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STATE OF WISCONSIN  
DEPARTMENT OF REVENUE  
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LEGAL DIVISION

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY  
BRANCH 18  
CIVIL DIVISION

JOHN D. HENNICK,

Appellant,

D E C I S I O N

vs.

A N D

WISCONSIN DEPARTMENT  
OF REVENUE,

O R D E R

Respondent.

Case No. 588-518

This case comes before the Court upon the Defendant's Motion To Dismiss the Appellant's Petition for a Trial by Jury. The basis for the Defendant's Motion To Dismiss is that this Court lacks subject matter jurisdiction to proceed since more than 30 days elapsed between the date of the decision of the Tax Appeals Commission (April 30, 1983) and service by the Appellant of a Notice of Appeal (July 12, 1983).

Appellant contends that he should be allowed to proceed regardless of the fact that more than 30 days elapsed between the rendering of the decision and the service of his Notice of Appeal because the Department of Revenue never advised him of the thirty-day requirement.

This Court certainly can understand the taxpayer's frustration with government when it appears that a decision that he wanted to appeal and had the right to appeal must now be allowed to stand unchallenged because of procedural requirements related to timely filing. However, an examination of the statutes and case law show that this Court does not have subject matter jurisdiction and cannot provide any relief to the Appellant. This case fits squarely under the doctrine of Cudahy v. Department of Revenue, 66 Wis. 2d 253 (1974) and it must be followed. The Court has no authority to exercise any discretion in this case on the issue of timely filing.

Accordingly, the Motion to Dismiss filed by the Defendant is granted and this case is dismissed without costs.

Dated this twelfth day of October, Nineteen Hundred Eighty-Two.

BY THE COURT:



Harold B. Jackson, Jr.  
Circuit Court Judge