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Wisconsin Tax Appeals Commission
Nicole Allee - Legal Assistant

STATE OF WISCONSIN
TAX APPEALS COMMISSION

MICHELLE PRIEBE,

DOCKET NO. 24-I-149

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 Partial Summary Judgment. The Petitioner, Michelle Priebe, appears by Mr. Genaro Cardaropoli, CPA. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Dominic L. Weisse. The Department has filed a brief and affidavit with attached exhibits in support of its Motion. Petitioner's representative has filed a Response to the Department's Motion for Partial Summary Judgment. Petitioner herself has filed a Brief in Response to the Department's Motion for Partial Summary Judgment, and a subsequent Amended Brief in Response to the Department's Motion for Summary Judgment.

The Commission finds that the refund claim filed by the Petitioner for 2018, the denial of which is one issue appealed by Petitioner in this matter, was not filed within four years of the unextended due date of the Petitioner's return, and as such it was not timely. Therefore, the Commission lacks jurisdiction to examine the merits of the appeal and must dismiss the portion of the Petition which pertains to the 2018 tax year.

FACTS

1. Ms. Priebe's 2018 Wisconsin income tax return was due April 15, 2019. (Affidavit of Alexander Hans ("Hans Aff."), ¶ 3.)
2. The due date for Ms. Priebe to file a claim for refund with regard to her 2018 Wisconsin income tax return was unextended. (Hans Aff., ¶4.)
3. On August 25, 2023, Ms. Priebe signed her amended 2018 Wisconsin income tax return. (Hans Aff., ¶ 6.)
4. On August 31, 2023, the Department received Ms. Priebe's amended 2018 Wisconsin income tax return. (Hans Aff., ¶ 5.)
5. On October 19, 2023, the Department issued to Ms. Priebe a Notice denying Ms. Priebe's claim for refund in the amount of \$3,055.00 for tax year 2018, pursuant to Wis. Stat. § 71.75(2), because the claim was filed more than four years after the original due date. (Hans Aff., ¶ 8, Ex. A.)
6. On March 27, 2024, the Department denied Ms. Priebe's timely filed petition for redetermination. (Hans Aff., ¶ 9, Ex. B.)
7. On April 25, 2024, Ms. Priebe filed a Petition for Review with the Commission which has been docketed as appeal number 24-I-149. (Commission file.)

8. The Petition for Review seeks Commission review of Department actions for tax years 2018, 2019, 2020, and 2021. (Commission file.)

APPLICABLE LAW

Wis. Stat. § 71.75 Claims for refund.

- (1) Except as provided in ss. 49.855, 71.77 (5) and (7) (b) and 71.935, the provisions for refunds and credits provided in this section shall be the only method for the filing and review of claims for refund of income and surtaxes, and no person may bring any action or proceeding for the recovery of such taxes other than as provided in this section.
- (2) With respect to income taxes and franchise taxes, except as otherwise provided in subs. (5) and (9) and ss. 71.30 (4) and 71.77 (5) and (7) (b), refunds may be made if the claim therefor is filed within 4 years of the unextended date under this section on which the tax return was due.

ANALYSIS

Summary judgment is warranted where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Wis. Stat. § 802.08(2). In addition, assessments made by the Department are presumed to be correct, and the burden is upon the Petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984); Wis. Stat. § 77.59(1).

Under Wis. Stat. § 71.75(2), a claim for refund of income tax must be filed within four (4) years of the unextended date on which the tax return was due for the time period for which a refund is sought. In this appeal, the unextended due date for a claim

for refund is four (4) years from April 15, 2019. This means that the claim for refund must have been filed no later than April 15, 2023. The Department submitted an affidavit attesting to the date on which the Department received Petitioner's amended 2018 Wisconsin income tax return. Petitioner has submitted no information to rebut that affidavit. Therefore, it is undisputed that Petitioner signed her amended 2018 Wisconsin tax return on August 25, 2023, and that the amended return was first received by the Department on August 31, 2023. Both dates were more than four (4) months past the statutory deadline for filing a claim for refund for 2018.

The statute allows certain exceptions to the four-year rule, none of which apply to this case: Petitioner's claim was not made within four years of an audit, it was not subject to attachment under delinquent child support laws or maintenance obligations or debts to other state entities, it does not concern a defense contract, it does not involve an IRS adjustment of her 2018 federal income tax return, and the Department did not agree in writing to an extension before the expiration of the deadline. Therefore, the Department cannot grant the requested refund, and the Commission cannot examine the merits of Petitioner's appeal of that denial. Examination of the timeline of filings by Petitioner in no way confers subject matter jurisdiction upon the Commission, but such examination is necessary to determine whether the Commission has jurisdiction to determine the merits of an appeal. The Commission's jurisdiction is granted by statute, and the Commission may only exercise jurisdiction as allowed by statute.

The majority and the dissent consider the issue of the Commission's subject matter jurisdiction quite differently. Our fundamental point of view is that subject matter

jurisdiction requires both the right to hear cases within a specified topical or statutory area, AND the power to grant relief in such cases. Let us begin with a review of the definitions of jurisdiction and subject matter jurisdiction. According to Barron's Law Dictionary¹, jurisdiction is "the power to hear and determine a case. . . . This power may be established and described with reference to particular subjects or to parties who fall into a particular category." Ballentine's Law Dictionary defines jurisdiction as:

A term used in two senses as it applies to a court: (1) In a general sense, the abstract right of a court to exercise its powers in causes of a certain class; (2) in a particular sense, the right of a tribunal to exercise its power with respect to a particular matter. In other words, the power of the court over the subject matter, over the res or property in contest, and for the rendition of the judgment or decree the court assumes to make. . . . Sometimes referring to the power or authority of administrative or executive agencies, even to the power of the state. 20 AmJ2d Cts § 87.²

Black's Law Dictionary, 11th Ed, defines jurisdiction as, "A court's power to decide a case or issue a decree."³ Black's continues, noting "'Rules of jurisdiction in a sense speak from a position outside the court system and prescribe the authority of the courts within the system."⁴ While that exposition focuses on the constitutional issues limiting federal courts, the same principle applies to statutory limitations on quasi-judicial agencies. All three law dictionaries provide additional definitions of subject matter jurisdiction. Barron's defines

¹ *Jurisdiction*, LAW DICTIONARY, BARRON'S LEGAL GUIDES (3rd Ed., 1991).

² *Jurisdiction*, BALLENTINE'S LAW DICTIONARY WITH PRONUNCIATIONS (3rd Ed., 1969), p. 690, internal citations omitted.

³ *Jurisdiction*, BLACK'S LAW DICTIONARY (11th Ed., 2019), p. 1017.

⁴ *Ibid.*, quoting Fleming, James Jr., Godfrey C. Hazard Jr. & John Leubsdorf, Civil Procedure § 2.1 at 55 (5th ed. 2001).

this as the competency of the court to hear and determine a particular category of cases⁵. Barron's further references the definition of "limited jurisdiction," which it defines as "courts that are only authorized to hear and decide certain or special types of cases."⁶ Ballentine's defines "jurisdiction of the subject matter," as "The power of a court to hear and determine cases of the general class to which the action in question belongs."⁷ Black's defines subject-matter jurisdiction slightly differently, as "Jurisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things."⁸ "Jurisdictional" is further defined in Ballentine's as "Vital or essential to the jurisdiction of the court or other tribunal before which a matter is pending."⁹ All of these definitions include two elements as required for jurisdiction: power to hear the matter (Barron's); the right to exercise power in causes of a certain class (Ballentine's); jurisdiction over the nature of the case (Black's); AND power to grant the relief sought (Barron's); the right of a tribunal to exercise its power with respect to a particular matter; the power of a court to determine cases (Ballentine's); jurisdiction over the type of relief sought (Black's). In other words, in order to have subject matter jurisdiction over a matter, the Commission must be able to hear cases of this type and have the power to grant the relief sought. It is the second prong of subject matter jurisdiction that the Commission lost when Ms. Priebe failed to file her 2018 claim for refund within four years of its original due date. While not every opinion written by the Commission has stated

⁵ BARRON'S, *Id.* at 260.

⁶ BARRON'S, *Id.* at 741.

⁷ BALLENTINE'S, *Id.* at 691.

⁸ BLACK'S, 11th Ed., *Id.* at 1020.

⁹ BALLENTINE'S, *Id.* at 690.

precisely the basis for finding a lack of jurisdiction, and while none of the opinions have distinguished between the two prongs of this test of subject matter jurisdiction when ruling that a petitioner's appeal was dismissed because we lack jurisdiction, we have generally so ruled since 1972, when we decided *Popp v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 200-812 (WTAC 1972).¹⁰ We believe these cases were decided correctly. We also believe that even if there is a reasonable argument in favor of explaining the outcomes differently, more than fifty years of precedent should not be overturned and the Commission's use of the term "lack of subject matter jurisdiction" should be understood as we have used it.

Most of the definitions of jurisdiction and subject matter jurisdiction focus on courts (in particular, federal courts), with limited discussion of quasi-judicial actions taken by agencies. However, we are not a court, with the distinct powers granted to courts under the Constitutions of the United States or the State of Wisconsin. We are not a co-equal branch of government, even within our prescribed area of authority. We are an agency of the executive branch with limited, quasi-judicial powers. Because we are an independent agency of the State of Wisconsin, and all of our responsibilities are quasi-judicial, as distinct from rulemaking or ministerial, the Commission occupies an unusual position. We exist only because of the statutory authority which created the Tax Appeals Commission, and all of our power and authority is explicitly granted to us by the Wisconsin Legislature. Commissioners are appointed by the Governor and confirmed by the State Senate, and the

¹⁰ See also, *Bower v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-421 (WTAC 1999), *Kohlbeck et al. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-445 (WTAC 1999), *Smith v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-595 (WTAC 2002), *Lueneburg v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-748 (WTAC 2004), and *Spear v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-537 (WTAC 2012).

capacity for our doing our work is supported in part by the Department of Administration¹¹. As such, it is the majority's opinion that we lack subject matter jurisdiction to make decisions in any matter to which we have not been specifically granted authority by the Wisconsin Legislature. The framework for determining whether or not we have been granted subject matter jurisdiction begins with our enabling statute, Wis. Stat. 73.01, but it does not end there. We may find that under Chapter 73, a case is properly before us, but the dispute fails to state a claim for which relief can be granted based on an underlying failure, such as in this case where Petitioner failed to file her refund claim within four years of the unextended deadline to file her taxes. If a case is filed before us using the correct procedure for filing, we may not ignore it. The Commission's clerk does not have the authority to reject out of hand any paperwork that appears to be intended to initiate an appeal to the Commission. However, accepting a filing and beginning the process of review of an appeal is not the same as agreement that subject matter jurisdiction exists.

The majority in this appeal today again holds that when a refund claim is untimely, the Commission lacks subject matter jurisdiction. This lack of jurisdiction bars the Commission from considering the merits of Petitioner's refund claim. In so holding, we follow both our own prior decisions, as well as authority set forth by a reviewing court. The Court of Appeals wrote, when reviewing a prior Commission decision in an appeal of the denial of untimely claim for refund, that the Commission "has held that if a taxpayer fails to file a refund claim within the time prescribed by statute, it lacks subject matter jurisdiction

¹¹ The Department of Administration supports us with technology, tech support, hiring, employee performance reviews, payroll, facilities management, and similar necessary "behind the scenes" work that is outside of the scope of our responsibilities, but which is necessary for the functioning of the office.

to determine whether the refund claim is valid. We agree with [the Commission]’s interpretation.” *Gilbert v. Dep’t of Revenue*, 246 Wis. 2d 734, 739, 633 N.W.2d 218 (Ct. App. 2001). The holding of the Court of Appeals is binding upon the Commission. The reasoning of the Court of Appeals is also correct. Where the legislature provides a solitary method of claiming a refund, which includes the filing of a timely claim, a taxpayer cannot skip over the required initial, timely filing of that claim, and then claim to have recourse to review by the Commission of the denial of that claim for refund. The precedent and reasoning set forth by the Court of Appeals, as well as the principle of *stare decisis* and the holdings of the Commission on this question since 1999, are binding upon this Commission and are followed in this ruling and order.

CONCLUSIONS OF LAW

1. For the 2018 tax year, Petitioner’s time to file a claim for refund expired on April 15, 2023. Pursuant to Wis. Stat. § 71.75(2), because Petitioner’s claim for refund was filed in conjunction with an amended return filed on August 31, 2023, the claim for refund was not timely.

2. The Commission lacks jurisdiction over the portion of the Petition for Review relating to the claim for refund for the 2018 tax year under Wis. Stat. § 71.75(2) because the claim for refund was untimely. Therefore, the Department is entitled to dismissal of the portion of the Petition which pertains to the 2018 tax year as a matter of law.

ORDER

Based on the foregoing, it is the order of this Commission that the Department's Motion for Partial Summary Judgment is granted and the portion of the Petition for Review which pertains to Petitioner's 2018 Wisconsin income tax return is dismissed with prejudice to refiling.

Dated in Madison, Wisconsin, this 10th day of September, 2024.

WISCONSIN TAX APPEALS COMMISSION


Elizabeth Kessler, Chair


Jessica Roulette, Commissioner

(concur in part, dissents in part)
Kenneth Adler, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

KENNETH P. ADLER, COMMISSIONER, *CONCURRING IN PART*

AND DISSENTING IN PART:

I agree with the majority's first Conclusion of Law that

1. For the 2018 tax year, Petitioner's time to file a claim for refund expired on April 15, 2023. Pursuant to Wis. Stat. § 71.75(2), because Petitioner's claim for refund was filed in conjunction with an amended return filed on August 31, 2023, the claim for refund was not timely.

I do not agree with the majority's second Conclusion of Law that

2. The Commission lacks jurisdiction over the portion of the Petition for Review relating to the claim for refund for the 2018 tax year under Wis. Stat. § 71.75(2) because the claim for refund was untimely. Therefore, the Department is entitled to dismissal of the portion of the Petition which pertains to the 2018 tax year as a matter of law.

The reason I do not agree is because Wis. Stat. § 71.75(2) is not a jurisdictional statute as it relates to the Tax Appeals Commission (Commission). It does not prevent the Commission from reviewing its provisions or deciding whether an individual complied with those provisions. Only Chapter 73 of the Wisconsin Statutes provides jurisdiction for the Commission to review Wis. Stat. § 71.75(2) and decide whether a taxpayer complied with its provisions. Wis. Stat. § 71.75(2) has no authority over the Commission and cannot interfere with its jurisdiction.

Jurisdiction in General

The universal general definition of jurisdiction is found in Black's Law Dictionary, which states jurisdiction is "[a] court's power to decide a case or issue a

decree.”¹² The Dictionary then provides 60 examples of specific types of jurisdiction, including *agency*¹³, *limited*¹⁴ and *subject matter*.¹⁵

**Jurisdiction of the Tax Appeals Commission
is defined and limited by Chapter 73 of the Wisconsin Statutes**

The powers of administrative agencies, including the Commission, are limited to those expressly granted by the legislature or necessarily implied by the statutes. This is a combination of agency, limited, and subject matter jurisdiction. As the Wisconsin Supreme Court stated in *DOR v. Hogan*, 198 Wis. 2d 792, 816, 543 N.W.2d 825 (1995):

Few principles are as well established as the proposition that administrative agencies, as entities created by the legislature as part of the executive branch of government, have only such powers as are expressly granted to them by the legislature, or as may be necessarily implied from the applicable statutes...In determining the nature and scope of an agency's powers, its enabling statutes are to be 'strictly construed to preclude the exercise of a power not expressly granted,' and '[a]ny reasonable doubt as to the existence of an implied power should be resolved against [the agency].’”

Chapter 73 of the Wisconsin Statutes limits this agency’s jurisdiction to particular subject matters. Wis. Stat § 73.01(4), titled “Powers and Duties Defined,” states, “[s]ubject to the provisions for judicial review contained in s. 73.015, the commission shall be the final authority for the hearing and determination of all questions of law and fact arising under . . .” and then lists specific enumerated provisions of the Wisconsin statutes.

¹² BLACK’S 11th Ed., *Id.* at 1017

¹³ *Id.* at 867. *Agency jurisdiction*. The regulatory or adjudicative power of a government administrative agency over a subject matter or matters.

¹⁴ *Id.* at 869. *Limited jurisdiction*. Jurisdiction that is confined to a particular type of case or that may be exercised only under statutory limits and prescriptions.

¹⁵ *Id.* at 870. *Subject matter jurisdiction*. Jurisdiction over the nature of the case and the type of relief sought the extent to which a court can rule on the conduct of persons or the status of things.

The list of specifically enumerated provisions over which the Commission is authorized to hear and determine questions of law includes a 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” and states that taxpayer may, subject to deadlines and procedures, file an appeal with the Commission.¹⁶ These redeterminations typically involve income tax, sales tax, tax withholding, tax credits, or disputes over the applicability of tax exemptions.

Based upon the above, Wis. Stat. § 73.01(4) granted the Commission the power and authority to accept Petitioner’s appeal involving Wis. Stat. § 71.75(2) and review the merits of the petition. Therefore, I agree with Conclusion of Law number one.

**Powers and duties of the Department of Revenue
are defined by Chapter 71 of the Wisconsin Statutes**

The Commission recently provided a helpful discussion of the Commission’s jurisdiction in *Town of La Pointe*:¹⁷

Our jurisdiction is considerably more narrow than that of the Department of Revenue. In addition to administering (or, in the case of many property tax matters, participating with municipalities in administering) nearly every Wisconsin tax,¹⁸ the Department is also tasked with the administration of the Wisconsin Lottery¹⁹ and the Wisconsin Unclaimed Property Act.²⁰

¹⁶ Wis. Stat. § 73.01(5).

¹⁷ *Town of La Pointe v. Dep’t of Revenue*, (WTAC) 23-J-183 (August 14, 2024). In this case, the Commission explained we do not have subject matter jurisdiction over the taxpayer’s appeal because the statutes and matters at issue are not enumerated in Chapter 73 of the Wisconsin Statutes.

¹⁸ Generally, Wisconsin Statutes Chapters 70 through 79.

¹⁹ Wis. Stat. § 565.01(1) and (2)

²⁰ Wis. Stat. § 177.01(1)

Chapter 71, titled "Income and Franchise Taxes for State and Local Revenues," includes the statute at issue and provides:

Wis. Stat. § 71.75 Claims for refund.

- (3) Except as provided in ss. 49.855, 71.77 (5) and (7) (b) and 71.935, the provisions for refunds and credits provided in this section shall be the only method for the filing and review of claims for refund of income and surtaxes, and no person may bring any action or proceeding for the recovery of such taxes other than as provided in this section.
- (4) With respect to income taxes and franchise taxes, except as otherwise provided in subs. (5) and (9) and ss. 71.30 (4) and 71.77 (5) and (7) (b), refunds may be made if the claim therefor is filed within 4 years of the unextended date under this section on which the tax return was due.
[emphasis added]

The bolded portions of the statute detail the timeframe in which a taxpayer must request a refund or credit with the Department. If the taxpayer does not comply with those timelines, the statute explains the person "may bring no action or proceeding for the recovery of such claims." That directive applies to the taxpayer's ability to have the Department act on the claim for refund. The statute does not state such claims, once denied by the Department pursuant to these statutory timelines, may not be brought to the Commission for review.

Prior decisions of the Commission have approached this jurisdictional question in two different ways.

The majority opinion cites several cases where the Commission has concluded Wis. Stat. § 71.75(2) prevents the Commission from reviewing a taxpayer's late claim for refund because the Commission lacks jurisdiction under that statutory provision. However, as detailed in the footnote below, the history of the cases reveals some incorrect

interpretation and referencing beginning with *Bower*.²¹ Interestingly, starting with that case in 1999, the majority of the decisions cited were issued during a 5 year period when the composition of the Commission remained relatively the same. However, other decisions by the Commission since that time, involving the exact same fact scenario and statutory provision, do not make a conclusion of law that the Commission lacks subject matter jurisdiction. Instead, those decisions explain the taxpayer does not prevail, because the taxpayer did not comply with the strict time provisions of Wis. Stat. § 71.75.²² I believe this is a better conclusion in resolving the case.

²¹ Some cases reference “subject matter jurisdiction” while others simply refer to “jurisdiction.” See footnote 10 of the majority opinion. Some of cases clearly cite a statute when referencing jurisdiction as a Conclusion of Law – others do not. The series of cases actually starts with *Popp v. Dep’t of Revenue*, (WTAC) I-3625 (April 28, 1972) which, at paragraph 12 stated:

“This Commission lacks jurisdiction to reopen the petitioners 1945 and 1953 income years and hear the merits of the petitioners claims for refunds or credits for said years, asserted in the petitioner’s petition, when the granting of such claims for refunds or credits is expressly forbidden by statute.”

While paragraphs 9 and 10 of the case provided citations to sections of Chapter 71 and Chapter 73 of the Wisconsin Statutes, this paragraph provided no citation for its jurisdiction conclusion. It is not clear which statute the Commission believed expressly forbid the granting of the refund. Especially when other parts of the case explained the Commission did not have jurisdiction over a collection statute – referencing Wis. Stat. §§ 73.01(4)(a) and 73.01(5)(b) as the appropriate basis for the lack of jurisdiction conclusion.

Then *Evers* (1984) stated the taxpayer was barred from claiming the refund per Wis. Stat. § 71.10(10)(bn) but made no mention of jurisdiction.

Then *Bower* (1999) incorrectly referenced both *Popp* and *Evers* stating:

“In at least two prior cases, this Commission has addressed a situation in which claims for refund were filed later than four years after their unextended filing due dates. In both cases, the Commission held that when the filing is late (and no exemption applies), the Commission lacks subject matter jurisdiction and, therefore, is barred from considering the merits of petitioner’s arguments. See *Popp* [citation omitted] and *Evers* [citation omitted]. That conclusion also applies here . . . ”

That summary was incorrect. Neither case mentioned subject matter jurisdiction and *Evers* did not mention jurisdiction at all. But the cases were then off and running. With the Court of Appeals in *Gilbert* stating “we agree with TAC’s interpretation” of *Bower*. While Court of Appeals cases can be cited as precedent, for the reasons explained throughout this Concurrence/Dissent I do not believe it is appropriate, or necessary, to cite the Court of Appeals decision as it relates to the issue of the taxpayer’s failure to follow the Department’s requirements for review of a claim for refund.

²² *Keller v. Dep’t of Revenue*, (WTAC), 17-I-198 (December 3, 2018), *DiMoff v. Dep’t of Revenue*, (WTAC), 09-I-240 (June 3, 2011)

First, the Commission does not lack jurisdiction over the Petition for Review under Wis. Stat. § 71.75(2). The Commission accepted the Petition for Review and now issues a Ruling and Order applying the facts of the case to Wis. Stat. § 71.75(2). The Commission has reviewed specific portions of the Department's statute to conclude Petitioner has not complied with those specific statutory provisions. That is not "lacking jurisdiction over the Petition for Review." It is the opposite. The Commission has fully reviewed the record, fully reviewed the Department statute at issue, and issued a Ruling and Order applying the facts to the statute.

Second, it is correct that the facts of the case, when applied to Wis. Stat. § 71.75(2), result in the conclusion that Petitioner is barred from seeking a review of that untimely claim for refund with the Department pursuant to the provisions of Wis. Stat. § 71.75(2). The statute itself states "no person may bring any action or proceeding for the recovery of such taxes other than as provided in this section." It does not, however, state no person may appeal that untimely claim for refund to the Commission for a review of that untimeliness.


Third, it is correct that jurisdiction is lacking when a taxpayer fails to timely appeal *to the Commission*, preventing review of the Department statute under appeal. However, that it is not the case here. The taxpayer failed to comply with the *Department's* statute regarding timeliness. That does not prevent the Commission from reviewing that matter when the taxpayer timely files with the Commission. In fact, it is the Commission's responsibility - if granted in Chapter 73 - to review the facts surrounding compliance with the Department's statute to determine if a taxpayer prevails.

Finally, the cases cited as precedent assert the Commission lacks jurisdiction based upon Wis Stat. § 71.75 which is a statute governing the Department of Revenue, not the Commission. *See* Chapter 71, Income and Franchise Taxes for State and Local Revenues. The Tax Appeals Commission is not mentioned in any of the subsections of Chapter 71. And none of the cases cited base an asserted lack of jurisdiction or subject matter jurisdiction utilizing any provision of Chapter 73.

In conclusion, the Tax Appeals Commission either has jurisdiction to review a case or it does not. Here, the majority correctly concluded Chapter 73 of the Wisconsin Statutes granted jurisdiction over Wis. Stat. § 71.75. I concur with that conclusion. Where I respectfully dissent is the conclusion that Wis. Stat. § 71.75 subsequently dictates the Commission does not have jurisdiction. The statute does not – only chapter 73 dictates the Commission’s jurisdiction. My suggested Conclusion of Law 2 would state that because Petitioner’s claim for refund was untimely under Wis. Stat. § 71.75(2), she is not eligible for the claimed refund.

Dated at Madison, Wisconsin, this 10th day of September, 2024.

WISCONSIN TAX APPEALS COMMISSION



Kenneth P. Adler, Commissioner
Concurring in Part and Dissenting in Part

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.