

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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CHARLOTTE DZIMIELA  
AND ESTATE OF THOMAS DZIMIELA,

DOCKET NO. 14-I-167

Petitioners,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**RULING AND ORDER**

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**LORNA HEMP BOLL, CHAIR:**

This case comes before the Commission for decision on Respondent's Motion to Dismiss Petitioners' Petition for Review. Petitioners, Charlotte Dzimielia and Estate of Thomas Dzimielia, of Kenosha, Wisconsin, appear *pro se* in this matter. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Sheree Robertson. The Department filed a brief and affidavit with exhibits in support of its Motion. Petitioners have not submitted a response to the Department's Motion.

The Commission finds that the refund claim filed by the Petitioners, the denial of which is the subject of this appeal, was not filed within four years of the unextended due date of the Petitioners' return, and as such it was not timely. Therefore, the Commission lacks jurisdiction and must dismiss this matter.

## FACTS

1. On March 16, 2009, Petitioners filed an original 2008 Wisconsin income tax return.

2. The unextended due date for Petitioners' 2008 Wisconsin income tax return was April 15, 2009. Under Wis. Stat. § 71.75(2), the Petitioner had four years from that date in which to file any claim for refund for the 2008 tax year.

3. On May 23, 2013, Petitioners filed an amended 2008 Wisconsin income tax return, claiming a refund for the 2008 tax year.

4. By Notice dated August 26, 2013, the Department of Revenue denied the Petitioners' refund claim pursuant to Wis. Stat. § 71.75(2) because the claim for refund made in the amended return was filed more than four years after the unextended due date. (Dep't Ex. 1.)

5. Petitioner filed a timely Petition for Redetermination, which was considered by the Department and denied in Department's Notice of Action ("the Notice") dated April 3, 2014. (Dep't Ex. 2 and Ex. 3.)

6. On May 29, 2014, the Petitioner appealed to the Commission, and on December 16, 2014, the Department filed a Motion to Dismiss with a brief in support of the Motion, along with an affidavit with exhibits.

## 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 statutes at issue here outline the requirements for filing a valid and timely claim for refund with the Department:

Wis. Stat. § 71.75(2): With respect to income taxes and franchise taxes, except as otherwise provided in subs. (5) and (9) and ss. 71.30 (4) and 71.77 (5) and (7) (b), refunds may be made if the claim therefor is filed within 4 years of the unextended date under this section on which the tax return was due.

### ANALYSIS

The Wisconsin Statutes allow four years in which to file a refund claim. That period of time runs from the unextended due date of the Wisconsin tax return for that tax year. Wis. Stat. § 71.75(2). The statute allows certain exceptions to the four-year rule, none of which apply to this case: Petitioners' claim was not made within four years of an audit, it was not subject to attachment under delinquent child support laws or maintenance obligations or debts to other state entities, it does not concern a defense contract, it does not involve an IRS adjustment of their 2008 federal income tax return, and the Department did not agree in writing to an extension before the expiration of the deadline.

Petitioners allege that they relied on erroneous professional advice from their accountant and did not discover their potential claim for refund until 2012. (Dep't Ex. 2.) However, Wisconsin caselaw has made it clear that such reliance provides no excuse to the taxpayer. The Commission has upheld substantial penalties in cases in

which the taxpayer was not personally at fault but rather was assessed due to an error made by an accountant or other advisor. *See, e.g., Kirschbaum v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-325 (WTAC 2010), and *Krysluk v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 203-084 (WTAC 1989).

The statute also does not contain a discovery exception. The four-year window is intended to provide an endpoint and is sufficient to allow for some certainty as to the finality of a claim. Moreover, Petitioners' representative admits that accounting changes were made in 2012 to correct the error; therefore, it is obvious that Petitioners were aware of the error before their time to appeal expired in April of 2013.

The Commission addressed a similar scenario in *Dimoff v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-445 (WTAC 2011). In *Dimoff*, the Petitioners filed an amended return due to an error made by a bookkeeping firm. They claimed a refund, but the amended return was filed more than four years after the unextended due date. The Commission rejected the petitioners' argument that the initial error was not made personally by them and ruled that the petitioners could not seek an additional refund because the claim for refund had not been filed before the four-year statute of limitations had run. *Id.*

When a refund claim is untimely, the Commission lacks subject matter jurisdiction which bars the Commission from considering the merits of the refund claim. *See Spear v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-537 (WTAC 2012), and *Bower v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-421 (WTAC 1999).

## CONCLUSIONS OF LAW

1. For the 2008 tax year, Petitioners' time to file a claim for refund expired on April 15, 2013. Because Petitioners' claim for refund was filed in conjunction with an amended return filed on May 16, 2013, the claim for refund was not timely.

2. The Commission lacks jurisdiction over the Petition for Review under Wis. Stat. § 71.75(2) because the claim for refund was untimely. Therefore, the Department is entitled to dismissal as a matter of law.

## ORDER

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

Dated at Madison, Wisconsin, this 1<sup>st</sup> day of April, 2015.

## WISCONSIN TAX APPEALS COMMISSION



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Lorna Hemp Boll, Chair



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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.