

STATE OF WISCONSIN
TAX APPEALS COMMISSION

ANGEL AND MATILDE ZUMBA,

DOCKET NO. 21-I-334

Petitioners,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

JESSICA ROULETTE, COMMISSIONER:

This case comes before the Commission for decision on Respondent's Motion to Dismiss Petitioners' Petition for Review for failure to file within the statutory time limit. The Petitioners, Angel and Matilde Zumba, appear by Angie Cao, Tax Manager at CarlsonSV LLC, of Golden Valley, Minnesota. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Jeffrey A. Evans of Madison, Wisconsin. The Department has filed a brief and affidavit in support of its Motion, as well as a reply brief in response to the Petitioners' letter to the Tax Appeals Commission ("Commission"). Petitioners' representative sent a notarized letter to the Commission with attachments which acknowledged that the appeal was filed a few days late. For the reasons stated below, we find for the Department.

FACTS

1. On October 23, 2020, the Department issued Petitioners Notices of Amount Due ("Notices") for the calendar years ending 2013, 2014, and 2015, in a total

amount for the three years of \$12,861.33. (Affidavit of Heidi Silvers, Tax Resolution Officer, Wisconsin Department of Revenue ("Silvers Aff."), ¶ 3, Ex. A.)

2. Subsequently, Petitioners submitted a petition for redetermination to the Department for all three tax years by handwritten notations on the Notices. (Silvers Aff., ¶ 4, Ex. B.)

3. On August 17, 2021, the Department denied Petitioners' Petition for Redetermination in a Notice of Action encompassing the three tax years at issue. (Silvers Aff., ¶ 5, Ex. C.)

4. The Notice of Action, sent by Certified Mail through the USPS in an envelope bearing USPS Tracking/ Article Number 7009 2250 0003 9293 1644, was received by Petitioners on August 19, 2021. (Silvers Aff. ¶ 6, Ex. D.)

5. Sixty days from August 19, 2021, was October 18, 2021.

6. On October 22, 2021, the Commission received Petitioners' Petition for Review to the Tax Appeals Commission by regular USPS mail. (Commission file.)

APPLICABLE LAW

The specific statute at issue here 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.

Thus, if a petitioner fails to file a petition for review within 60 days of receipt of the denial of redetermination, the Commission has no jurisdiction and must dismiss.

ANALYSIS

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).

Unless otherwise provided by statute, a document is filed on the date it is received by the Commission, not the date it is mailed. *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. The exception does not apply in this case because the Petitioners sent their Petition by ordinary mail.

Petitioners received the Notice of Action on August 19, 2021. Petitioners do not allege any particular date of receipt of the Notice of Action. In contrast, the Department has provided a sworn statement from Tax Resolution Officer Heidi Silvers describing the mailing of the Notice of Action by certified mail. We have no basis upon which we can disregard the Department's evidence that Petitioners received the Notice of Action on August 19, 2021. Accordingly, Petitioners' 60-day timeframe in which to appeal expired on Monday, October 18, 2021. For this Commission to have jurisdiction

over the matter, Petitioners needed to file their appeal with the Commission by that date. Petitioners did not file the appeal until October 22, 2021. On February 4, 2022, Petitioners' representative filed a notarized letter acknowledging that the petition was filed a few days late. If a petition is not filed with the Commission within the time provided in s. 73.01 . . . the assessment becomes final and conclusive. Wis. Stat. § 71.88(2).

While many due dates have been extended due to the coronavirus pandemic, statutory jurisdictional deadlines have not. 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 became final and conclusive because Petitioners failed to file a timely Petition for Review; therefore, the Commission lacks jurisdiction to hear this appeal.
2. The Department is entitled to dismissal as a matter of law.

ORDER

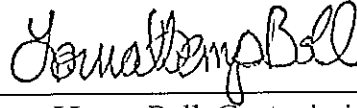
Based on the foregoing, it is the order of this Commission that the Department's Motion to Dismiss is granted and the Petition for Review is dismissed.

Dated in Madison, Wisconsin, this 7th day of March, 2022.

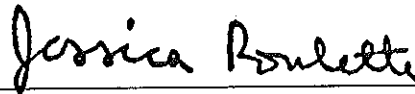
WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Chair



Lorna Hemp Boll, Commissioner



Jessica Roulette, 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. 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.