

STATE OF WISCONSIN
TAX APPEALS COMMISSION

CAROLE K. STAMM,

DOCKET NO. 15-Y-214

Petitioner,

vs.

VILLAGE OF PEWAUKEE,

Respondent.

RULING AND ORDER

LORNA HEMP BOLL, CHAIR:

This case comes before the Commission for decision on Respondent's Motion to Dismiss Petitioner's Petition for Review as untimely. The Petitioner is designated as Carol Stamm of Pewaukee, Wisconsin. She appears *pro se* as to any claim she may have personally; it is unclear whether she represents herself or "the villagers" of the Village of Pewaukee. The Respondent, the Village of Pewaukee ("the Village"), is represented by Attorneys Remzy D. Bitar and Matteo Reginato of Arenz, Molter, Macy, Riffle & Larson, S.C., Waukesha, Wisconsin. The Village filed two briefs in support of its Motion. Petitioner has provided several letters in response.

The Village asserts that Petitioner's Petition for Review was not filed within the required 60-day period.

FACTS

1. The Petition filed by Ms. Stamm was received by ordinary mail and deemed filed at the Commission on November 23, 2015.

2. The caption in this case was created by the Commission. The Commission named Ms. Stamm as the Petitioner, but we note that the Petition, which was in the form of a letter to the Commission, began with a request for help for "us, the Villagers of Pewaukee." Petitioner went on to describe the imposition of what she deemed unreasonable charges by the Village of Pewaukee for false fire alarm calls. The Petition expressed its goal as that of obtaining a lowering of the fees "for all the Villagers."

3. The Petition listed several examples of the imposition of the false alarm charges, including those of Matthews Place, an assisted living facility, and of Pewaukee Shores Condos, both of which have been subject to tens of thousands of dollars of fees for false alarms over the past few years.

4. On December 7, 2015, Petitioner supplemented her filing with additional information noting an increase in prospective false fire alarm charges for 2016. The supplemental filing included documentation of 2015 charges with copies of bills to the Pewaukee School district from July and September 2015 which showed that the Village of Pewaukee billed the Pewaukee School District \$7,676 for each of the 2015 false alarms.

5. The most recent specific false alarm fee documented by Petitioner was charged to the Pewaukee School District from an incident occurring on September 16, 2015. The billing date on the exhibit is September 21, 2015. The due date listed is October 21, 2015.

6. All other specific incidents occurred prior to September 2015. The most recent documented false alarm charge for Pewaukee Shores Condominium Association involved an incident which occurred in February 2015.

7. The Village of Pewaukee filed a Motion to Dismiss the Petition as untimely and further claimed that Petitioner has not been harmed by the imposition of the fee and, therefore, has no standing to bring this appeal.

8. Petitioner responded with a repetition of the assertion that her petition was not just for her or for her condominium association but "all of the Village" and continued to make reference to "us Villagers." We interpret this to mean Petitioner is asserting that she is representing all residents of the Village of Pewaukee.

9. Petitioner's response included a mention of one additional false alarm charged to an elderly resident of the Village of Pewaukee; that event occurred in 2014.

10. In support of the appeal brought by Petitioner, the President of the Pewaukee Shores Condominium Association filed a description of the events leading to the false alarm charges imposed upon the condominium association. The most recent charge noted took place in February of 2015.

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. § 66.0628(4)(a): Any person aggrieved by a fee imposed by a political subdivision because the person does not believe that the fee bears a reasonable relationship to the service for which the fee is imposed may appeal the reasonableness of the fee to the tax appeals commission by filing a petition with the commission within 60 days after the fee's imposition, as provided under s. 73.01(5) with respect to income or franchise tax cases, and the commission's decision may be reviewed under s. 73.015.

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. Admin Code § 1.15(2m): A separate petition for review shall be filed with the commission by an aggrieved party from each notice of action of the department of revenue or the department of transportation on a petition for redetermination. No petition for review may be filed by more than one person unless each person filing the petition for review is aggrieved by the same notice of action. A separate filing fee shall accompany each petition for review.

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).

Because matters outside of the pleadings have been presented to the Commission in connection with the Village's Motion to Dismiss, the Commission treats the Motion as a motion for summary judgment. See Wis. Stats. §§ 802.06(3) and 802.06(2)(b); see also *Toney v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-348 (WTAC 2010). 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).

We begin by attempting to clarify the identity of the proper Petitioner. No specific provisions exist regarding municipal fees; the statute instructs us to consider these cases in the manner specified for appeals from the decisions of the Department of Revenue. Thus, we review the case in the context of Wis. Stat. § 73.01.

The Petition was drafted and sent to the Commission by Ms. Stamm. The record holds no evidence of her having personally been subject to the false alarm fee. If she is appealing on behalf of others, the Wisconsin Administrative Code requests the Petitioner to include a "statement that the representative is authorized to appear and act for the petitioner." Wis. Admin. Code § TA 1.15(e). Petitioner has not included such a statement; however, the Commission is somewhat liberal on specific requirements as to the form of the Petition and, on summary judgment, makes inferences in favor of the non-moving party.

Ms. Stamm's letter seems to indicate that she believes she is representing all of the residents of the Village of Pewaukee. If that is the case, the Petition must fail for two

reasons. First, this Commission does not have the authority to certify a class action that seeks income tax refunds. *Dep't of Revenue v. Hogan*, 198 Wis. 2d 792, 543 N.W.2d 825 (Ct. App. 1995). Second, but closely related, is the fact that "the Villagers" may not seek redress as a group. The Administrative Code provides that joint actions may not be brought on behalf of multiple claimants; each complainant must file his or her own separate petition appealing a particular notice from the Department, or in this case the Village. *See* Wis. Admin. Code § TA 1.15(2m).

Although we do not reach the question of timeliness, we note that those who wish to appeal the imposition of a municipal fee must do so "within 60 days of the fee's imposition." Wis. Stat. § 66.0628(4)(a). While it may be a case for another day to determine when a fee is "imposed," it is clear that all but arguably one of the examples provided by Ms. Stamm occurred in 2014 and early 2015, long before the filing of her Petition; thus, appeals regarding those fees would be untimely.

CONCLUSIONS OF LAW

1. Petitioner has shown no personal claim as an aggrieved person who has been subject to the imposition of the Village of Pewaukee's municipal fee for false alarms.
2. As a representative, Ms. Stamm may not bring one action on behalf of numerous claimants, either as a class action or as similar claims by multiple joint claimants, because each claimant has been subject to a separate imposition of the contested fee and the law requires each imposition to be appealed separately.

3. The Petition improperly attempts to appeal more than one fee imposition; separate petitions are required for each fee imposition.

ORDER

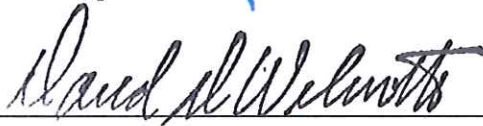
The Village's Motion to Dismiss is granted and the Petition is dismissed.

Dated at Madison, Wisconsin, this 21st day of April, 2016.

WISCONSIN TAX APPEALS COMMISSION



Lorna Hemp Boll, Chair



David D. Wilmoth, Commissioner



David C. 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. 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.