

STATE OF WISCONSIN
TAX APPEALS COMMISSION

TEQUILA WILLIAMS-MATTHEW
3155 North 26th Street
Milwaukee, WI 53206,

DOCKET NO. 04-I-82

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8907
Madison, WI 53708-8907,

Respondent.

DON M. MILLIS, COMMISSION CHAIRPERSON:

This matter comes before the Commission on respondent's motion to dismiss the petition for review for lack of subject matter jurisdiction. Both parties have filed submissions with respect to respondent's motion. Petitioner appears pro se. Respondent is represented by Attorney Michael J. Buchanan.

Based on the submissions of the parties and the entire record in this matter, the Commission finds, rules, and orders as follows:

On September 22, 2003, respondent issued to petitioner an income tax assessment in the total amount of \$7,380.60. Petitioner filed a petition for redetermination dated October 1, 2003.

On January 19, 2004, respondent issued a notice of action letter denying the petition for redetermination. The notice of action letter was received at petitioner's residence on January 21, 2004.

Petitioner filed her petition for review with the Commission via regular U.S. mail. The Commission received the petition for review on March 26, 2004.

The 60th day following receipt of the notice of action letter was March 21, 2004, a Sunday. Thus, the last day for filing the petition for review was Monday, March 22, 2004. The petition for review was filed four days late.

Petitioner does not argue that she did not receive the notice of action letter on a date other than January 21, 2004—the date on which it was signed for at her residence. Rather, petitioner simply argues that she assumed that the time period for appealing the notice of action letter did not include Saturdays and Sundays. That assumption, of course, is incorrect. While it is true that if the 60th day falls on a weekend, the day for filing is the next business day, nothing in the Statutes provides that Saturdays and Sundays are not to be included in the 60 days. Moreover, the notice of action letter provided notice to petitioner that she had to file her appeal with the Commission “within 60 days of receiving this notice.” A reasonable reading of this phrase does not support petitioner's assumption.

Regardless of whether petitioner's assumption is reasonable or not, the result is that the Commission does not have the discretion to entertain the petition for review. Because the petition for review was not timely filed, the Commission lacks subject matter jurisdiction over it, and, therefore, it must be dismissed.

ORDER

Respondent's motion to dismiss is granted, and the petition for review is dismissed.

Dated at Madison, Wisconsin, this 2nd day of July, 2004.

WISCONSIN TAX APPEALS COMMISSION

Don M. Millis, Commission Chairperson

Jennifer E. Nashold, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"