

STATE OF WISCONSIN
TAX APPEALS COMMISSION

BURTON AND SUSAN GRINYER,

DOCKET NO. 10-I-009

Petitioners,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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). Attorney Julie A. Lotto represents the Department and has filed a notice of motion and motion to dismiss with supporting affidavit, exhibits and brief, and a reply. The Petitioners represent themselves in this matter and filed a response to the motion.

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

FINDINGS OF FACT

1. By a Notice of Amount Due and Office Audit Worksheet dated March 23, 2009 and issued to the Petitioners, the Department assessed the Petitioners additional income tax plus interest and penalty in the total amount of \$19,839.63 for the years 2004-2005 (the "period at issue"). (Affidavit of Department Resolution Officer

Marie Romero dated February 4, 2010 (“Romero Aff.”), ¶ 2, Ex. 1.)

2. By letter dated on May 15, 2009, the Petitioners filed with the Department a petition for redetermination. (Romero Aff. ¶ 3, Ex. 2.)

3. By Notice of Action dated November 12, 2009 (the “Notice”) sent to the Petitioners by certified mail, the Department denied the petition for redetermination. (Romero Aff. ¶ 4, Ex. 3.)

4. The Notice was delivered to the Petitioners on November 13, 2009. (Romero Aff. ¶ 5, Ex. 4.)

5. The Notice informed the Petitioners as follows:

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

**Wisconsin Tax Appeals Commission
5005 University Ave., Ste. 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 conclusive and the additional liability will be payable on or before the date indicated on the attached statement.

(Romero Aff. ¶ 4, Ex. 3) (emphasis in original).

6. On January 13, 2010, the Commission received the Petitioners’ petition for review sent by ordinary U.S. mail.

7. On February 5, 2010, the Department filed its answer and notice of motion and motion to dismiss the petition for review on the basis of untimely filing

with supporting affidavit, exhibits and brief.

8. On February 11, 2010, the Commission issued a Briefing Order requiring the Petitioners to file a response to the motion by March 15, 2010.

9. The Petitioners filed a response to the motion on March 15, 2010.

10. The Department filed a reply on March 16, 2010.

CONCLUSION OF LAW

The Commission does not have jurisdiction to consider the Petitioners' petition for review because it was filed after the statutory due date specified in § 73.01(5)(a), Wis. Stats.

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 action of the Department 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 the Petitioners on November 13, 2009. The 60-day period permitted under Wis. Stat. § 73.01(5)(a) for the Petitioners to file a timely petition for review with the Commission expired on January 12, 2010. The Petitioners mailed the petition via

ordinary mail and the Commission received it on January 13, 2010, one day after the 60-day appeal period had expired.

In their response to the Department's motion, the Petitioners do not dispute the relevant dates, the amounts claimed by the Department or the Department's position that their petition was not timely filed. The Petitioners' only request is to discuss a settlement of this matter, which they still may pursue through the Department's Petition for Compromise program regardless of the outcome of this appeal to the Commission.

Even though this petition for review was filed just one day late, the Commission is required to dismiss it for lack of jurisdiction pursuant to longstanding precedent. "To dismiss an appeal because it comes one day late may seem harsh. However, if statutory time limits to obtain appellate jurisdiction are to be meaningful they must be unbending." *Currier v. Dep't of Revenue*, 288 Wis. 2d 693, 706, 709 N.W.2d 520 (Ct. App. 2005), quoting *Ryan v. Dep't of Revenue*, 68 Wis. 2d 467, 472, 228 N.W.2d 357 (1975).

The Petitioners did not file a petition for review with the Commission within 60 days after their receipt of the Notice of Action on their 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 14th day of June, 2010.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger W. Le Grand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"