

**STATE OF WISCONSIN**  
**TAX APPEALS COMMISSION**

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**DODGEVILLE TRAVEL PLAZA INC.,**

**DOCKET NO. 07-S-170**

Petitioner,

vs.

**RULING AND ORDER**

**WISCONSIN DEPARTMENT OF REVENUE,**

Respondent.

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**DAVID C. SWANSON, COMMISSIONER:**

This case comes before the Commission on the motion of the Wisconsin Department of Revenue (the "Department") to dismiss the petition for review on the basis that it was not timely filed under Wis. Stat. § 73.01(5)(a). Petitioner is represented by Avzi Ramadani, its owner, and has not filed a response to the motion. The Department is represented by Attorney Linda M. Mintener, who has filed a notice of motion and motion to dismiss, with a supporting affidavit and exhibits.

Having considered the entire record, including the Department's motion, affidavit and exhibits, the Commission, acting pursuant to Wis. Stat. § 73.01(4)(em)2, hereby finds, rules, and orders as follows:

**JURISDICTIONAL AND MATERIAL FACTS**

1. By notice to petitioner dated June 26, 2006, the Department issued an assessment of sales/use tax against petitioner for the audit period June 5, 1998 through December 31, 2003 in the total amount of \$84,140.93, including tax and interest

calculated to August 26, 2006 (the “assessment”).

2. By letter dated September 7, 2006, petitioner filed with the Department a petition for redetermination of the assessment.

3. By Notice of Action and Notice of Amount Due dated June 18, 2007 and sent to petitioner by certified mail, the Department granted in part and denied in part the petition for redetermination, and adjusted the total amount due under the assessment to \$88,985.03, including tax and interest calculated through August 17, 2007.

4. The Notice of Action was delivered to petitioner’s address of record on June 28, 2007, where an individual signed for receipt of the Notice.<sup>1</sup>

5. The Notice of Action informed petitioner as follows:

If you disagree with this decision, you may appeal in writing to the

**Wisconsin Tax Appeals Commission  
5005 University Avenue, Suite 110  
Madison, Wisconsin 53705**

within 60 days of receiving this notice. If you appeal, you must pay **a \$25.00 filing fee** to the Commission at the time you file.

If you do not file an appeal within the 60 day period, this action will become final and the assessment will be payable on or before the date indicated on the attached schedule.

6. On September 5, 2007, the Commission received via ordinary mail petitioner’s petition for review dated August 26, 2007, which the Commission treated as a petition for review filed on its date of receipt.

7. On October 2, 2007, the Department filed an answer and

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<sup>1</sup> While the signature on the receipt is not entirely legible, it appears to be Mr. Ramadani’s.

affirmative defense, as well as a notice of motion and motion to dismiss the petition for review on the basis of untimely filing, with a supporting affidavit and exhibits.

8. On October 10, 2007, the Commission issued a briefing order requiring petitioner to file a response to the motion by November 9, 2007.

9. Petitioner filed no response to the motion.

### **RULING**

Section 73.01(5)(a) of the Wisconsin Statutes requires that a petition for review be filed with the Commission within 60 days of receipt of the Department's notice of action on a petition for redetermination. If no petition is filed within that allotted timeframe, then the related assessment becomes "final and conclusive." Wis. Stat. § 71.88(2). Unless sent by certified mail, a petition is considered filed on the date of its receipt by the Commission. Wis. Stat. § 73.01(5); Wis. Admin. Code § TA 1.13(2). The requirement of timely filing is strictly construed. *See McDonald Lumber Co. v. Dep't of Revenue*, 117 Wis. 2d 446 (1984).

The Notice of Action from the Department was delivered via certified mail to petitioner's address of record on June 28, 2007, where it was signed for as received. Proof of delivery at the petitioner's address of record is sufficient to begin tolling the 60-day period under Wis. Stat. § 73.01(5)(a), and the Department has provided that proof. *See, e.g., Steenlage v. WTAC and Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 203-348 (Trempealeau Co. Cir. Ct., May 7, 1992).

The 60-day period permitted under Wis. Stat. § 73.01(5)(a) for petitioner to file a timely petition for review with the Commission expired on August 27, 2007.

Petitioner mailed the petition via ordinary mail, and the Commission received the petition on September 5, 2007, nine days after the expiration of the 60-day period.

Petitioner did not file a petition for review with the Commission within 60 days after receipt of the Notice of Action on the petition for redetermination. The Commission has no authority under the Wisconsin Statutes to ignore or make exceptions to the 60-day provision. The Commission cannot act on a petition for review filed after the statutory due date other than to dismiss it for lack of timely filing.

### **ORDER**

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

Dated at Madison, Wisconsin, this 22nd day of January, 2008.

### **WISCONSIN TAX APPEALS COMMISSION**

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David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"