

FILED

STATE OF WISCONSIN
TAX APPEALS COMMISSION

MAR 26 2025

Wisconsin Tax Appeals Commission
Nicole Allee - Legal Assistant

JAMES & TALIA LUECKE,

DOCKET NO. 24-I-211

Petitioners,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

KENNETH P. ADLER, COMMISSIONER:

The Petitioners, James and Talia Luecke, appear *pro se* in this matter. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Heather M. Morrissey. The Respondent submitted a Motion to Dismiss the Petitioners' Petition for Review as untimely and has filed an affidavit and a supplemental letter in support of its Motion. The Petitioners filed a response. For the reasons stated below, we find that the Petitioners did not file their Petition for Review to the Commission in a timely manner as required by statute, and therefore we grant the Department's Motion to Dismiss.

FACTS

1. On December 29, 2023, the Department issued two Notices of Office Audit Amount Due to Petitioners: one for tax year 2019 for the amount of \$4,883.11 and one for tax years 2021 and 2022 for the amount of \$530.74. The Notices informed Petitioners they could file Petitions for Redetermination. (Hans's Affidavit Aff. ¶ 2, Exhibits A, B).

2. On or about January 8, 2024, Petitioners submitted two Petitions for Redetermination: one for tax year 2019 and one for tax years 2021 and 2022. (Hans' Aff. ¶ 3, Exhibits C, D).

3. The Department denied the Petitions for Redetermination by a Notice of Action dated June 20, 2024, that combined all three tax years 2019, 2021 and 2022. Petitioners received the Notice of Action on June 27, 2024. (Hans' Aff. ¶ 4, Exhibit E).

4. The Notice informed Petitioners they had 60 days from receipt of the Notice of Action to file a Petition for Review with the Tax Appeals Commission. (Exhibit E).

5. The 60-day filing period for the Petitioner to file a Petition for Review with the Tax Appeals Commission ended August 26, 2024. (Hans' Aff. ¶ 5).

6. On October 1, 2024, the Commission received Petitioners' Petition for Review. The Petitioners' submission was sent via regular mail and postmarked September 16, 2024. (Commission file).¹

7. On October 23, 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.

8. On December 23, 2024, Petitioners submitted a response to the Department's Motion to Dismiss, pursuant to a Memorandum and Order issued by the Commission following a December 11, 2024, Status Conference.

¹ The Commission notes the Affidavit of Alexander Hans states there is an Exhibit F attached to the affidavit. No Exhibit F was attached to the copy received by the Commission. However, the Commission file has the original copy of Petitioners' Petition for Review which is date-stamped as received by the Commission on October 1, 2024.

ISSUE

The issue in this case concerns the timeliness of Petitioners' Petition for Review to the Tax Appeals Commission. Petitioners assert they were extremely busy working during the months of May through October doing seasonal work with local resort motel businesses and acknowledge they were behind in reading their mail and correspondence during this period. They also believe the appeal process is convoluted and explain it was not clearly defined or concisely understood by them, specifically referring to the two processes available when they disagreed with the Department's actions: (1) the initial Petitions for Redetermination filed with the Department to contest the Department's 29, 2023 Notices of Office Audit Amount Due to Petitioners and (2) the subsequent Petition for Review filed with the Commission to contest the Department's June 20, 2024 Notice of Action. Finally, Petitioners assert they have reason to believe that the documents produced by the Department are not true and exact and reference a federal IRS reporting record in accordance with federal law IRC § 6103(d).²

The Department argues Petitioners' Petition for Review was not timely submitted to the Commission, and therefore the Commission does not have jurisdiction to review the underlying issues raised by Petitioners.

APPLICABLE LAW

A Motion to Dismiss will be granted if the Commission finds it does not have jurisdiction to review a case because a valid and timely Petition for Review has not

² Petitioners' submission did not expound on this assertion to clarify what, exactly, was not considered true and accurate or how the IRC section cited was relevant to that assertion.

been filed with the Commission. Without jurisdiction to hear the matter, the Commission has no alternative other than to dismiss the action.³

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 is 'filed' with the Commission under Wis. Stat. § 73.01(5)(a) has consistently been held to be the date on which the Petition for Review has been physically received in the Commission office.⁴ Therefore, unless otherwise provided by statute, a document is filed on the date it is *received* by the Commission, not the date it is mailed.⁵

³ See *Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002).

⁴ See *Edward Mischler v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-159 (WTAC 1983)

⁵ See *Laurence H. Grange v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-017 (Dane Co. Cir. Ct. 1993).

The Petitioners' Petition for Review was required to be received at the Commission on or before August 26, 2024 - 60 days after receipt of the Department's Notice of Action on June 27, 2024. Wis. Stat. § 990.001(4)(a). Unfortunately, the Petition for Review was received 36 days late, on October 1, 2024. This is not a matter for discretion; the Commission has no choice in the matter.⁶

CONCLUSIONS OF LAW

1. That as Petitioners 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.

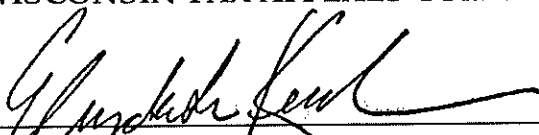
⁶ *Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002).

ORDER

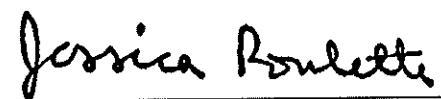
That the Department's Motion to Dismiss is granted and Petitioners' Petition for Review to the Commission is Dismissed.

Dated at Madison, Wisconsin, this 26th day of March, 2025.

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 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.