

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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DEREK ALEXANDER,

DOCKET NO. 12-I-268

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**ROGER W. LEGRAND, COMMISSIONER:**

This case comes before the Commission on a Motion to Dismiss for lack of jurisdiction filed by the Wisconsin Department of Revenue on the grounds that Petitioner failed to file an appeal within 60 days of the Notice of Refund as required by Wis. Stat. § 71.88(2)(a). Petitioner, Mr. Derek Alexander, of Brookfield, Wisconsin, appears *pro se*. The Respondent, the Wisconsin Department of Revenue (“the Department”), is represented by Attorney John R. Evans. Both parties have filed briefs and affidavits in support of their positions.

**FINDINGS OF FACT**

1. Department issued Petitioner a Notice of Refund dated January 9, 2012. (Affidavit of Attorney John R. Evans dated January 25, 2013, “Evans Aff.” ¶3, Exh. A.)

2. On, or about April 24, 2012, Petitioner submitted an appeal request (Petition for Redetermination electronically through My Tax Account. (Evans Aff. ¶4, Exh. B.)

3. The Department denied Petitioner's Petition for Redetermination by Notice of Action dated on or about October 24, 2012, because the Petitioner did not file a timely Petition for Redetermination. (Evans Aff. ¶5, Exh. C.)

4. Petitioner filed a Petition for Review on December 26, 2012. (Commission file.)

### RULING AND DECISION

The Commission grants the Motion and dismisses this case.

The specific statutes at issue here outline the requirements a Petitioner must comply with to give the Commission jurisdiction to hear an appeal:

Wis. Stat. § 73.01(5)(a) (2011-12) provides:

Any person . . . who has filed a petition for redetermination with the department of revenue and who is aggrieved by the redetermination of the department of revenue may . . . within 60 days after the redetermination but not thereafter, file with the clerk of the commission a petition for review of the action of the department . . . For the 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 of filing.

Wis. Stat. § 71.88(2) (2011-12) provides:

*Appeal of the department's redetermination of assessments and claims for refund.* A person feeling aggrieved by the department's redetermination may appeal to the tax appeals commission by filing a petition with the clerk of the commission as provided by law and the rules of practice promulgated by the commission. If a petition is not filed with

the commission within the time provided in s. 73.01 . . . the assessment, refund, or denial or refund shall be final and conclusive.

The Wisconsin Tax Appeals Commission has repeatedly held that it lacks jurisdiction to hear an appeal in cases where a Petitioner fails to file a timely Petition for Redetermination. *Beck v. Dep't of Revenue*, Wis. Tax Rptr. CCH ¶400-275 (WTAC 1997).

In this case, the Department of Revenue issued a Notice of Refund to Petitioner on January 9, 2012, at his correct address. The Petition for Redetermination was not filed until April 24, 2012. This was 105 days after the Notice of Refund was sent to Petitioner.

Petitioner claims that he never received the Notice of Refund. However, the mailing of a document creates a presumption that it was delivered and received. *Joann R. Mueller v. Dep't of Revenue*, Wis. Tax Rptr. CCH ¶2002-020 (WTAC 1982). Petitioner has presented no proof to rebut the presumption that the Notice of Refund was received other than self-serving statements. In fact, all of the evidence supports the conclusion that Petitioner received the Notice of Refund:

- 1) The Notice was addressed to the correct address.
- 2) The Petitioner admitted receiving other correspondence from the Department of Revenue in a timely fashion.
- 3) There has been no correspondence addressed to the Petitioner which has been returned to the Department of Revenue. This would have occurred if the Notice of Refund was undeliverable.

Petitioner also claims that he received the refund check without receiving the Notice of Refund. However, this claim lacks credibility. The Department's WINPAK

system generates adjustments to the refund claimed and the refund check together. (Aff. of Atty. Evans, Mar. 21, 2013, ¶9)

Although there is no direct proof of exactly when Petitioner received the Notice of Refund, the evidence, taken as a whole leads to the conclusion that the Notice of Refund was received by Petitioner within a short time of the mailing on January 9, 2012.

Under Wis. Stat. § 71.88(2)(a), the refund became final and conclusive 60 days after receipt. The Commission concludes that the filing of the Petition for Redetermination on April 24, 2012, was not timely and that it has no jurisdiction to hear the appeal. The Department's Motion to Dismiss is granted. The Petition for Review is dismissed.

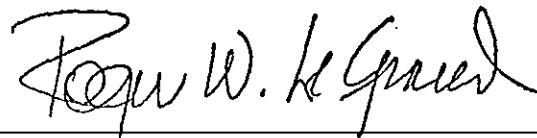
Dated at Madison, Wisconsin, this 19<sup>th</sup> day of September, 2013.

**WISCONSIN TAX APPEALS COMMISSION**



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Lorna Hemp Boll, Chair



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Roger W. LeGrand, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

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. Alternatively, 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 Appeals Commission either in-person, by certified mail, or by courier, and served upon the other party (which usually is the Department of Revenue) 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 <http://wicourts.gov>.

This notice is part of the decision and incorporated therein.