney receives the notice." *Id.* Although *Kulas* may not precisely stand for that proposition, when a

[9] As noted above, the Power of Attorney form in *Kulas* was deficient, and its reference to *Gallion* relies on statutory language which includes the phrase "to the taxpayer" which is not present in the Wisconsin statute.

taxpayer requests that both the taxpayer and the attorney-in-fact receive all notices, it seems good policy for the receipt by the taxpayer to dictate.

Finally, in *Pomasl v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-677 (WTAC 2013), the Commission was again presented with the question of receipt by a represented taxpayer. In *Pomasl*, the Petitioners had failed to file their Petition for Review with the Commission within 60 days of their[10] receipt. The representative may have received it later which could have made the petition timely, but the details were unclear as to when that receipt might have occurred, so the Commission dismissed and took the opportunity to attempt to set a bright line rule, declaring,

> While taxpayers may be represented by counsel, the gravity of a final decision requires it to be delivered to the taxpayer directly. It is the taxpayer who needs to decide whether to accept the decision or to appeal from it. Running these important decisions through a third party, even if it is an attorney or other competent representative, can result in delay or confusion and could potentially shorten the time for filing of an appeal. We hold that receipt by the taxpayer is controlling to trigger the 60-day period in which to file an appeal.

Id.

We note that the Commission has yet to be faced with a properly drafted and properly executed power of attorney. Even if we were to determine that a valid power of attorney form could trump the conclusions reached in *Pomasl*, we cannot look to the Form A-222 used in this case as a basis to do so. The form itself is internally

[10] The Petitioners' daughter had actually been the recipient. The Commission ruled that her receipt established receipt by the parents.

inconsistent. The form allows taxpayers to choose whether notices will be sent only to the taxpayer, only to the power of attorney, or to both. The choices are rendered pointless by the language immediately following, which states that "Notice to the attorney-in-fact is notice to the taxpayer and vice versa."

We find this Power of Attorney Form A-222, as drafted, is meaningless other than to announce the existence of counsel and, therefore, presents no basis for exception to the holding of *Pomasl*. Thus, Petitioner's receipt of the Denial Notice triggered the beginning of the 60-day period in which to request a redetermination. Apparently, the Petitioner did not share the notice with its representative,[11] and there is nothing in the record to show Attorney Pickart contacted the Department directly at any time in 2018 to inquire into the status of the refund. No request for redetermination was filed until 2019, over a year after the initial Denial Notice was issued, by which time the Denial Notice was final and unappealable per Wis. Stat § 77.59(6).[12]

There is some argument that the Second Notice, issued July 25, 2019, may have been an effort at a "re-do" by the Department, which could potentially have restarted the appeal time. This Second Notice and the communications that followed between the parties demonstrate, however, that the Department was not reconsidering the Petitioner's Claim for Refund. The Second Notice was identical to the initial Denial Notice, the only difference being that the dollar amount shown in the first sentence was

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[11] Pickart Aff., ¶ 7.

[12] Wis. Stat. § 77.59(6): Except as provided in sub. (4) (b), a determination by the department is final unless, within 60 days after receipt of the notice of the determination, the taxpayer, or other person directly interested, petitions the department for a redetermination....

corrected to reflect the full amount. Mr. MacKenzie's emails shortly after the issuance of the Second Notice state the Department's position in no uncertain terms – the Department was rejecting as untimely any refund claim by the Petitioner. It would not be in the public interest to discourage the Department from correcting its errors and continuing to work with taxpayers toward equitable resolutions, and we do not intend anything in this decision to be interpreted as prohibiting the Department from doing so. However, the Department had no such intent here. The Second Notice is simply a redundant document which reiterates the conclusions of the initial Denial Notice and clarifies that the full amount is being denied.

It is always the preference of the Commission to decide cases based upon their merits as opposed to technicalities, but the Commission cannot address the merits without jurisdiction. The requirement that appeals be filed timely is one which we must construe strictly. *Grinyer v. Dep't of Revenue*, (CCH) ¶ 401-324 (WTAC 2010). Once a notice becomes final, the Commission does not have jurisdiction over the matter and has no choice but to dismiss. *Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002). Here, the Denial Notice went final. The Department did not allow any further consideration. All subsequent actions and filings are, therefore, moot.

We next address the practical ramification of dismissal. Petitioner argues that upholding the Denial Notice means simply upholding the first sentence of the Notice. We reject that argument. Just as a simple reading of the Claim for Refund makes it clear that the Petitioner is contesting the entire assessment, it is equally and abundantly clear that the Denial Notice rejects the entire Claim for Refund.

The body of the Notice begins, "Pursuant to sec. 77.59(4)(a), you are hereby notified that the Claim for Refund of $53,034.98 is denied for the following reasons: Please see Denial Explanations page for more information about your claim." Page 2, which contains the Denial Explanations, expressly indicates, "The final determination at the time of the field audit remains the same" followed by an extensive itemization of the various aspects of the original audit findings.

We further note that the $53,035.98 was paid as a late filing penalty. It is illogical and absurd to argue that Department's Notice refunded an underlying tax but denied the refund of a late filing fee on that refunded tax.

CONCLUSIONS OF LAW

1. The Power of Attorney Form A-222 is internally inconsistent and unenforceable as to Petitioner's ability to direct that Notices be sent to its Attorney-in-Fact.

2. Receipt of the Denial Notice directly by the Taxpayer/Petitioner was sufficient to trigger the 60-day period in which to file for redetermination.

3. Petitioner did not file for a redetermination within 60 days of receipt of the May 10, 2018 Denial Notice, so pursuant to Wis. Stat. § 77.59(6), the Denial Notice became final and conclusive. Accordingly, the Commission has no jurisdiction and must dismiss.

4. All subsequent filings, including the Second Notice and any requests for redetermination based thereon are moot.

5. Having established that the Denial Notice is final and conclusive, because there may be need for clarification of the amounts in question,[13] the Commission further concludes that, while the May 10, 2018 Denial Notice contained an error on the first page indicating a denied amount of $53,035.98, no reasonable person reading the full content of the Denial Notice could conclude anything other than that the entire Assessment was upheld and that the Department was denying Petitioner any refund whatsoever for tax years 2016 and 2017.

ORDER

Petitioner's Motion for Summary Judgment is denied, the Department's Motion for Summary Judgment is granted, and these cases are dismissed.

Dated at Madison, Wisconsin, this 16th day of March, 2021.

WISCONSIN TAX APPEALS COMMISSION

Elizabeth Kessler, Chair

Lorna Hemp Boll, Commissioner

David L. Coon, Commissioner

ATTACHMENT: **NOTICE OF APPEAL INFORMATION**

[13] As explained above and as the full record clearly indicates, there is feigned confusion at best as to the amounts both requested and denied.

WISCONSIN TAX APPEALS COMMISSION
5005 University Avenue - Suite 110
Madison, Wisconsin 53705

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

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternately, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, within 30 days of this decision if there has been no petition for rehearing or, within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service, or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or, the Wisconsin Statutes. The website for the courts is *https://wicourts.gov*.

This notice is part of the decision and incorporated therein.