



STATE OF WISCONSIN
TAX APPEALS COMMISSION

JOSEPH J. NEMETH, SR.,

DOCKET NO. 22-W-014

Petitioner,

v.

RULING & ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

KENNETH P. ADLER, COMMISSIONER:

The Petitioner, Joseph J. Nemeth, Sr., appears *pro se* in this matter. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney James W. McNeilly, Jr. The Respondent submitted a Motion to Dismiss the Petitioner's Petition for Review as untimely and has filed an affidavit and a supplemental letter in support of its Motion. The Petitioner has declined to file a response brief. For the reasons stated below, we find that the Petitioner did not file his Petition for Review in a timely manner as required by statute, and therefore we grant the Department's Motion to Dismiss.

FINDINGS OF FACT

1. On September 9, 2019, the Department issued a Notice of Amount Due, notifying the Petitioner of tax, interest and penalty due in the amount of \$89,950.31.

The Notice informed the Petitioner he could file a Petition for Redetermination. (Nelson Aff. ¶ 3, Exhibit A).

2. On or about November 8, 2019, the Petitioner's Petition for Redetermination was filed timely with the Department. (Nelson Aff. ¶ 3, Exhibit B).

3. The Department denied the Petition for Redetermination by a Notice of Action dated November 10, 2021. The Notice of Action was delivered by certified mail to the Petitioner on November 12, 2021. The Petitioner had 60 days from receipt of the Notice of Action to file a Petition for Review with the Tax Appeals Commission. (Nelson Aff. ¶ 4 and ¶ 5, Exhibit C).

4. The 60-day filing period for the Petitioner to file a Petition for Review with the Tax Appeals Commission ended on January 11, 2022. (Nelson Aff. ¶ 5, Exhibit C).

5. On January 12, 2022, the Commission received via ordinary mail the Petitioner's Petition for Review. The Petitioner's submission was sent via regular USPS mail - not certified letter and there is no postmark visible on the envelope. (Exhibit D).

6. On February 21, 2022, the Department filed a Motion to Dismiss the Petitioner's Petition for Review as untimely, along with an affidavit with exhibits in support of the Motion.

7. On May 10, 2022, the Petitioner notified the Commission he would not be filing a brief in response to the Department's Motion to Dismiss.

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.¹

The specific statute at issue outlines 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. § 990.001(4)(a): (4) Time, how computed.

(a) The time within which an act is to be done or proceeding had or taken shall be computed by excluding the first day and including the last; and when any such time is expressed in hours the whole of Sunday and of any legal holiday, from midnight to midnight, shall be excluded.

ANALYSIS

The date on which a Petition for Review (Petition) 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.² Therefore, unless otherwise provided by statute, a document is filed on the date it is *received* by the

¹ See *Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002).

² See *Edward Mischler v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-159 (WTAC 1983)

Commission, not the date it is mailed.³ 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.

The Petitioner mailed his Petition by regular mail. Regular mail is not certified mail or its equivalent for purposes of the provision allowing for timely filing at the time of certified mailing.⁴ Therefore the exception for certified mail does not apply in this case and the Petitioner's Petition was required to be received at the Commission on or before Tuesday, January 11, 2022 - 60 days after receipt of the Notice of Action on November 12, 2021. Wis. Stat. § 990.001(4)(a). Unfortunately, the Petition was received one day late on January 12, 2022. This is not a matter for discretion; the Commission has no choice in the matter.⁵

CONCLUSIONS OF LAW

1. That as Petitioner failed to file a timely Petition for Review with the Commission within 60 days after receipt of the Department's Notice of Action on the Petition for Redetermination, the Commission lacks subject matter jurisdiction over the untimely Petition for Review. Wis. Stat. § 73.01(5)(a).

2. That the Department is entitled to dismissal as a matter of law.

³ See *Laurence H. Grange v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-017 (Dane Co. Cir. Ct. 1993).

⁴ *McDonald Lumber Co. v. Dep't of Revenue*, 117 Wis. 2d 446, 447, 344 N.W.2d 210 (Ct. App. 1984).

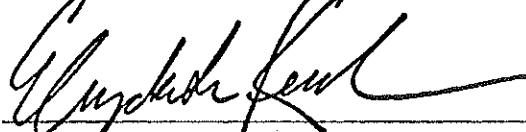
⁵ *Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002).

ORDER

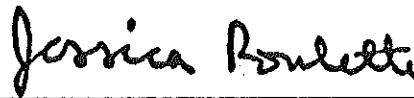
That the Department's Motion to Dismiss is granted, and the Petitioner's Petition for Review is Dismissed.

Dated at Madison, Wisconsin, this 8th day of August, 2022.

WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Chair



Jessica Roulette, Commissioner



Kenneth P. Adler Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION
101 E Wilson St, 5th Floor
Madison, Wisconsin 53703

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. Alternately, 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 Appeal 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 <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.