

STATE OF WISCONSIN
TAX APPEALS COMMISSION

WIEGAND OIL CO., INC.,

DOCKET NO. 08-V-028

Petitioner,

vs.

ORDER OF DISMISSAL

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

ROGER W. LEGRAND, COMMISSIONER:

This matter comes before the Commission on respondent's motion to dismiss the petition for review for failure to file the petition within 60 days after receipt of respondent's notice of denial of the related petition for redetermination, as required by Section 73.01(5)(a), Stats. Petitioner is represented by Mr. Dale A. Wiegand, and respondent, the Wisconsin Department of Revenue (the "Department"), is represented by Attorney Sheree Robertson.

JURISDICTIONAL FACTS

1. On April 24, 2007, the Department assessed petitioner in the total amount of \$92,889.83 for excise motor vehicle fuel tax, interest, penalty and related fee, for the period December 1, 2002 through March 31, 2003. (Robertson Aff., Ex. 1.)

2. The petitioner filed a petition for redetermination with the Department on June 22, 2007. (Robertson Aff., Ex. 2.)

3. The Department denied petitioner's petition for redetermination on December 19, 2007. (Robertson Aff., Ex. 3.) Petitioner received the notice of denial on December 24, 2007. (Robertson Aff., Ex. 4.)

4. The Commission received the petition for review via regular mail on February 25, 2008. (Robertson Aff., Ex. 5.)

RULING AND ORDER

Under Section 73.01(5)(a), Stats., an aggrieved party may file a petition for review with the Commission within 60 days after an adverse decision on a petition for redetermination by the Department. In this case, the notice of denial of the petition for redetermination was sent to petitioner on December 19, 2007 and was received by the taxpayer on December 24, 2007. (Exhibits 3 and 4.) The notice of denial notified petitioner of the 60-day filing requirement and that, if no appeal was filed within the 60-day period, the assessment by the Department would become final. The petition for review was sent to the Commission by regular mail, and the Commission received the petition on February 25, 2008.

A petition for review sent to the Commission by regular mail is considered filed on the date of its receipt by the Commission. The 60-day time period has been strictly construed by the Commission and by the courts. *See McDonald Lumber Co. v. Dep't of Revenue*, 117 Wis. 2d 446, 344 N.W.2d 210 (Ct. App. 1984).

The 60-day appeal period expired February 22, 2008. The Commission received this petition on February 25, 2008, 63 days after petitioner had received the denial of its petition for redetermination. The petition is therefore untimely and the Commission lacks jurisdiction to review the appeal. The respondent's motion to dismiss is granted and the petition for review is dismissed.

Dated at Madison, Wisconsin, this 20th day of August, 2008.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger L. LeGrand, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"