

STATE OF WISCONSIN
TAX APPEALS COMMISSION

JOHN SPENCER GRAY
1715 Birch Road, #4
Kenosha, WI 53140-4519,

DOCKET NO. 04-S-251

Petitioner,

vs.

RULING AND ORDER

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

Respondent.

This case comes before the Commission on the motion of the respondent, Wisconsin Department of Revenue ("Department"), to dismiss the petition for review on the basis that it was not timely filed under Wis. Stat. § 73.01(5)(a).

Petitioner represents himself and has filed no objection to the motion. Attorney David A. Lange represents the Department and has filed an affidavit with exhibits in support of the motion.

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

FACTS

1. By notice dated May 27, 2003, the Department issued an assessment of sales tax, interest, and penalty in the amount of \$4,121.53 to petitioner for the period January 1, 1999 through November 30, 2000 (Affidavit of David A. Lange, Ex. 1).

2. On July 25, 2003, petitioner filed with the Department a timely petition for redetermination of the assessment (Lange Affidavit, Ex. 2).

3. By certified mail dated May 25, 2004, the Department issued a notice of action denying the petition for redetermination (Lange Affidavit, Ex. 3). Petitioner received the notice of action on May 29, 2004 (Lange Affidavit, Ex. 4).

4. On October 12, 2004, petitioner filed several documents with the Commission, including original Wisconsin Sales and Use Tax Returns for January 1999 through January 2001. No cover letter or filing fee accompanied the documents.

5. In a letter dated October 13, 2004, the Commission informed petitioner that, based on the absence of a cover letter or filing fee, the documents he filed on October 12, 2004 were being forwarded to Mary E. Nelson, a Resolution Officer with the Department of Revenue. The letter stated that if petitioner intended to file a petition for review, he should submit a \$25.00 filing fee.

6. By letter dated October 19, 2004, filed with the Commission on October 25, 2004, petitioner submitted payment of the filing fee. A docket number was then assigned to his petition for review.

7. The 60-day period under Wis. Stat. § 73.01(5)(a) for petitioner to file a timely petition for review with the Commission expired on July 28, 2004.

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. The requirement of timely filing has

been strictly interpreted by the Commission and by the judiciary. *See, McDonald Lumber Co. v. Dep't of Revenue*, 117 Wis. 2d 446 (1984).

Petitioner filed his petition for review on October 12, 2004, nearly two and a half months past the 60-day period set forth in § 73.01(5)(a). Because petitioner did not file his petition for review within 60 days after receipt of the notice of action on the petition for redetermination, the Commission lacks jurisdiction over the appeal and must grant the motion to dismiss.

ORDER

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

Dated at Madison, Wisconsin, this 7th day of February, 2005.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"