

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

---

OTHA COLLINS-MOORE,

DOCKET NO. 14-I-046

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

---

**RULING & ORDER**

---

**DAVID D. WILMOTH, 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, Otha Collins-Moore, of Chicago, Illinois, appears *pro se* in this matter. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Sheree Robertson. For the reasons stated below, the Commission finds that the Petitioner did not file her Petition in a timely manner as required by statute and, therefore, concludes that dismissal is appropriate.

**FACTS**

*Jurisdictional Facts*

1. By Notice of Amount Due dated August 1, 2013, the Department issued to the Petitioner an assessment of income tax in the amount of \$9,457.28, including

regular interest computed to October 3, 2013. (Affidavit of Attorney Sheree Robertson ("Robertson Aff."), ¶ 2, Ex. 1.)

2. On August 7, 2013, the Petitioner electronically filed a Petition for Redetermination with the Department, appealing the Department's assessment. (Robertson Aff., ¶ 3, Ex. 2.)

3. By Notice of Action dated December 2, 2013, the Department denied the Petitioner's Petition for Redetermination. The Department of Revenue mailed its Notice of Action to the Petitioner by United States Postal Service (USPS) certified mail. Per USPS tracking, the Notice of Action was delivered and signed for by the Petitioner on December 4, 2013. (Robertson Aff., ¶ 4, Ex. 3 and 4.)

4. The Petitioner's Petition for Review, appealing the Department's denial of her Petition for Redetermination, was received in the office of the Commission on February 14, 2014, having been sent by USPS regular mail with a postmark of February 12, 2014. (Robertson Aff., ¶ 5, Ex. 5; Commission's file.)

5. The 60-day period provided for in Wis. Stat. § 73.01(5)(a), for timely filing a Petition for Review appealing the action of the Department of Revenue on the Petitioner's Petition for Redetermination expired on February 2, 2014; however, since that date falls on a Sunday, the last date for timely filing a Petition for Review was Monday, February 3, 2014. (Robertson Aff., ¶ 6.)

### *Other Facts*

6. On March 12, 2014, the Department filed a Motion to Dismiss the Petitioner's Petition for Review as untimely, along with an affidavit, exhibits, and a memorandum of law in support of the Motion. (Commission's file.)

7. The Petitioner filed a responsive letter to the Department's Motion on May 29, 2014 (dated May 21, 2014), with enclosures. In her letter, Petitioner stated that she mailed her Petition for Review before the due date, and she speculated that it was not delivered to the Commission on time because of the government furloughs. She attached a print-out from CNN.com showing the dates certain governmental agencies would be closed. Nowhere in the print-out was there a reference to the USPS. (Commission's file.)

8. On June 17, 2014, the Department filed a Reply Brief, responding to the Petitioner's letter, along with a supplemental affidavit with attached exhibits.

9. On May 21, 2014, by USPS Internet Customer Care Center, the Department's representative asked whether mail was delivered on the dates federal employees were furloughed. (Supplemental Affidavit of Attorney Sheree Robertson ("Robertson Supp. Aff."), ¶ 2.)

10. On June 3, 2014, the Department's representative received a response from the USPS Internet Customer Care Center indicating that postal service was not affected by the furlough. (Robertson Supp. Aff., ¶ 3, Ex. 7.)

11. On June 9, 2014, the Department's representative sent an email to Karen J. Cronin at the USPS requesting an affidavit stating that the USPS picked-up,

processed, and delivered mail during the period when some federal employees were furloughed. (Robertson Supp. Aff., ¶ 4, Ex. 8.)

12. On June 9, 2014, The Department's representative received an email from Robert Sheehan of the USPS in response to the email that she sent to Ms. Cronin. In the reply email, Mr. Sheehan stated that the USPS was not affected by the federal government furlough. (Robertson Supp. Aff., ¶ 5, Ex. 9.)

### 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.

In this case, Petitioner mailed her petition by regular mail with a postmark of February 12, 2014, nine days after the time to appeal expired. It was received by the Commission on February 14, 2014, eleven days after the time to appeal expired. 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 not timely filed.

In her letter in response to the Department's Motion to Dismiss, the Petitioner claimed that she mailed her Petition for Review before the due date, and speculated that it was not delivered to the Commission on time because of the government furloughs. She has, however, presented no evidence whatsoever to support either her claim or conjecture. On the contrary, the facts clearly show that she mailed her Petition for Review on February 12, 2014, and that it was received by the Commission on February 14, 2014, long after the statutory due date. Further, the Department has presented credible statements from representatives of the USPS that the USPS was unaffected by the federal government furloughs.

**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**

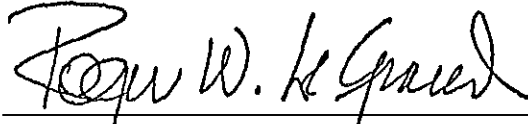
The Department's Motion to Dismiss is hereby granted, and the Petition for Review is dismissed.

Dated at Madison, Wisconsin, this 23<sup>rd</sup> day of July, 2014.

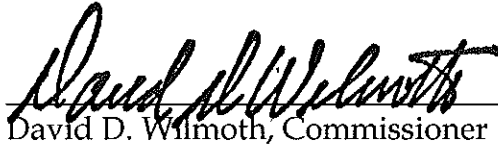
**WISCONSIN TAX APPEALS COMMISSION**



\_\_\_\_\_  
Lorna Hemp Boll, Chair



\_\_\_\_\_  
Roger W. Le Grand, Commissioner



\_\_\_\_\_  
David D. Wilmoth, 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.