

STATE OF WISCONSIN
TAX APPEALS COMMISSION

MUNEM S. ABUKHAMIREH,

DOCKET NO. 20-I-188

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING & ORDER

LORNA HEMP BOLL, COMMISSIONER:

This case comes before the Commission for decision on the Respondent's Motion to Dismiss the Petitioner's Petition for Review as untimely. The Petitioner, Munem S. Abukhamireh, of Franklin, Wisconsin, is represented by Sher K. Sharwani, Senior Tax Consultant, SS Tax & Accounting. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Chief Counsel Dana J. Erlandsen. For the reasons stated below, the Commission finds that the Petitioner's Petition was not filed in a timely manner as required by statute and, therefore, grants dismissal.

FACTS

1. On July 23, 2019, the Department issued the Petitioner a Notice of Office Audit Amount Due - Individual Income Tax in the amount of \$78,833.21 for the

periods ending December 31, 2014 through December 31, 2017. (Affidavit of Resolution Officer Jason Ledger ("Ledger Aff."), Ex. A.)

2. On or about August 23, 2019, the Petitioner filed a Petition for Redetermination with the Department. (Ledger Aff., Ex. B.)

3. The Department denied the Petition for Redetermination by Notice of Action dated July 3, 2020, which Petitioner received by certified mail on July 8, 2020. (Ledger Aff., Ex. C.)

4. The 60-day period provided for in Wis. Stat. § 73.01(5)(a), for the timely filing a Petition for Review appealing the action of the Department of Revenue on the Petitioner's Petition for Redetermination expired on September 6, 2020. That date fell on a Sunday, so the deadline is extended to Monday, September 7, 2020.

5. The Tax Appeals Commission received Petitioner's Petition for Review appealing the Department's denial of his Petition for Redetermination on September 11, 2020, via regular U.S. mail. (Commission file.)

6. On October 2, 2020, the Department filed a Motion to Dismiss the Petitioner's Petition for Review as untimely, along with an affidavit, exhibits, and a Brief in support of the Motion. (Commission file.)

7. The Petitioner responded with information regarding the substance of its claim but without evidence refuting the untimeliness of the filing.

APPLICABLE LAW

A motion to dismiss will be granted if the Commission finds it does not have proper jurisdiction. Without jurisdiction to hear the matter, the Commission has

no alternative other than to dismiss the action. See *Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002).

The specific statute at issue here outlines the requirements for filing a valid and timely petition for review with the Commission:

Wis. Stat. § 73.01(5)(a): Any person who is aggrieved . . . by the redetermination of the department of revenue may, within 60 days of the redetermination . . . but not thereafter, file with the clerk of the commission a petition for review of the action of the department of revenue For purposes of this subsection, a petition for review is considered timely filed if mailed by certified mail in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the last day for filing.

ANALYSIS

The date on which a petition for review is "filed" with the Commission under Wis. Stat. § 73.01(5)(a) has consistently been held to be the date on which the petition is physically received in the Commission's office. See *Edward Mischler v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-159 (WTAC 1983). Unless otherwise provided by statute, a document is filed on the date it is *received* by the Commission, not the date it is mailed. See *Laurence H. Grange v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-017 (Dane Co. Cir. Ct. 1993). The one exception in Wis. Stat. § 73.01(5)(a) states that a petition is timely if it is mailed: (1) by certified mail; (2) in a properly addressed envelope; (3) with postage prepaid; and (4) postmarked before midnight of the last day for filing. Petitioner's Petition was filed by ordinary mail, so this exception does not apply.

The 60-day period for the timely filing a Petition for Review in this case expired on September 7, 2020. The Petitioner mailed this Petition by regular, not certified,

mail, and the Commission received it on September 11, four days after the final date allowable for filing. Under any of the rules of Wis. Stat. § 73.01(5)(a) applicable to the time for filing a petition for review with the Commission, the Petition in this matter was untimely. Therefore, the redetermination is final and no longer appealable. Wis. Stat. § 71.88(2)(a).¹

CONCLUSION OF LAW

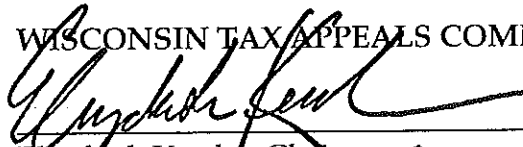
The Petitioner's Petition for Review was not timely filed as required by Wis. Stat. § 73.01(5)(a) and, thus, the Commission lacks jurisdiction in this matter.

ORDER

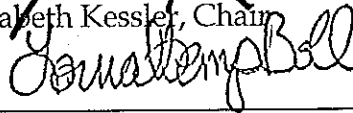
The Department's Motion to Dismiss is hereby granted, and the Petition for Review is dismissed.

Dated at Madison, Wisconsin, this 3rd day of February, 2021.

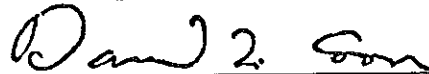
WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Chair



Lorna Hemp Boll, Commissioner



David L. Coon, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

¹ If a petition is not filed with the commission within the time provided in s. 73.01 . . . the assessment, refund, or denial of refund shall be final and conclusive.

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.