

STATE OF WISCONSIN
TAX APPEALS COMMISSION

RICHARD J. DAVIS
11453 W. Forest Home Avenue
Franklin, WI 53132-1701,

DOCKET NO. 97-D-350

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8907
Madison, WI 53708-8907,

Respondent.

This matter comes before the Commission for a ruling on the motion of respondent, Wisconsin Department of Revenue (Department), to dismiss the petition for review of petitioner, Richard J. Davis.

Petitioner appears *pro se*. The Department is represented by Attorney Veronica Folstad, who has filed an affidavit with exhibits and case law in support of the motion. Petitioner has filed no response to the motion.

Having considered the motion and the entire record herein, the Commission finds, rules, and orders as follows:

MATERIAL FACTS

1. By notice from the Department dated September 25, 1992, an assessment of controlled substance tax was made against petitioner in the amount of \$26,762.76, including tax, interest, and penalty.

2. Petitioner did not file a petition for redetermination with the

Department objecting to the assessment.

3. On January 3, 1994 and January 26, 1994, petitioner made payments to the Department of \$4,500.00 and \$3,000.00, respectively, as full payment of a \$7,500.00 compromised amount of delinquent controlled substance tax due.

4. Under date of February 25, 1997, petitioner filed with the Department a claim for refund of the \$7,500.00 payment of controlled substance tax.

5. Under date of March 7, 1997, the Department notified petitioner that his claim for refund of the controlled substance tax in issue was beyond the two-year statute of limitation provided for claims for refund under Wis. Stat. § 71.75(5)¹ and therefore denied his claim.

6. Under date of March 8, 1997, petitioner filed a petition for redetermination with the Department.

7. Under date of September 8, 1997, the Department issued a Notice of Action denying the petition for redetermination.

8. On October 15, 1997, petitioner filed a petition for review with the Commission.

9. On November 14, 1997, the Department filed a motion to dismiss, alleging that the Commission lacked jurisdiction to hear the case because petitioner failed to file a timely claim for refund within two years after the assessment of taxes as required by Wis. Stat. § 71.75(5).

10. Further proceedings in this matter were stayed pending the outcome in the court system of several related drug tax cases.

¹ This statute was amended to provide a time limitation of four years by 1997 Wisconsin Act 227.

11. By letter dated June 17, 2004, the Department notified the Commission that the related drug tax cases are now final and requested a ruling on its motion to dismiss.

12. On July 12, 2004, the Commission set a briefing schedule on the Department's motion. Petitioner did not file a response to the Department's motion to dismiss.

RULING

In his petition for review, petitioner asserts that the two-year time limitation for filing a refund claim should not apply to his case because the statute under which he was assessed was ruled unconstitutional. This argument has been addressed and rejected by both the Court of Appeals, *see Gilbert v. Dep't of Revenue*, 246 Wis. 2d 734, 633 N.W.2d 218, and by the Commission, *see Schmitz v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-610 (July 10, 2002). As was held in those cases, the Commission again concludes that petitioner's failure to timely file a refund claim results in the Commission lacking jurisdiction to review the Department's action.

ORDER²

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

² This Ruling and Order is issued by a single Commissioner under the authority provided by Wis. Stat. § 73.01(4)(em)2 as created by 2003 Wisconsin Act 33, § 1614d.

Dated at Madison, Wisconsin, this 9th day of December, 2004.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"