

STATE OF WISCONSIN
TAX APPEALS COMMISSION

DANNY AND ANNALISA RASCH,

DOCKET NO. 15-I-029

Petitioners,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

LORNA HEMP BOLL, CHAIR:

This case comes before the Commission for decision on Respondent's Motion to Dismiss Petitioners' Petition for Review as untimely. Petitioners, Danny and Annalisa Rasch, of Kenosha, Wisconsin, appear *pro se*. Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Axel F. Candelaria. The Department filed a brief and affidavit with exhibits in support of its Motion. Petitioners have provided a letter in response.

The Commission finds that Petitioners' 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.

FACTS

1. On March 17, 2014, the Department issued to Petitioners a Notice of Amount Due for the calendar years 2011-2012 in the amount of \$3,321.78. (Dep't Ex. 1.)

2. On May 16, 2014, Petitioners filed a timely Petition for Redetermination with the Department. (Dep't Ex. 2.)

3. On September 3, 2014, the Department requested additional substantiation information from Petitioners. (Dep't Ex. 3.)

4. On October 19, 2014, the parties signed a stipulation agreeing to an extension of the Department's time in which to act on the Petition for Redetermination until December 12, 2014. (Dep't Ex. 5.)

5. Petitioners provided some but not all of the requested additional information, so; on November 12, 2014, the Department again requested additional information. With that letter, the Department offered a second stipulation to further extend the Department's time for decision until February 12, 2015. (Dep't Ex. 7.)

6. Petitioners provided some additional information (Dep't Ex. 8.) which was received by the Department on December 9, 2014, but Petitioners did not sign and return the second extension agreement prior to the previously agreed upon deadline of December 12, 2014.

7. The Department issued a Notice of Action dated December 12, 2014, denying Petitioners' Petition for Redetermination, without considering the information received on December 9, 2014. Along with the Notice, the Department offered to

withdraw its Notice and to extend the Department's time for decision until February 12, 2015, provided Petitioners signed the stipulation agreeing to the extension.

8. Because Petitioners never returned the signed Stipulation agreeing to the second extension, on January 5, 2015, the Department notified Petitioners that the December 12, 2014 Notice would stand as the Department's decision on their Petition for Redetermination. The letter alerted Petitioners to the 60-day appeal period. (Dep't Ex. 10.)

9. Petitioners received the Notice of Action on December 15, 2014. (Dep't Ex. 11.) The Notice contained information regarding the 60-day time limit for appeal.

10. Petitioners' deadline for filing with the Commission was 60 days from December 15, 2014. That date was Friday, February 13, 2015.

11. Petitioners' Petition for Review was filed with the Commission by certified mail dated February 18, 2015. (Commission file.)

12. On August 10, 2015, the Department filed a Motion to Dismiss, along with an affidavit with exhibits and a brief in support of the Motion. Petitioners have submitted a letter response. (Commission file.)

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 of 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).

Unless otherwise provided by statute, a document is filed on the date it is received by the Commission, not the date it is mailed. *Laurence H. Grange v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-017 (Dane Co. 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.

Petitioners received the notice on December 15, 2014. The Notice included language explaining that Petitioners may appeal to the Tax Appeals Commission within

60 days of receiving the notice if they were in disagreement. In addition, when Petitioners did not return the stipulation by early January, the Department wrote to them clarifying that the December 12, 2014 Notice would stand. That letter included a second caution that Petitioners had 60 days from receipt of the Notice in which to file any appeal. The 60-day deadline to file expired on February 13, 2015. Petitioners mailed their Petition for Review by certified mail on February 18, 2014, several days beyond the statutory deadline.¹

Petitioners plead a health issue. We have sympathy; however, caselaw dictates that we have no discretion in the matter. *Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002). Because the Petition was not timely filed, the Commission has no jurisdiction and must dismiss the Petition.

Although we do not have discretion to act, the Department does, and we would hope, as a matter of fairness, that they would consider information received before the deadline to act on the Petition for Redetermination.

CONCLUSIONS OF LAW

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

¹ Petitioners' response asserts that the Department's Answer concedes that the Petition was timely filed. That language refers to the timely filing of the Petition for Redetermination with the Department in May of 2014, not to the Petition for Review here at the Commission.

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 25th day of February, 2016.

WISCONSIN TAX APPEALS COMMISSION



Lorna Hemp Boll, Chair



David D. Wilmoth, 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. Alternatively, 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 Appeals 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 <http://wicourts.gov>.

This notice is part of the decision and incorporated therein.