

**STATE OF WISCONSIN  
TAX APPEALS COMMISSION**

---

**RAY L. REYNOLDS,**

**DOCKET NO. 10-I-41**

Petitioner,

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") for summary judgment on the grounds that the petition for review was not timely filed under Wis. Stat. § 73.01(5)(a). Attorney Sheree Robertson represents the Department and has filed a notice of motion and motion with supporting affidavit, exhibits and brief. The Petitioner represents himself in this matter and has not filed a response to the motion. Based on the total amount in controversy, the Commission does not treat this matter as a small claims matter pursuant to Wis. Stat. § 73.01(1)(b).

Having considered the entire record, including the motion, affidavit, exhibits and brief, the Commission hereby finds, rules and orders as follows:

**FINDINGS OF FACT**

1. By a Notice of Amount Due and Office Audit Worksheet dated November 10, 2008 issued to the Petitioner, the Department assessed the Petitioner

additional income tax plus interest and penalty in the total amount of \$2,871.28 for the year 2004. (Affidavit of Attorney Sheree Robertson dated April 5, 2010 (“Robertson Aff.”), ¶ 2, Ex. 1.)

2. By letter dated December 20, 2008, the Petitioner filed with the Department a petition for redetermination. (Robertson Aff. ¶ 3, Ex. 2.)

3. By letter dated January 15, 2009, the Department informed the Petitioner of the grounds for its decision and requested additional information. (Robertson Aff. ¶ 4, Ex. 3.)

4. By letter received in March 2009, the Petitioner informed the Department that he was disabled and expected to file for bankruptcy. (Robertson Aff. ¶ 5, Ex. 4.)

5. By Notice of Action dated March 20, 2009 (the “Notice”) sent to the Petitioner by certified mail, the Department denied the petition for redetermination. (Robertson Aff. ¶ 6, Ex. 5.)

6. The Notice was delivered to the Petitioner on March 23, 2009. (Robertson Aff. ¶ 6, Ex. 5.)

7. The Notice informed the Petitioner as follows:

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

**Wisconsin Tax Appeals Commission  
5005 University Avenue, Suite 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, the additional tax and interest will become final and payable on or before the date indicated on the attached statement.

(Robertson Aff. ¶ 6, Ex. 5) (emphasis in original).

8. By Notice of Refund Offset dated January 27, 2010, the Department notified the Petitioner that it had offset his claim for a Homestead Credit and related refund for 2009 in the amount of \$900.00 against his outstanding income tax liability for 2004. (Robertson Aff. ¶ 8, Ex. 6, and brief at 1-2.)

9. On February 22, 2010, the Commission received the Petitioner's petition for review sent by ordinary U.S. mail, and received the required \$25.00 filing fee on March 11, 2010.

10. On April 6, 2010, the Department filed its answer and notice of motion and motion for summary judgment on the basis of untimely filing with supporting affidavit, exhibits and brief.

11. On April 8, 2010, the Commission issued a Briefing Order requiring the Petitioner to file a response to the motion by May 7, 2010.

12. After the Petitioner filed no response to the motion by the May 7, 2010 deadline, the Commission extended the filing deadline on its own motion to May 24, 2010.

13. By letter dated May 26, 2010, the Commission informed the Petitioner that it had not received any response to the motion from him.

14. The Petitioner filed no response to the motion.

## CONCLUSIONS OF LAW

1. There is no genuine issue of material fact in this matter and the Department is entitled to judgment as a matter of law pursuant to Wis. Stat. § 802.08 and Wis. Admin. Code § TA 1.31.

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

## RULING

Summary judgment is warranted where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Wis. Stat. § 802.08(2). If the moving party has established a *prima facie* case for summary judgment, then the opposing party must establish that there is a genuine issue of material fact that entitles that party to a trial. *Grams v. Boss*, 97 Wis.2d 332, 338, 294 N.W.2d 473 (1980). The Commission concludes that the Petitioner has not shown that there is a genuine issue of material fact in dispute in this case, and the Department therefore is entitled to judgment as a matter of law.

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 Petitioner on March 23, 2009. The 60-day period permitted under Wis. Stat. § 73.01(5)(a) for the Petitioner to file a timely petition for review with the Commission expired on May 24, 2009. The Petitioner mailed the petition via ordinary mail and the Commission received it on February 22, 2010, approximately nine months after the 60-day appeal period had expired.

In his petition for review, the Petitioner appeals primarily on the grounds that he cannot afford to pay the outstanding liability. However, he does not dispute the amounts claimed by the Department for 2004, which is the year at issue. By appealing the Notice of Refund Offset for 2009, the Petitioner attempts to bootstrap a review of his liability for 2004, which is now subject to collection by the Department, to his new claim. However, the Commission has long held that it does not have jurisdiction over the Department's collection of delinquent taxes. *See, Beck v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-275 (WTAC Jan. 30, 1997). Finally, in his petition for review, the Petitioner's only request is to discuss a settlement of this matter, which he still may pursue through the Department's Petition for Compromise program, subject to the Department's discretion.

The Commission finds that the Department has presented a *prima facie* case in support of its motion and the Petitioner has not responded. The Petitioner did

not file a petition for review with the Commission within 60 days after his receipt of the Notice of Action on his petition for redetermination. The Commission has no authority under the Wisconsin Statutes to ignore or make exceptions to the 60-day provision. There is no genuine issue of material fact at issue in this matter and the Department is entitled to judgment as a matter of law.

**ORDER**

The Department's motion for summary judgment is granted and its action on the Petitioner's petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 23<sup>rd</sup> 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"