

STATE OF WISCONSIN
TAX APPEALS COMMISSION

WILLIAM C. AND JOANNE M. TORREY,

DOCKET NO. 14-I-165

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. The Petitioners, William C. and Joanne M. Torrey, of Marco Island, Florida, are represented by their accountant, Jeffrey B. Hanson of Superior, Wisconsin. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Peter D. Kafkas. The Department filed a brief and affidavit with exhibits in support of its Motion. Petitioners have declined to respond.

The Commission finds that the Petitioners' Petition for Review was not filed within the 60-day period. As such, it was not timely. Therefore, the Commission lacks jurisdiction and therefore must dismiss this matter.

FACTS

Jurisdictional Facts

1. On September 9, 2013, the Department issued to the Petitioners a Notice of Amount Due for the calendar years 2008 and 2010 in the amount of \$2,919.83. (Dep't Ex. A.)

2. Petitioners filed a timely Petition for Redetermination, which was considered by the Department and denied in Department's Notice of Action dated March 20, 2014. Petitioners received the Notice of Action on March 24, 2013. (Dep't Exs B and C.)

3. The 60-day time period from the date of receipt of the Notice of Action denying the Petition for Redetermination expired on May 23, 2014.

4. On May 27, 2014, the Commission received Petitioners' Petition for Review by ordinary mail. (Commission file.)

5. On June 17, 2014, the Department filed a Motion to Dismiss, along with an affidavit with exhibits in support of the Motion. Petitioners have not submitted a response to the Motion. (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. Stats. § 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 or 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).

The date on which a petition for review is "filed" with the Commission under Wis. Stat. § 73.01(5)(a) has consistently been held to be the date on which the petition has been physically received in the Commission office. *See Edward Mischler v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-159 (WTAC 1983).

Unless otherwise provided by statute, a document is filed on the date it is received by the Commission, not the date it is mailed. *See 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.

In this case, Petitions received the notice on March 24, 2014. Thus, their 60-day deadline to file expired on May 23, 2014. Petitioners mailed their Petition with a letter dated one day after that date. The Petition was sent by ordinary mail and was not received at the Commission until May 27, 2014, four days after the deadline allowed by statute.

Because the Petition was not timely filed, the Commission has no jurisdiction and must dismiss the Petition. This is not a matter for discretion; the Commission has no choice in the matter. *Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002).

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 the Petitioners failed to file the Petition for Review with the Commission within 60 days of the Notice.

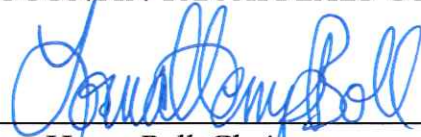
2. The Commission lacks jurisdiction over the Petition for Review under Wis. Stat. § 73.01(5) because it was untimely. Therefore, the Department is entitled to dismissal as a matter of law.

ORDER

The Department's Motion to Dismiss is granted, and the Petition for Review is dismissed.

Dated at Madison, Wisconsin, this 27th day of August, 2014.


WISCONSIN TAX APPEALS COMMISSION



Lorna Hemp Boll, Chair



Roger W. LeGrand, Commissioner



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 either in-person, by certified mail, or by courier, and served upon the other party (which usually is the Department of Revenue) 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.