

STATE OF WISCONSIN
TAX APPEALS COMMISSION



JAMES D. KURTZ,

DOCKET NO. 19-I-013

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

DAVID L. COON, COMMISSIONER:

This case comes before the Commission for decision on Respondent's Motion to Dismiss Petitioner's Petition for Review as untimely. The Petitioner, James D. Kurtz, of Plymouth, Wisconsin, appears *pro se*. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Jenine E. Graves.¹ The Department filed a brief and affidavit with exhibits in support of its Motion. Petitioner has provided a response with exhibits.

The Commission finds that the Petitioner's Petition for Review was not filed within the required 60-day period. As such, it was not timely. The Commission lacks jurisdiction and therefore must dismiss this matter.

¹ Department was initially represented by Attorney Axel Candelaria.

FACTS

Jurisdictional Facts

1. On March 7, 2018, and March 14, 2018, Petitioner filed claims for the veterans and surviving spouse credit for the tax years 2009 through 2014 ("Tax Period").

(Affidavit of Kloss ("Kloss Aff.") ¶ 4.)

2. On April 3, 2018, Respondent issued Notice of Changes - Individual Income Tax to the Petitioner regarding each year of the Tax Period denying his claims.

(Kloss Aff. ¶ 2, Ex. A.)

3. On May 9, 2018, Petitioner filed a Petition for Redetermination with the Department. (Kloss Aff. ¶ 3, Ex. B.)

4. The Petition for Redetermination was considered by the Department and denied in Department's Notice of Action issued November 9, 2018. (Kloss Aff. ¶ 6, Ex. E.)

5. The Notice of Action was sent to Petitioner by USPS Certified Mail. It was received by Petitioner on November 16, 2018. (Kloss Aff. ¶ 8, Ex. F.)

6. The Notice of Action included language alerting Petitioner to his right to appeal within 60 days of his receipt of the Notice and that, if the appeal was not filed "within the 60-day period, this action will become final and conclusive." (Kloss Aff. Ex. E.)

7. The 60-day time period from the date of receipt of the Notice of Action denying the Petition for Redetermination ended on January 15, 2019.

8. On January 18, 2019, the Commission received Petitioner's Petition for Review by ordinary mail. (Commission file.)

9. On May 8, 2019, the Department filed a Motion to Dismiss, along with an affidavit with exhibits and brief in support of the Motion. Petitioner submitted a “Response and Objection” with affidavit and additional documents on June 17, 2019. The Department filed a letter Reply on June 26, 2019.

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 petition for review with the Commission:

Wis. Stat. § 73.01(5)(a): Any person who is aggrieved . . . by the redetermination of the department of revenue may, within 60 days of the redetermination . . . but not thereafter, file with the clerk of the commission a petition for review of the action of the department of revenue. . . . For purposes of this subsection, a petition for review is considered timely filed if mailed by certified mail in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the last day for filing.

Wis. Stat. § 71.88(2): *Appeal of the department’s redetermination of assessments and claims for refund.* A person feeling aggrieved by the department’s redetermination may appeal to the tax appeals commission by filing a petition with the clerk of the commission as provided by law and the rules of practice promulgated by the commission. If a petition is not filed with the commission within the time provided in s. 73.01 . . . the assessment, refund, or denial or refund shall be final and conclusive.

ANALYSIS

The Wisconsin Tax Appeals Commission lacks jurisdiction to hear an appeal in cases where a petitioner fails to file a timely petition for review with the Commission. *Barth v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-527 (WTAC 2012).

The date on which a petition for review is “filed” with the Commission under Wis. Stat. § 73.01(5)(a) has consistently been held to be the date on which the petition has been physically received in the Commission office. *See Mischler v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-159 (WTAC 1983).

Unless otherwise provided by statute, a document is filed on the date it is received by the Commission, not the date it is mailed. *Grange v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-017 (Cir. Ct. 1993). The one exception in Wis. Stat. § 73.01(5)(a) states that a petition is timely if it is mailed (1) by certified mail (2) in a properly addressed envelope (3) with postage prepaid, and (4) postmarked before midnight of the last day for filing.

Petitioner received the Notice of Action on November 16, 2018, via Certified Mail. His 60-day deadline to file expired on January 15, 2019. He mailed his Petition using ordinary mail rather than certified mail. A major advantage of utilizing the certified mailing exception is that a certified mailing is considered timely filed if postmarked by the last date for filing a petition. There is no “postmark” exception for any other means of mailing. All other mailings must be received at the Commission Office by the final date for filing.

Because the Petition was not timely filed, the Commission has no jurisdiction and must dismiss the Petition. This is not a matter for discretion; the Commission has no choice in the matter. *Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002).

Petitioner does raise other issues related to the filing of his Petition. He argues for a mailbox rule or postmark exception, that the Petition was mailed "just like one does when certify mailing," and lists various medical and financial issues related to the late filing.

The law is clear that only certified mailing through the USPS will attach a postmark exception to a Petition filed by mail. Only USPS Certified Mailing or mailings received before the deadline comply with Wis. Stat. § 73.01(5)(a).

We do sympathize with parties who miss a deadline by a short period of time and who may have various personal issues that might create problems leading to the late filing. Jurisdiction, though, is statutory. If the deadline is missed, we do not have jurisdiction to hear the matter.

Petitioner also threatens the Commission with reference to the American with Disabilities Act ("ADA") regarding this late filing issue. Petitioner has cited no law showing that the ADA modifies state statute related to mandatory jurisdictional requirements. The statute requires filing within 60 days. Petitioner's Petition to the Commission was received late. The Commission does not have jurisdiction to hear the matter.

CONCLUSIONS OF LAW

1. The Notice of Action denying Petitioner's Petition for Redetermination became "final and conclusive" pursuant to Wis. Stat. § 71.88(2)(a) because the Petitioner failed to file the Petition for Review with the Commission within 60 days of receiving the Notice.

2. The Commission lacks jurisdiction over the Petition for Review under Wis. Stat. § 73.01(5) because it 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 22nd day of November, 2019.

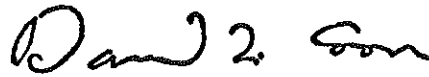
WISCONSIN TAX APPEALS COMMISSION



Elizabeth D. Kessler, Chair



Lorna Hemp Boll, Commissioner



David L. Coon, 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. Alternately, 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 Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, 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 <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.