

FILED

MAR 13 2025

STATE OF WISCONSIN
TAX APPEALS COMMISSION

Wisconsin Tax Appeals Commission
Nicole Allee - Legal Assistant

KATHLEEN DOYLE,

DOCKET NO. 24-H-156

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

JESSICA ROULETTE, COMMISSIONER:

This case comes before the Tax Appeals Commission (“the Commission”) for decision on Respondent’s Motion for Summary Judgment. The Petitioner, Kathleen Doyle, appears *pro se*. The Respondent, the Wisconsin Department of Revenue (“the Department”), is represented by Attorney Jeffrey A. Evans and Attorney Jeremy R. Lange.¹ The Department has filed a Brief and Affidavits with attached Exhibits in support of its Motion, as well as a Reply Brief. Petitioner has filed a Response to the Department’s Motion for Summary Judgment. The Commission determines that it does not have jurisdiction to hear this appeal, and that it must grant the Department’s Motion for Summary Judgment.

¹ Attorney Evans retired from the Department in August of 2024, and Attorney Lange replaced Attorney Evans as counsel for the Department.

FACTS

1. On June 9, 2023, the Department issued a Notice of Changes - Homestead Credit² to Ms. Doyle reflecting a reduction to \$0.00 of the claimed \$764.00 homestead tax refund for tax year 2019. (Affidavit of Alexander Hans, ("Hans Aff."), ¶ 2, Ex. 1, pp.1 - 2.)

2. On June 9, 2023, the Department issued a Notice of Changes - Homestead Credit³ to Ms. Doyle reflecting a reduction to \$0.00 of the claimed \$756.00 homestead tax refund for tax year 2020. (Hans Aff., ¶ 2, Ex. 1, pp. 3 - 4.)

3. On June 16, 2023, the Department issued a Notice of Changes - Homestead Credit⁴ to Ms. Doyle reflecting a reduction to \$0.00 of the claimed \$748.00 homestead tax refund for tax year 2021. (Hans Aff., ¶ 2, Ex. 1, pp. 5 - 6.)

4. On June 16, 2023, the Department issued a Notice of Refund - Homestead⁵ to Ms. Doyle reflecting a reduction to \$404.00 of the claimed \$556.00 homestead tax refund for tax year 2022. (Hans Aff., ¶ 2, Ex. 1, pp. 7 - 10.)

² The Notice informed the recipient that if she does not agree with the Notice, she can file an appeal and included instructions regarding how to appeal, including: 1) over the internet at tap.revenue.wi.gov/Appeal, 2) by mail sent to Wisconsin Department of Revenue, PO Box 8906, Madison, WI 53708-8906, or 3) by fax sent to 608-267-0834. (Hans Aff., Ex.1, p. 2.)

³ The Notice informed the recipient that if she does not agree with the Notice, she can file an appeal and included instructions regarding how to appeal, including: 1) over the internet at tap.revenue.wi.gov/Appeal, 2) by mail sent to Wisconsin Department of Revenue, PO Box 8906, Madison, WI 53708-8906, or 3) by fax sent to 608-267-0834. (Hans Aff., Ex. 1, p. 4.)

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⁵ The Notice informed the recipient that if she does not agree with the Notice, she can file an appeal and included instructions regarding how to appeal, including: 1) over the internet at tap.revenue.wi.gov/Appeal, 2) by mail sent to Wisconsin Department of Revenue, PO Box 8906, Madison, WI 53708-8906, or 3) by fax sent to 608-267-0834. (Hans Aff., Ex. 1, p. 8.)

5. On July 3, 2023, the Department sent the notices described above in paragraphs 1 through 4 to Ms. Doyle. (Hans Aff., ¶ 6.)

6. On July 11, 2023, Ms. Doyle spoke by telephone with the Department. Notes taken by Bobby Jo Ramsey during that telephone call indicate that Ms. Ramsey informed Ms. Doyle that she could file a petition for redetermination⁶ by mail, in person, or online, and that Ms. Doyle intended to file a petition for redetermination in person in Milwaukee. (Hans Aff., ¶ 7, Ex. 3; Affidavit of Bobby Jo Ramsey ("Ramsey Aff."), ¶ 3, Ex. 1.)

7. On July 26, 2023, the Department received a copy of a written complaint filed by Ms. Doyle on July 18, 2023, with Contact 6.⁷ The complaint had been lodged with Contact 6 regarding the Wisconsin Department of Revenue, and the complaint had appended to it the notices described in paragraphs 1 through 4. In the complaint lodged with Contact 6, Ms. Doyle explained in detail her frustration with the Department and the basis of her complaint. (Affidavit of Patricia Mayers ("Mayers Aff."), ¶ 3, Ex. 1.)

8. On October 12, 2023, Ms. Doyle spoke by telephone with the Department. (Hans Aff. ¶ 8, Ex. 4.)

9. On October 12, 2023, the Department re-sent the three June 2023 Notices of Change and the June 2023 Notice of Refund to Ms. Doyle. (Hans Aff. ¶ 8, Ex.4.)

⁶ Both parties refer throughout their pleadings to Petitioner's "appeal" to the Department. For clarity, and to more closely track the applicable statutory language, this Ruling will refer to Petitioner's "petition for redetermination," which is the legal term for what both parties refer to as an "appeal to the Department."
⁷ "Contact 6" is the investigative department of the Milwaukee area television station known as "Fox 6." This ruling will refer throughout to the organization fielding Petitioner's initial complaint as "Contact 6."

10. On October 20, 2023, Ms. Doyle filed a petition for redetermination of the three June 2023 Notices of Change and the June 2023 Notice of Refund with the Department. (Hans Aff., ¶ 9, Ex. 8 pp. 17 - 18.)

11. On October 27, 2023, the Department mailed Ms. Doyle a letter stating that the petition for redetermination filed with the Department on October 20, 2023, had not been timely filed, and that the Department's determinations regarding the 2019, 2020, 2021, and 2022 homestead tax credit were final and conclusive. (Hans Aff., Ex. 8 p. 12.)

12. On October 28, 2023, Ms. Doyle sent a letter regarding her petition for redetermination to the Department. (Hans Aff., Ex. 8 pp. 13-16.)

13. On October 31, 2023, Ms. Doyle sent a letter to the Department, again regarding her petition for redetermination. (Hans Aff., Ex. 8 p. 10-11.)

14. On November 20, 2023, the Department mailed Ms. Doyle a letter stating that her petition for redetermination of the Department's adjustments regarding the homestead tax credit for 2019, 2020, 2021, and 2022 had been reviewed and the Department's adjustments were correct because: 1) her petition for redetermination was filed untimely, 2) the determinations were accurate based on the property tax-exempt status of the property she rented in 2019, 2020, 2021, and part of 2022, and 3) Ms. Doyle's concern regarding Department employee error was unfounded. (Hans Aff., ¶ 10, Ex. 5.)

15. On November 27, 2023, Ms. Doyle sent a letter to Mary Nelson at the Department. (Hans Aff., Ex. 8 pp. 21-25.)

16. On March 14, 2024, the Department sent a Notice of Action to Ms. Doyle denying Ms. Doyle's petitions for redetermination regarding her claim for homestead tax credit for 2019, 2020, 2021, and 2022. The Notice of Action indicated that the petitions were denied because they were late, and also that they would have been denied even if they had been timely filed because the property for which she paid rent during those years was not subject to property taxes and therefore could not be claimed for Homestead credit. (Hans Aff., ¶ 15, Ex. 7.)

17. The property tax bill for the property in question reflects that \$0.00 in State of Wisconsin tax was owed for 2018 and 2019. (Hans Aff., Ex. 5, p. 4.)

18. The property tax bill for the property in question reflects that \$0.00 in State of Wisconsin tax was owed for 2020. (Hans Aff., Ex. 5, p. 5.)

19. The property tax bill for the property in question shows no line item for any State of Wisconsin tax owed for 2021. (Hans Aff., Ex. 5, p. 6.)

20. The property tax bill for the property in question shows no line item for any State of Wisconsin tax owed for 2022. (Hans Aff., Ex. 5, p. 7.)

21. On May 15, 2024, Ms. Doyle filed a Petition for Review of the March 14, 2024, Notice of Action with the Commission, which has been docketed as 24-H-156. (Commission file.)

22. Ms. Doyle agrees that the owner of the property where she resided did not pay property tax during the years at issue. (May 15, 2024, Petition for Review, page 3, lines 6 - 10; page 12, lines 3 - 6; page 19, lines 7 - 9; page 21, line 27 - page 22, line

2;⁸ August 21, 2024, Petitioner’s Brief at page 1, lines 20 – 23; page 6, lines 5 – 7 and 19 – 21.)

APPLICABLE LAW

The statutes pertinent to this ruling outline eligibility for claiming the homestead tax credit, as well as the requirements for filing a valid and timely petition for redetermination with the Department when that petition involves a determination regarding a homestead tax credit.

Wisconsin Statutes

SUBCHAPTER VIII HOMESTEAD CREDIT

Wis. Stat. § 71.52 Definitions.

(3) “Homestead” means the dwelling, whether rented or owned, . . . and the land surrounding it, not exceeding one acre, that is reasonably necessary for use of the dwelling as a home, and may consist of part of a multidwelling or multipurpose building and a part of the land upon which it is built.

(7) “Property taxes accrued” means real property taxes or monthly municipal permit fees under s. 66.045(3)(c), exclusive of special assessments, delinquent interest, and charges for service, levied on a homestead owned by the claimant or a member of the claimant’s household. “Real property taxes” means those levied under ch. 70, less the tax credit, if any, afforded in respect of such property by s. 79.10. . . . If a homestead is an integral part of a multidwelling or multipurpose building, property taxes accrued are the percentage of the property taxes accrued on that part of the multipurpose or multidwelling building occupied by the household as a principal residence plus that same percentage of the property taxes accrued on the land surrounding it, not exceeding one acre, that is reasonably necessary for use of the

⁸ The majority notes that Petitions to the Commission are not required to be sworn, are a part of the record, and that statements contained therein can properly form the basis of Uncontested Facts at Summary Judgment.

multipurpose or multidwelling building as a principal residence, except as the limitations of s. 71.52(2)(b) apply. . . .

(8) "Rent constituting property taxes accrued" . . . means 25 percent, or 20 percent if heat is included, of the gross rent actually paid in cash or its equivalent by a claimant and his or her household solely for the right of occupancy of their Wisconsin homestead during the calendar year to which the claim relates if that rent constitutes the basis, in the succeeding calendar year, of a claim for relief under this subchapter by the claimant. . . .

Wis. Stat. § 71.53 Filing claims.

(2) **INELIGIBLE CLAIMS.** No claim under this subchapter may be allowed if any of the following conditions applies:

. . .

(e) The claimant resided for the entire calendar year to which the claim relates in housing which was exempt from taxation under ch. 70

SUBCHAPTER XIV APPEALS

Wis. Stat. § 71.88 Time for filing an appeal.

(1) **APPEAL TO THE DEPARTMENT OF REVENUE.**

(a) *Contested assessments and claims for refund.* . . . [A]ny person feeling aggrieved by a . . . notice of denial of refund may, within 60 days after receipt of the notice, petition the department of revenue for redetermination. . . . The department shall make a redetermination on the petition within 6 months after it is filed.

(b) *Contested adjustments of credits.* Any person feeling aggrieved by the determination made by the department to adjust a credit claimed under . . . subch. VIII . . . may, within 60 days after receipt, petition the department for redetermination. . . . If no timely petition for redetermination is filed with the department, its determination shall be final and conclusive.

(2) **APPEAL TO THE WISCONSIN TAX APPEALS COMMISSION.**

(a) *Appeal of the department's redetermination of assessments and claims for refund.* A person 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. . . . [E]xcept as provided in s. 71.75(5), if no petition for redetermination is made within the time provided the assessment, refund, or denial of refund shall be final and conclusive.

(b) *Appeal of department's redetermination of credit.* Any person aggrieved by the department of revenue's redetermination of a credit under . . . subch. VIII . . . may appeal the redetermination to the tax appeals commission by filing a petition with the commission within 60 days after the redetermination, as provided under s. 73.01(5) with respect to income or franchise tax cases, and review of the commission's decision may be had under s. 73.015. For appeals brought under this paragraph, the filing fee required under s. 73.01(5)(a) does not apply.

CHAPTER 73 TAX APPEALS COMMISSION AND DEPARTMENT OF REVENUE

Wis. Stat. § 73.01 Tax appeals commission.

(5) APPEALS TO COMMISSION.

(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.

Administrative Code

Tax 1.14 Petition for redetermination.

- (1) **SCOPE.** A person feeling aggrieved by . . . a notice of reduced homestead . . . credits, or by a notice of refund or denial of refund may petition the department for redetermination. This section describes the administrative provisions related to the petition for department redetermination.
- (2) **FORMAT OF THE PETITION.** The petition shall be in writing

and set forth clearly and concisely the specific grievances to the assessment, reduced credit, refund or denial of refund, including a statement of the relevant facts and propositions of law upon which the grievance is based. Every petition shall be signed by a taxpayer or by a duly authorized representative.

(3) FILING DEADLINE.

(a) To be considered "timely filed" a petition for redetermination shall be filed within 60 days after receipt of a notice of additional assessment, reduced credit, refund or denial of refund. Except as provided in par. (b), a petition for redetermination is "filed" within the proper statutory 60-day time period only if it is actually received by the department, or at the destination the department prescribes, within the 60-day period, or it is mailed in a properly addressed envelope, with postage prepaid, the envelope is postmarked before midnight of the 60th day and the petition is actually received by the department, or the destination the department prescribes, within 5 days of the prescribed 60th day date.

(b) In lieu of being received by the department or at a location prescribed by the department, a petition for redetermination may be received at a destination prescribed by the department of administration if the petition relates to a notice of additional assessment, reduced credit, refund or refund denial of . . . homestead . . . credit

ANALYSIS

A motion for summary judgment will be granted if the Commission finds it does not have proper jurisdiction over the appeal before it. 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).

Under Wis. Stat. § 71.88(a), a person feeling aggrieved by a determination of the Department as to a notice of denial of refund may file a petition for

redetermination with the Department within 60 days of receipt of such determination to deny a refund. If a petition for redetermination is not filed with the Department within 60 days, the determination of the Department as to the denial of refund becomes final and conclusive.

Under Wis. Stat. § 71.88(b), a person feeling aggrieved by a determination of the Department as to an adjustment to a tax credit may file a petition for redetermination with the Department within 60 days of receipt of such determination to adjust a tax credit. If a petition for redetermination is not filed with the Department within 60 days, the determination of the Department as to the adjustment of credit becomes final and conclusive.

The Commission has repeatedly ruled that it does not have jurisdiction to hear appeals of cases in which a petitioner has not filed a timely petition for redetermination with the Department. *See, Lyman v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-917 (WTAC 2006); *Williams v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶400-880, (WTAC 2006); *Kaminske v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶401-638 (WTAC 2012). The reasoning behind these decisions is that, if a taxpayer does not file a petition for redetermination with the Department, the taxpayer cannot be “aggrieved by the redetermination of the Department of Revenue.” Under Wis. Stat. § 73.01(5)(a), the Tax Appeals Commission only has jurisdiction over cases in which a person has filed a petition for redetermination and is aggrieved by the redetermination of the Department. Where a petitioner fails to file a timely petition for redetermination, the Department’s determination is final. Wis. Stat. §§ 71.88(1)(a) and (b). In such a case, accordingly, there

is no redetermination to appeal to the Commission, and the Commission has no jurisdiction to hear an appeal in such a case.

The Petitioner did not file a timely petition for redetermination with the Department. Instead, she complained to the news media. Petitioner argues that she did not trust the process outlined by the Department for filing an appeal, and that she chose to file a complaint with Contact 6 instead. There is no provision in Wisconsin law for this Commission to consider a complaint filed with an investigative television news station as equivalent to a petition for redetermination filed with the Department. There is, additionally, no evidence in the record of the taxpayer authorizing Contact 6 to act as her legal representative in this matter, nor of Contact 6 agreeing to act as such. Neither is there a legal justification for searching for such evidence. A complaint to the news media, regardless of what actions are or are not taken by the news media organization following the complaint, is not filing a petition for redetermination with the Department. Accordingly, the Commission cannot consider the July 18, 2023, complaint lodged with Contact 6 as a timely filed petition for redetermination.

We now turn to determining the deadline for a petition for redetermination from Ms. Doyle to be considered timely. July 11, 2023, is the earliest date on which it can be construed that Ms. Doyle received the Notices based on her telephone call of that date to the Department where she indicated her intent to file a petition for redetermination in person. September 9, 2023, is 60 days after July 11, 2023. Given that September 9, 2023, was a Saturday, if July 11, 2023, were proven to be the date on which Ms. Doyle received the Notices, a petition for redetermination would have been timely filed if it had been

received by the Department on Monday, September 11, 2023. The latest date on which it might be reasonable to construe Ms. Doyle's receipt of the Notices is July 18, 2023, the date on her Contact 6 Complaint Form, since Ms. Doyle attached the Notices to her complaint. September 18, 2023, is the first weekday 60 days following July 18, 2023. Construing the facts in the manner most favorable to Petitioner, the Commission will use the date of July 18, 2023, as the date on which Petitioner received the June 2023 Department Notices. Pursuant to Wis. Stat. § 71.88(1)(b), Petitioner had 60 days from July 18, 2023, to file a timely petition for redetermination with the Department. Accordingly, in this matter, the deadline by which Petitioner could file a timely petition for redetermination with the Department was September 18, 2023. Petitioner filed a petition for redetermination on October 20, 2023, 94 days after the latest date it is reasonable to construe Petitioner's receipt of the Notices.

Because Petitioner did not file a petition for redetermination with the Department on or before September 18, 2023, the Department could not make a lawful redetermination. Therefore, the Petitioner could not be "aggrieved by the redetermination of the department" under Wis. Stat. § 71.88(2)(a) or Wis. Stat. § 71.88(2)(b). If there is no lawful redetermination of the department under Wis. Stat. § 71.88(1)(a) or Wis. Stat. § 71.88(1)(b), the Commission has no jurisdiction under Wis. Stat. § 73.01(5)(a).

The Commission's jurisdiction is statutory, and "where a method of review is prescribed by statute, the prescribed method is exclusive." *Jackson County Iron Co. v. Musolf*, 134 Wis.2d 95, 101, 396 N.W.2d 323 (Wis. 1986). In its Notices dated June 9, 2023,

and June 16, 2023, the Department notified Petitioner that the Department had determined her ineligible for the homestead tax credit for all of 2019, 2020, and 2021, and for a portion of 2022, due to her housing having been exempt from property tax. The date the Commission has determined to use for receipt by Petitioner of the June 2023 Notices is July 18, 2023. Petitioner's petition for redetermination was filed with the Department on October 20, 2023, 94 days later. The Department had no authority to issue, and did not issue, a redetermination. Wis. Stat. §§ 71.88(1)(a) and 71.88(1)(b). Accordingly, the Petitioner is not aggrieved by a redetermination. Consequently, this matter is not within the jurisdiction granted to the Commission by Wis. Stat. § 73.01(5)(a).

Statutory jurisdictional deadlines are 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).

The Commission is sympathetic to the frustration Ms. Doyle has obviously experienced during this process. That some low-income taxpayers are eligible to receive the Homestead tax credit while other apparently similarly situated taxpayers are not, based on the tax-status of the entity to which they pay rent, is no doubt confusing. Neither the Department nor the Tax Appeals Commission have the power under Wisconsin law to change those statutes, nor to adjust statutory deadlines. Such changes to the law are the exclusive purview of the Legislature.

CONCLUSIONS OF LAW

1. Because Petitioner failed to file a timely petition for redetermination with the Department, the Department's initial determination is final and conclusive pursuant to Wis. Stat. § 71.88(2)(b).

2. Because Petitioner is not aggrieved by a redetermination and because the underlying Notice is final, the Commission lacks jurisdiction to hear this appeal pursuant to Wis. Stat. § 73.01(5)(a).

3. 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 for Summary Judgment is granted, and the Petition for Review is dismissed.

Dated in Madison, Wisconsin, this 13th day of March, 2025.

WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Chair



Jessica Roulette, Commissioner

Dissents
Kenneth Adler, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

KENNETH P. ADLER, COMMISSIONER, *DISSENTING*:

The two issues for determination are (1) whether a petition for redetermination was timely filed with the Department within 60 days of the Department's Notice of Action as required by Wis. Stat. §§ 71.88(1)(b) and (2) whether Ms. Doyle was ineligible for the Homestead Credit for the years at issue because she resided in a property exempt from property tax pursuant to Wis. Stat. § 71.53(2)(e). I write this dissent because I believe there are genuine issues as to material facts requiring a fact finding hearing.

As a general rule, petitions filed with the Tax Appeals Commission are to be set for hearing upon receipt of the answer from the Department. Wis. Stat. § 73.01(5), Appeals to the Commission states, in relevant part, as follows:

(a) Any person who . . . has filed a petition for redetermination with the department of revenue and who is aggrieved by the redetermination of the department of revenue may, . . . within 60 days after the redetermination but not thereafter, file with the clerk of the commission a petition for review of the action of the department of revenue . . . the department of revenue, . . . shall file with the clerk of the commission an . . . **answer** to the petition .

(b) The petition shall set forth specifically the facts upon which the petitioner relies, together with a statement of the propositions of law involved, and shall be in such form as the commission by rule designates. **After an answer is filed as provided in par. (a), the matter shall be regarded as at issue and the commission shall set it for hearing. . .**
 . [emphasis added]

However, if there are no genuine issues of material fact, the fact finding hearing is not necessary. This situation typically arises after the answer is filed by the Department and both parties draft stipulations of fact because there is no genuine issue as to any material fact. In that scenario, both parties request summary judgment without the need for a fact finding hearing because only legal issues remain in dispute.

As noted by the Wisconsin Supreme Court in *Transportation Ins. Co. v. Hunzinger Const. Co.*, 179 Wis. 2d 281, 289-290:

Summary judgment is used to determine whether there are any disputed issues for trial. . . . First, the pleadings are examined to determine whether they state a claim for relief. If they do, and if the responsive pleadings join issue, the court must then examine the evidentiary record to determine whether there is a "genuine issue as to any material fact," and, if not whether a party is thereby entitled to "judgment as a matter of law." . . .

The well-known purpose of summary judgment is "to avoid trials where there is nothing to try." . . . [a] party seeking summary judgment must "establish a record sufficient to demonstrate . . . that there is **no triable issue of material fact on any issue presented.**" [emphasis added]

In other scenarios one party may request summary judgment, asserting material facts are not in dispute, while the other party believes material facts are at issue and opposes the motion for summary judgment. When the Department moves for summary judgment, it presents an affidavit or notarized document to support its position that no material facts are at issue. When it is a pro se taxpayer appeal, the taxpayer's response to the motion often does not contain affidavits or notarized

documents, thus likely leading to the conclusion the Department's assertions are more credible and there is no genuine issue as to any material fact.

However, that does not always mean there are no material facts at issue. It means the Department – with significant resources, attorneys, paralegals, and clerks – has provided affidavits and notarized documents to support its position and interpretation of the matters at issue. If there is no stipulation of facts it arguably requires the pro se taxpayer to obtain affidavits and notarized documents to effectively rebut the Department's submissions and establish there is a triable issue of any material fact presented. Thus, summary judgment may be granted in favor of the Department without a hearing – or the opportunity for the taxpayer to explain her or his case under oath.

In *Wisconsin Dept. of Revenue v. Menasha Corp.*, affirming the Court of Appeals, 299 Wis. 2d 348, 728 N.W.2d 738, the Supreme Court reviewed the deference the Tax Appeals Commission owes when reviewing a Department of Revenue rule. The decision explained it is the Commission's responsibility to conduct hearings and stated, in relevant part, as follows:

We conclude that the DOR's interpretation and application of its tax rules are not entitled to any deference. We also conclude that the commission's interpretation and application of the tax rules are entitled to due weight deference. . . .

This decision has great import to the average taxpayer in this state. **More typically, it is the individual taxpayer who seeks a fair and neutral hearing before the Commission when that person believes that he or she has been taxed incorrectly by the DOR. If the Commission must defer to the DOR, the average taxpayer does not receive a fair hearing before a neutral tribunal.**

Though the Commission is subject to judicial review, the legislature specifically charged the Commission as the “final authority for hearing and determination of all questions of law and fact” under the tax code. We must not second guess that act of the legislature. . . .

Requiring the Commission to give deference to the DOR not only undermines the Commission’s authority, it is troubling for the taxpayer who appeals the DOR’s decision. The Commission hears and decides disputes between the DOR and individual taxpayers or entities. If the Commission, which serves a quasi judicial function, must defer to one party - namely, the DOR – **how does the taxpayer receive a fair hearing?** The taxpayer brings his or her appeal to the Commission at a significant disadvantage if the Commission must defer to the taxpayer’s opponent, the DOR.
[emphasis added]

When a pro se taxpayer does not, or cannot, supply affidavits or notarized documents, their assertions cannot overcome the sworn information presented by the Department in support of summary judgment. That is the reason hearings are to be conducted – for a taxpayer to appear, be sworn in, and offer their version of events. It also provides the opportunity for both parties to question each other, and the Commission to question both parties. In this case, as detailed below, there are many questions unanswered and genuine issues as to several material facts.

Whether Petitioner’s petition for redetermination was timely submitted to the Department.

The Department argues Ms. Doyle failed to timely file her petition for redetermination with the Department⁹ - asserting the information submitted by Contact

⁹ The Department asserts the petition for redetermination was not filed until October 20, 2023. Exhibit 8, pages 17-18.

6 on July 26, 2023¹⁰, did not qualify as a petition for redetermination because “appeals sent to news agencies do not meet this requirement.”¹¹ However, Contact 6 forwarded Ms. Doyle’s complaint to the Department and the Department acknowledges it was timely received within the 60 day appeal timeframe.¹²

The complaint was signed by Ms. Doyle, provided her address, explained her numerous issues with the Department and stated Ms. Doyle agreed to release the Department to provide her personal information to Fox 6 News.¹³ The complaint also attached rent payment confirmation and the Department’s June 9 and June 16, 2023, Notice of Changes - Homestead Credit which supplied the relevant facts and propositions of law upon which the grievance was based. Therefore, it met the requirements as a petition for redetermination as listed in the Department’s administrative rule:

Tax 1.14 Petition for redetermination. . . . (2) FORMAT OF THE PETITION. The petition for redetermination shall be in writing and shall set forth clearly and concisely the specific grievances to the assessment, reduced credit, refund or denial of refund, including a statement of the relevant facts and propositions of law upon which the grievance is based. Every petition shall be signed by the taxpayer or by a duly authorized representative

As the submission (1) was received by the Department within the 60 day appeal time frame after issuance of the Department’s Notices and (2) contained all the

¹⁰ Affidavit of Patricia Mayers, paragraph 3.

¹¹ Department letter dated November 20, 2023. Exhibit 5, page 2.

¹² The Department acknowledges that on July 26, 2023, it received a copy of the written complaint filed by Ms. Doyle on July 18, 2023, with Contact 6. Affidavit of Patricia Mayers, paragraph 3, confirms this.

¹³ Affidavit of Patricia Mayers, Exhibit 1.

necessary information for the Department to determine Ms. Doyle was asserting she was aggrieved and by what specific Department actions, a relevant question is why did the Department not act on the submission upon receipt?

First, nothing in the Department's appeal information (How do I appeal?) attached to the June Notices states a taxpayer cannot have someone else submit a petition for redetermination on their behalf.¹⁴ This raises the question - what would the Department do if a taxpayer complained to her sister and the sister then submitted a complaint meeting all the statutory requirements for a petition for redetermination on behalf of her sibling?

Second, the majority's assertion that "[a] complaint to the news media, regardless of what actions are or are not taken by the news media organization following the complaint, is not filing a petition for redetermination with the Department" does not explore what happened here. The record is silent as to (1) what Ms. Doyle intended or requested Contact 6 do with her complaint¹⁵, (2) how the complaint was forwarded to the Department - internet, postal mail, fax or personal delivery and (3) to whom at the Department the complaint was directed.¹⁶

¹⁴ Exhibit 1. The directives state taxpayers need to file their appeal within 60 days of receiving the notice. The directives further state: changes will become final if you do not appeal within 60 days, clearly explain why you don't agree with this notice, type (or nearly print) and sign your appeal, attach or include any documents to support your appeal, write your tax account number letter, letter ID and the tax period of this notice on all documents you include with your appeal.

¹⁵ Did she intend Contact 6 to submit the complaint on her behalf as a petition for redetermination? Did she intend Contact 6 to conduct an investigation into her complaints? We can assume, but the record does not definitively tell us. That requires sworn testimony from Ms. Doyle.

¹⁶ The Department states the submission from Annette at Contact 6 was received by Patricia Mayers on July 26, 2023. Patricia Mayers was employed as the Communications Director for the Department at that time. However, that affidavit does not explain how that submission came to the Department - via internet, postal mail, fax or personal delivery. Or whether Patricia Mayers was the initial recipient. Therefore, we do not

Third, the record lacks information as to the Department's standard procedure upon receipt of a document meeting all the requirements of a petition for redetermination which it believes is not properly filed. Does it ignore the submission? Does it contact the person who submitted the document and state it is not properly filed? Does it contact the taxpayer named in the document to state it is not properly filed? Is there any timeframe in which the Department is to make such contacts?

Based upon its prior communications with Ms. Doyle, and the June Notices it issued to her, the Department was aware the information was submitted within the timeframe to file a petition for determination and yet chose not to act for three months. It appears the Department did not submit any response to Ms. Doyle following the July 26, 2023, submission and only acknowledged that submission in a letter dated November 20, 2023.¹⁷ And, as with Ms. Doyle's communications with Contact 6, the record contains no information regarding any Department communications with Contact 6 prior to October 2023.

Finally, the Department reissued the June Notices several times. These Notices contained the "How do I appeal?" information. This raises several questions. Why did the Department issue these Notices more than once to the same address? What communications did the Department have with Ms. Doyle regarding reissuing these

know if the submission came through the requested petition for redetermination methods, or via some other method such as a designated news media portal. Affidavit of Patricia Mayers, paragraphs 1, 2 and 3.
¹⁷ Exhibit 5.

Notices?¹⁸ Did the Department intend to restart the appeal time clock by reissuing the Notices? Did the reissuance of the Notices restart the appeal time clock?

If a taxpayer feels the Department is not listening to them, or making mistakes on their behalf, they may ask someone else they perceive to be more influential to file a submission on their behalf. When that submission meets the statutory requirements as a petition for redetermination, and it is filed within the applicable timeframe, I believe there are genuine issues as to material facts and it is the Commission's responsibility to conduct a fact finding hearing to establish a clear record as to (1) whether Ms. Doyle requested or expected Contact 6 to submit her complaint on her behalf and (2) why the Department did not act on that submission for approximately three months.

Whether Petitioner was eligible for the Homestead Credit.

One requirement for an individual to be eligible to claim a Homestead Credit is that the taxpayer reside "for the entire calendar year to which the claim relates in housing which was exempt from taxation under ch. 70 . . . "¹⁹ The information presented by the Department contains errors and contradictions regarding that eligibility. Ms. Doyle states she believes the property was exempt from paying property taxes but also filed this appeal stating she should be eligible for the Homestead Credit. In my opinion, that indicates material facts are in dispute requiring a fact finding hearing.

¹⁸ The Department Affidavits and employee Notes do not answer these questions in full.

¹⁹ Wis Stat. § 71.53 (2)(e).

The Department's November 20, 2023, letter to Ms. Doyle stated her petition for redetermination of the Department's adjustments regarding her homestead tax credit for 2019, 2020, 2021 and 2022 had again been reviewed and the adjustments were considered correct because her petition for redetermination was filed untimely.²⁰ The correspondence contains several inconsistencies and errors.

First, the letter refers to the property as 1032 W Knapp Street. There is no such address in Milwaukee.²¹ The correct address is 1032 E Knapp Street.

Second, the Department's letter states that the property tax bills for 1032 E Knapp Street for the years in question support the claim that these properties are tax exempt. The letter continues by stating "I have highlighted the 'Net Property Tax' of \$0.00 for your convenience."²² However, the tax bills for the years at issue which were attached by the Department employee do *not* state that the "Net Property Tax" is \$0.²³ They state that the Lottery and Gaming credit is \$0.²⁴ The "Net Property Tax" for 2019 is \$887.69, \$893.87 for 2020, \$890.66 for 2021 and \$900.11 for 2022.²⁵ "Full Payment Due" for 2019 is \$959.91, \$1,841.23 for 2020, \$1,469.07 for 2021 and \$1,484.83 for 2022.²⁶

²⁰ Exhibit 5.

²¹ The Commissioner searched the City of Milwaukee Assessor database and completed a Google search.

²² Exhibit 5, page 2.

²³ The majority's finding of facts 17-20 state that the property tax bills list the State of Wisconsin tax as \$0 or show no line item for such tax. That is correct. However, the Hans' affidavit does not mention "State of Wisconsin" taxes and neither does the November 20, 2023, letter from Mr. Hans. As noted, that November 20, 2023, letter states it highlights the net property tax line. But the net property tax line is not \$0.

²⁴ Exhibit 5, pages 4, 5, 6, 7.

²⁵ Exhibit 5, pages 4, 5, 6, 7.

²⁶ Exhibit 5, pages 4, 5, 6, 7.

Third, while the majority opinion is correct that the City of Milwaukee tax bills state that the State of Wisconsin taxes are \$0 for 2019 and 2020, with no line item for State of Wisconsin in 2021 or 2022, the only Department documents in the record that reference "Wisconsin property taxes" are the June 2023 Notice of Changes - Homestead Credit.²⁷ However, that is not what the Hans' affidavit states when it references "Net Property Taxes" - thereby raising questions of material fact within the Department's documents. It is not the Commission's role to make the case for the Department. And, while Ms. Doyle mentions it in her letters, she is not the owner of the property, and those letters are not notarized. Therefore, those statements are hearsay and cannot be used, alone, to support a finding of fact. As I noted above, when pro se individuals appeal they are entitled to a hearing and should not be expected to supply affidavits and notarized documents. Especially taxpayers who may financially qualify for a Homestead Credit.

In my opinion, the record does not contain legally sufficient information proving the property is exempt from taxation.²⁸ Wis. Stat. § 71.53(2)(e) states the person seeking the Homestead Credit must have "resided for the entire calendar year to the claim relates in housing which was exempt from taxation under ch 70 . . ." Chapter 70 is a large chapter addressing general property taxes. It is the responsibility of the Department to explain exactly how the subject property was "exempt from taxation under ch. 70." The majority appears to believe it is because the Milwaukee property tax

²⁷ Exhibit 1.


²⁸ The record does contain a letter from the Executive Director of Hope House of Milwaukee, Inc., which apparently owns the property stating it is exempt from property taxation. But that letter is not notarized, does not give specific tax years and no foundation has been laid for the knowledge of the writer. Hans' Affidavit, Exhibit 6.

bill states the State of Wisconsin portion is \$0. That may be true. But the record as it exists simply has the Department's correspondence with the errors and inconsistencies noted. While the Department enjoys the presumption of correctness, it must first establish a basis for its decision. Therefore, this Department correspondence raises a material issue of fact as to whether the property is, in fact, exempt from property taxes thus disqualifying Ms. Doyle from her claim for the Homestead Credit.

Based upon all of the above, I believe the Commission should conduct a fact finding hearing to develop the record on the material issues discussed. There is no guarantee Ms. Doyle will prevail, but the Commission is responsible for fully developing the record and issuing a decision based upon facts and not assertions.

Dated at Madison, Wisconsin, this 13th day of March, 2025.

WISCONSIN TAX APPEALS COMMISSION



Kenneth P. Adler, Commissioner
Dissenting

WISCONSIN TAX APPEALS COMMISSION
101 E Wilson Street, 5th Floor
Madison WI 53703

NOTICE OF APPEAL INFORMATION

NOTICE OF RIGHTS FOR JUDICIAL REVIEW FOLLOWING THE DISPOSITION OF A
TIMELY PETITION FOR REHEARING, THE TIME ALLOWED, AND THE
IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

The following notice is served on you as part of the Commission's decision rendered:

PETITION FOR JUDICIAL REVIEW

Wis. Stat. §227.53 provides for judicial review of this 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 <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.