

STATE OF WISCONSIN
TAX APPEALS COMMISSION

GERARD AND BRENDA L. MAGEE
GERARD MAGEE
7765 S. 66th Street
Franklin, WI 53132,

DOCKET NO. 04-I-177
DOCKET NO. 04-S-178

Petitioners,

vs.

RULING AND ORDER

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

Respondent.

These cases come before the Commission on motions of respondent, Wisconsin Department of Revenue (Department), to dismiss the petitions for review under Wis. Stat. § 73.01(5)(a) on the basis they were not timely filed.

Petitioners represent themselves and have filed an objection to the motions. Attorney John R. Evans represents the Department and has filed affidavits, exhibits, and a reply brief in support of the motions.

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

FACTS

1. By notice dated September 23, 2003, the Department issued an assessment of income tax, interest, and penalty to Gerard and Brenda Magee in the total

amount of \$8,572.93 for tax years 1998-2001.

2. Under date of November 21, 2003, petitioners filed with the Department a timely petition for redetermination of the income tax assessment.

3. By certified mail dated May 19, 2004, the Department issued a notice of action which denied the petition for redetermination. Petitioners received the notice of action on May 20, 2004, as evidenced by the record herein.

4. By notice dated September 21, 2003, the Department issued an assessment of sales tax, interest, and penalty to petitioner Gerard Magee in the total amount of \$11,505.63 for the tax period January 1, 1997 through December 31, 2001.

5. Under date of November 21, 2003, petitioner filed with the Department a timely petition for redetermination of the sales tax assessment.

6. By certified mail dated May 19, 2004, the Department issued a notice of action which denied the petition for redetermination. Petitioner received the notice of action on May 20, 2004, as evidenced by the record herein.

7. On July 20, 2004, petitioners filed their petitions for review with the Commission, by ordinary mail postmarked July 19, 2004.

8. The 60-day period under Wis. Stat. § 73.01(5)(a) for petitioners to file timely petitions for review with the Commission expired on July 19, 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).

In an objection to the motions to dismiss, petitioner Gerard Magee refers to the money orders for the filing fees having been purchased on July 18, 2004. He then asserts that the money orders were mailed on July 18, 2004 and should have been received on July 19, 2004. Given that July 18, 2004 was a Sunday, a day on which the United States Postal Service does not operate, it is unlikely that the envelopes containing the money orders and the petitions for review were mailed on July 18, 2004.

Petitioners' petitions for review were sent by ordinary mail, postmarked July 19, 2004. Wisconsin Statutes § 73.01(5)(a) does contain a provision whereby the petitions would be considered filed as of the July 19, 2004 postmark date if petitioners had sent them by certified mail. Unfortunately for petitioners, they did not do so, and their petitions were filed one day late, on July 20, 2004.

Petitioners failed to file their petitions for review within 60 days after receipt of the notices of action on their petitions for redetermination. Therefore, the Commission lacks jurisdiction over their appeals and must grant the motions to dismiss.

ORDER¹

The Department's motions are granted, and the petitions for review are dismissed.

¹ This Ruling and Order is issued by a single Commissioner under the authority provided by Wis. Stat. § 73.01(4)(em)2, as created by 2003 Wisconsin Act 33, § 1614d.

Dated at Madison, Wisconsin, this 21st day of December, 2004.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"