

STATE OF WISCONSIN
TAX APPEALS COMMISSION

KRISTINE ZAKARYAN,

DOCKET NO. 14-I-211

Petitioner,

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 Petitioner's Petition for Review as untimely. The Petitioner, Kristine Zakaryan, of Milwaukee, Wisconsin, appears *pro se* in this matter. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Sheree Robertson. The Department filed a brief and affidavit with exhibits in support of its Motion. Petitioner has submitted a response.

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

FACTS

1. On November 4, 2013, the Department issued to the Petitioner a Notice of Amount Due for the calendar years 2009. (Dep't Ex. 1.)

2. Petitioner filed a timely Petition for Redetermination, which was considered by the Department and denied in Department's Notice of Action ("the Notice") dated July 8, 2014. (Dep't Ex. 2 and Ex. 3.)

3. The Notice was signed for by the doorman at Petitioner's place of residence. Petitioner's submission states that the doorman "is the designated person for accepting resident mail when the resident can't be reached." The United States Postal Service documentation shows a "signature of recipient" of the Notice on July 10, 2014. (Dep't Ex. 4.)

4. The 60-day time period from the July 10, 2014 receipt of the Notice expired on September 8, 2014.

5. On September 17, 2014, the Petitioner filed by ordinary mail a Petition for Review with the Commission. (Commission file.)

6. On October 15, 2014, the Department filed a Motion to Dismiss, along with an affidavit with exhibits in support of the Motion.

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. § 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 Statutes provide that a petitioner has 60 days from the date of receipt of the notice to file an appeal with the Wisconsin Tax Appeals Commission. The 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).

Petitioner takes issue with both the starting date and the ending date for calculating the 60 days in this case. The Petitioner disputes the Department's argument that she "received" the Notice when the doorman signed for it. The Petitioner further disputes her perceived requirement to utilize certified mail to solidify her filing date.

Finally, Petitioner asks to be excused from the 60-day deadline due to her travel schedule.

We first determine the date on which the Petitioner's 60-day filing period began. Petitioner correctly points out that she did not herself sign for the Notice. The Notice was delivered and signed for by her doorman on July 10, 2014. However, the statutory time period does not require service upon the petitioner personally, only upon a responsible person competent to receive service:

Personal acceptance is not a listed prerequisite. Commission decisions have held that a notice is deemed received when it is delivered to and signed for by a responsible person at the petitioner's proper mailing address. *See Jacobson v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) § 200-606 (WTAC 1970) (petitioners' visiting adult daughter's signature deemed receipt by petitioners). *See also Miller v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) 202-151 (WTAC 1983) (spouse's signature deemed receipt by taxpayer to trigger 60-day time limit for taxpayer's appeal); *Steenlage v. WTAC and Dep't of Revenue*, Wis. Tax Rptr. (CCH) § 203-348 (WTAC 1992) (signature by houseguest deemed receipt by taxpayer).

Pomasl v. Dep't of Revenue, Wis. Tax Rptr. (CCH) ¶ 401-677 (WTAC 2013) (15-year-old daughter deemed competent to receive service).

Petitioner admits that the doorman was authorized to receive her mail in her absence. Therefore, we find he was a responsible person competent to sign for the certified delivery of the Notice. We find the 60-day period began on the day he signed for the Notice, July 10, 2014.

Next, we determine the filing date to see whether the Petition for Review was filed within the statutory 60-day period. 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).

We find that the Petition for Review was filed on September 17, 2014, as that is the date the Commission received it by ordinary mail. The statutes provide an exception for petitioners who choose to use certified mail. Wis. Stat. § 73.01(5)(a). That exception deems a petition filed on its mailing date. This Petition was sent to the Commission by ordinary mail so its mailing date is not relevant to this analysis. We further note that the statute in no way requires the use of certified mail but merely allows it as an alternative.

Finally, Petitioner states that she understands that her busy work-related travel schedule does not exempt her from the statutorily mandated deadlines. She however asks for leniency, a request we must deny. Case law has addressed the jurisdictional importance of the time limits outlined in the statutes. Decisions have consistently and clearly held that the Commission lacks authority to make exceptions to the time limits and lacks jurisdiction over appeals when taxpayers fail to file timely petitions for review as required by statute. See *Keith v. Dep’t of Revenue*, Wis. Tax Rptr. (CCH) § 400-694 (WTAC 2003); *Alexander v. Dep’t of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002).

As a side note, the certified mailing option provided by the legislature allows a petitioner some certainty as to the filing date; this alternative is particularly useful as the deadline draws near. The legislature has also allowed a full 60 days for

filing. Even with a busy schedule, two months' time should be sufficient for a petitioner to submit something to the Commission to begin the appeal process.

CONCLUSIONS OF LAW

1. The date of receipt of the Notice of Action denying Petitioner's Petition for Redetermination was July 10, 2014.

2. Petitioner's Petition for Review was filed on September 17, 2014.

3. The Notice of Action denying Petitioner's Petition for Redetermination became "final and conclusive" on September 8, 2014, pursuant to Wis. Stat. § 71.88(2)(a) because the Petitioner failed to file the Petition for Review with the Commission within 60 days of the Notice.

4. 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 26th day of February, 2015.

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.