

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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**EDWARD T. AND CATHERINE A. JONES (DEC'D.),**                      **DOCKET NO. 09-I-052**

Petitioners,

vs.

**WISCONSIN DEPARTMENT OF REVENUE,**                      **RULING AND ORDER**

Respondent.

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**ROGER W. LEGRAND, COMMISSIONER:**

This matter comes before the Commission on respondent's motion to dismiss the petition for review for failure to file the petition within 60 days after receipt of respondent's notice of denial of the related petition for redetermination, as required by Section 73.01(5)(a), Stats. Petitioner Edward T. Jones ("Mr. Jones") appears *pro se* and has not filed a response to the motion. Attorney Sheree Robertson represents respondent, the Wisconsin Department of Revenue (the "Department"), and has filed a notice of motion and motion to dismiss the petition for review, supporting brief and Affidavit of Attorney Robertson dated April 1, 2009 with Exhibits 1 through 5, and an answer to the petition in the alternative.

**FINDINGS OF FACT**

1. By a Notice of Field Audit Action dated November 7, 2006, the Department issued an assessment for income tax to the Petitioners in the amount of \$46,442.04, including interest, for tax years 1997-1998. (Dept. Ex. 1.)

2. The Petitioners filed a Petition for Redetermination dated December 27, 2006 with the Department, which the Department received on January 5, 2007. (Dept. Ex. 2.)

3. By a Notice of Action letter dated October 16, 2008 and mailed to Petitioners via United States Postal Service (USPS) Certified Mail (the "Notice"), the Department denied Petitioners' Petition for Redetermination of the assessment. (Dept. Ex. 3.)

4. The Notice was assigned USPS Certified Mail tracking number 7099 3400 0014 7505 4390 and, per USPS Track & Confirm verification, was received by Mr. Jones on October 31, 2008. (Dept. Ex. 4.)

5. The Notice of Action informed 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 . . . .

(Dept. Ex. 3) (emphasis in original).

6. The Petitioners' Petition for Review of the Department's action on the Petition for Redetermination was sent to the Commission via USPS Certified Mail on March 6, 2009. The Commission received the Petition with the \$25.00 filing fee on

March 9, 2009.

7. In the Petition, Mr. Jones alleged that he had sent a petition for review to the Commission on October 26, 2008.

8. The Commission has no record of receiving a petition for review from Petitioners prior to the Petition mailed on March 6, 2009.

9. On April 1, 2009, the Department filed the notice of motion and motion to dismiss the Petition for lack of timely filing.

10. On April 8, 2009, the Commission issued a Briefing Order requiring Petitioners to file a response to the motion by May 8, 2009.

11. Petitioners did not file a response to the motion.

12. On July 29, 2009, Mr. Jones contacted the Commission by telephone and spoke with Commission Clerk Bonnie Jorstad. Mr. Jones alleged that he had just received the Commission's Briefing Order dated April 8, 2009 because it had been delayed in the mail due to its initial delivery to the wrong address.

### **RULING**

Section 73.01(5)(a) of the Wisconsin Statutes requires that a petition for review be filed within 60 days of receipt of the Department's Notice of Action on a petition for redetermination. If no petition is filed within that time period, then the related assessment becomes "final and conclusive." Wis. Stat. § 71.88(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 Mr. Jones on October 31, 2008. The 60-day period permitted under Wis. Stat. § 73.01(5)(a) for Petitioners to file a timely petition for review with the Commission expired on December 30, 2008. Mr. Jones mailed the Petition via USPS Certified Mail on March 6, 2009, approximately two months after the 60-day appeal period had expired.

In his Petition for Review, Mr. Jones states that he mailed a petition for review to the Commission on October 26, 2008. However, he could not have mailed a proper petition for review of this matter to the Commission on that date, because he did not receive the Notice of the Department's action until October 31, 2008. In addition, the Commission has no record of receipt of any such earlier petition for review.

In his most recent telephone contact with the Commission, Mr. Jones asserted that he did not receive the Commission's Briefing Order until July 29, 2009. Assuming that is true, there is no indication in the record before us that he would have been able to withstand the Department's motion. The record clearly shows that Petitioners did not file a timely petition for review. If Mr. Jones has any factual information bearing on the issue of timely filing that he still wishes to present to the Commission, he may present such information to the Commission in the context of a petition for rehearing filed as provided in the attached "**NOTICE OF APPEAL INFORMATION.**"

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.

**IT IS ORDERED**

The Department's motion to dismiss the Petition for Review is granted and the Petition is dismissed.

Dated at Madison, Wisconsin, this 31<sup>st</sup> day of July, 2009.

**WISCONSIN TAX APPEALS COMMISSION**

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David C. Swanson, Chairperson

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Roger W. Le Grand, Commissioner

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Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"