

FILED

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Wisconsin Tax Appeals Commission
Nicole Allee - Legal Assistant

STATE OF WISCONSIN
TAX APPEALS COMMISSION

JAMES S. AND RITA KIRCHOFF,

DOCKET NO. 24-I-154

Petitioners,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

KENNETH P. ADLER, COMMISSIONER:

Petitioners, James S. and Rita Kirchoff¹, appear *pro se* in this matter. The Respondent, the Wisconsin Department of Revenue (“the Department”), was represented by Attorney Jeffrey A. Evans and Attorney Bridget D. Laurent.² The Respondent submitted a Motion to Dismiss Petitioners’ Petition for Review as untimely and filed an affidavit and a supplemental letter in support of its Motion. Petitioners then filed a response brief, and the Department filed a reply. For the reasons stated below, we find that Petitioners did

¹ All the Department’s pleadings list Petitioners as “James S. and Rita Kirchoff” while all the Commission correspondence lists “James S. Kirchoff” as Petitioner. As the Kirchoffs are married, and filed their tax return jointly, this caption correctly reflects their filing status. Wis. Stat. §§ 71.87 and 71.88(2).

² Attorney Evans retired from the Department in August 2024, and the case was transferred to Attorney Bridget D. Laurent.

not file their Petition for Review with the Tax Appeals Commission in a timely manner as required by statute, and therefore we grant the Department's Motion to Dismiss.

FACTS

1. For the tax year 2021, Petitioners claimed a Veterans Property Tax Credit of \$3,586 in an amended tax return filed with the Department. For the tax year 2022 Petitioners claimed a Veterans Property Tax Credit of \$3,546 on their regular tax return filed with the Department. (Affidavit of Kristopher Margo ("Margo Aff.") ¶¶ 2, 3, Ex. A.)

2. On July 12, 2023, the Department issued Notices of Refund for both tax years. For the tax year 2021, the Department reduced Petitioners' Veteran's Property Tax Credit by \$712 to \$2,874. For the tax year 2022, the Department reduced Petitioners' Veteran's Property Tax Credit by \$704 to \$2,842. The Notices informed Petitioners they could file an appeal with the Department. (Margo Aff. ¶ 3, Ex. A.)

3. On August 24, 2023, Petitioners timely filed their appeal of both Notices with the Department.³ (Margo Aff. ¶ 4, Ex. B.)

4. On February 22, 2024, the Department issued a Notice of Action which denied Petitioners' Petition for Redetermination and upheld the Department's adjustments to Petitioners' claimed Veteran's Property Tax Credit. The Notice of Action informed Petitioners they had 60 days from receipt of the Notice of Action to file an appeal with the Tax Appeals Commission. The Notice of Action was sent to Petitioners' correct address via certified mail. (Margo Aff. ¶ 5, Ex. C.)

³ Appeals to the Department are formally designated as Petitions for Redetermination.

5. On February 26, 2024, the Notice of Action was delivered by certified mail to Petitioners. (Margo Aff. ¶ 7, Ex. C.)

6. On April 18, 2024, Kristopher Margo, a Department Resolution Officer, spoke with Petitioner James Kirchoff by telephone. During that conversation, Mr. Margo reminded Petitioner he had 60 days from receipt of the Department's Notice of Action to file an appeal with the Tax Appeals Commission. Petitioner James Kirchoff indicated he was aware of the time limit. (Margo Aff. ¶6.)

7. The 60th day after February 26, 2024, was Friday, April 26, 2024.

8. On April 30, 2024, the Commission received Petitioners' appeal letter via ordinary mail.⁴ (Margo Aff. ¶ 8, Ex. D.) The appeal letter was dated April 25, 2024. The envelope in which the appeal letter was received was post-marked April 27, 2024. (Margo Aff. ¶ 8, Ex. D.)

9. On May 30, 2024, the Department filed a Motion to Dismiss Petitioners' Petition for Review as untimely, along with an affidavit with exhibits in support of the Motion. (Commission file.)

10. Petitioners did not submit any affidavits in support of their appeal. They did submit some documents to further explain their position.

⁴ Appeals to the Commission are formally designated as Petitions for Review.

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.⁵

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 is physically received in the Commission office.⁶ Therefore, unless otherwise provided by statute, a document is filed on the date it is *received* by the Commission, not on

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

⁶ See *Edward Mischler v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-159 (WTAC 1983).

the date it is mailed.⁷ The only exception to physical receipt in the Commission office, found in Wis. Stat. § 73.01(5)(a), states that a Petition is considered timely filed 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 Department submitted affidavits confirming (1) the date Petitioners received the Department's Notice of Action, (2) the date the Department's Resolution Officer spoke to Petitioner James Kirchoff and confirmed his knowledge of the deadline to file an appeal with the Commission, and (3) the date upon which Petitioners' appeal was received at the Commission. Petitioners did not submit affidavits to rebut the Department's submissions. Petitioners did submit written statements, which were not notarized, stating Petitioner James Kirchoff had called the Commission on April 22, 2024, and left a voicemail message. However, it is not clear from Petitioners' notes whether Petitioner James Kirchoff spoke with anyone at the Commission after April 22, 2024, and because the notes have not been notarized attesting to their truth, they cannot be taken as true. Even if Mr. Kirchoff spoke to someone at the Commission on April 22, 2024, the Commission cannot accept a telephone call as the filing of an appeal. The statutory requirements for filing appeals with the Commission, discussed above, are unambiguous. None of Petitioners' submissions raise a disputed issue of material fact sufficient to contradict the Department's sworn statements regarding the timeline of this controversy.

⁷ See *Laurence H. Grange v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-017 (Dane Co. Cir. Ct. 1993).

Petitioners mailed their Petition by regular mail. Regular mail is not certified mail or its equivalent for purposes of the applicable statutory exception stating a Petition is considered filed at the time of certified mailing.⁸ Therefore, the exception for certified mail does not apply in this case, and Petitioners' Petition was required to be received at the Commission on or before April 26, 2024 - 60 days after their receipt of the Notice of Action on February 26, 2024.⁹ Unfortunately, the Petition for Review was received four days late, on April 30, 2024. The Commission has no choice and must apply the statutory appeal timelines as written.¹⁰

CONCLUSIONS OF LAW

1. Petitioners did not file their Petition for Review with the Commission within 60 days after receipt of the Department's Notice of Action on the Petition for Redetermination, therefore, the Commission lacks subject matter jurisdiction to hear the appeal. Wis. Stat. § 73.01(5)(a).

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

⁸ *McDonald Lumber Co. v. Dep't of Revenue*, 117 Wis. 2d 446, 447, 344 N.W.2d 210 (Wis. Ct. App. 1984).

⁹ Wis. Stat. § 990.001(4)(a).

¹⁰ *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 Petitioners' Petition for Review is Dismissed.

Dated at Madison, Wisconsin, this 24th day of October, 2024.

WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Chair



Jessica Roulette, Commissioner



Kenneth P. Adler, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"