

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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GLEND A THOMAS,

Petitioner,

DOCKET NOS. 16-I-183  
AND 16-I-186

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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RULING AND ORDER

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LORNA HEMP BOLL, CHAIR:

These matters come before the Commission on the Department's Motion to Dismiss based upon Petitioner's failure to file a timely Petition for Redetermination, a prerequisite for jurisdiction at the Tax Appeals Commission. The Petitioner appears *pro se*, and the Department is represented by Attorney Jenine E. Graves. The Department has submitted a Brief and Affidavit in support of its motion. The Petitioner has not filed a response.

FACTS

1. On January 25, 2016, the Department issued Notices of Amount Due to the Petitioner regarding her earned income credit claims and dependent exemptions for both 2013 and 2014. (Affidavit of Resolution Officer Mary Nelson

("Nelson Aff."), ¶¶ 2, 3; Exs. A, B.) The first page of each of the Notices explains that Petitioner has sixty days to appeal the Department's decision. Page six of each of the Notices provides instructions outlining how to appeal to the Department and again communicates the sixty-day appeal period. (Nelson Aff., ¶ 4; Exs. A, B, pp. 1, 6.)

2. On January 29, 2016, after receiving the Notices, the Petitioner called the Department twice to ask questions about the Notices she had received. During one of the telephone calls, the Department reminded Petitioner of the sixty-day appeal period and that the Department had not received information from her. (Nelson Aff., ¶ 6; Ex. C.)

3. Assuming the 60-day time period for filing a Petitioner for Redetermination began with Petitioner's January 29, 2016 telephone conversation with the Department about the Notices, the time period expired on March 29, 2016. The Department did not receive documents, correspondence, or Petitions for Redetermination from the Petitioner regarding the Notices. (Nelson Aff., ¶¶ 10 and 11.)

4. On April 28, 2016, the Department sent Petitioner Notices of Overdue Tax for both 2013 and 2014. (Nelson Aff., ¶ 7; Exs. D, E.)

5. On May 5, 2016, the Department sent Petitioner a Statement of Account for 2013 and 2014. The Statement contained an account summary indicating that the accounts had been sent to collections. (Nelson Aff., ¶ 8; Ex. F.)

6. Petitioner filed her Petitions for Review with the Commission on June 24, 2016. (Commission file.)

#### APPLICABLE STATUTES

Wis. Stat. § 71.88(1)(b):

*Contested adjustments to credits.* Any person feeling aggrieved by the determination made by the department to adjust a credit claimed . . . may, within 60 days after receipt, petition the department for redetermination. . . . If no timely petition for redetermination is filed with the department, its determination shall be final and conclusive.

Wis. Stat. § 71.88(2)(b):

*Appeal of department's redetermination of credits.* Any person aggrieved by the department of revenue's redetermination of a credit . . . may appeal the redetermination to the tax appeals commission by filing a petition with the commission within 60 days after the redetermination . . . .

Wis. Stat. § 73.01(5)(a):

APPEALS TO COMMISSION. (a) Any person who . . . has filed a petition for redetermination with the department of revenue and who is aggrieved by the redetermination of the department of revenue may, . . . file with the clerk of the commission a petition for review of the action of the department of revenue . . . .

#### DECISION

These cases involve Notices in which the Department changed the Petitioner's filing status and denied her claim for an earned income credit and a portion of her exemption for dependents.

"Any person aggrieved by the department of revenue's redetermination of a credit . . . may appeal the redetermination to the tax appeals commission by filing a

petition with the commission within 60 days after the redetermination.” See Wis. Stat. § 71.88(2)(b). The Department asserts, as a basis for its motion, that the Petitioner failed to petition the department for a redetermination, and therefore there is no redetermination by which Petitioner has been aggrieved which would give her a basis for an appeal to the Commission. The Department is correct.

We note that aggrievement by a redetermination of the Department is a condition precedent for review by the Tax Appeals Commission under Wis. Stat. § 71.88(2)(b). Thus, our jurisdiction turns on whether the Petitioner did in fact file a timely petition for redetermination by which she could have been aggrieved.

The Department sent Notices to the Petitioner in January of 2016. Petitioner received the Notices on or before January 29, 2016, at which time she called the Department to discuss the Notices. Sixty days from January 29, 2016, was March 29, 2016. Petitioner filed nothing with the Department requesting a redetermination either by that deadline or at any time thereafter. Petitioner’s next filing was at the Tax Appeals Commission.

The statutes require a taxpayer first to seek a redetermination at the Department. Only after that does the door open to the Tax Appeals Commission. In this case, because there was no petition for redetermination, the Notices in question became final and conclusive. Wis. Stat. § 71.88(1)(b).

The Commission only has jurisdiction to review the Department's actions against persons who have filed Petitions for Redetermination with the Department and have been "aggrieved" by a redetermination. Wis. Stat. § 73.01(5). *See also, e.g., Hussain v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-359 (WTAC 2010) (the Commission lacks jurisdiction over a petition for review where the Petitioner has failed to file a timely petition for redetermination). Petitioner has not been so aggrieved and, therefore, we must dismiss.

We further note that, by the time these cases were filed at the Commission, they were already in collections. The Commission does not have jurisdiction over the Department's collection of delinquent taxes. *Beck v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-275 (WTAC 1997).

#### CONCLUSIONS OF LAW

1. Because Petitioner failed to petition the Department for a redetermination of the Department's Notices, there was no redetermination.
2. In the absence of a redetermination, Petitioner is not aggrieved by a redetermination of the Department.
3. Because Petitioner is not aggrieved by a redetermination of the Department, the Commission lacks jurisdiction and, therefore, must dismiss these cases.

ORDER

Based on the foregoing, the Commission grants the Department's Motion to Dismiss.

Dated at Madison, Wisconsin, this 18<sup>th</sup> day of April, 2017.

WISCONSIN TAX APPEALS COMMISSION



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Lorna Hemp Boll, Chair



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David D. Wilmoth, Commissioner



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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. 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.