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Wisconsin Tax Appeals Commission
Katelyn Bowman - Legal Secretary

STATE OF WISCONSIN
TAX APPEALS COMMISSION

JAMES S. AND RITA KIRCHOFF,

DOCKET NO. 24-I-154

Petitioners,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

CORRECTED¹ RULING AND ORDER

KENNETH P. ADLER, COMMISSIONER:

Petitioners, James S. and Rita Kirchoff², appear *pro se* in this matter. The Respondent, the Wisconsin Department of Revenue ("the Department"), was represented

¹ The Commission reissues this Ruling and Order because the Notice of Appeal Information attached to the Ruling and Order issued on October 24, 2024, incorrectly stated the appeal options available to the parties. Pursuant to Wis. Stat. § 227.48(2):

Each decision shall include notice of any right of the parties to petition for rehearing *and* administrative or judicial review of adverse decisions, the time allowed for filing each petition and identification of the party to be named as respondent. No time period specified under s. 227.49 (1) for filing a petition for rehearing, under s. 227.53 (1) (a) for filing a petition for judicial review or under any other section permitting administrative review of an agency decision begins to run until the agency has complied with this subsection. (emphasis added)

The original Notice of Appeal Information in this matter included only instructions for obtaining judicial review. This reissuance, with the correct Notice of Appeal information attached immediately following the Ruling and Order, has no effect other than to restart the deadlines for the correct appeal options. There have been no other changes to the Ruling and Order.

² 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).

by Attorney Jeffrey A. Evans and Attorney Bridget D. Laurent.³ 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 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.⁴ (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

³ Attorney Evans retired from the Department in August 2024, and the case was transferred to Attorney Bridget D. Laurent.

⁴ Appeals to the Department are formally designated as Petitions for Redetermination.

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.)

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.⁵ (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.)

⁵ Appeals to the Commission are formally designated as Petitions for Review.

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

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.⁶

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

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

the Petition is physically received in the Commission office.⁷ Therefore, unless otherwise provided by statute, a document is filed on the date it is *received* by the Commission, not on the date it is mailed.⁸ 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

⁷ See *Edward Mischler v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-159 (WTAC 1983).

⁸ See *Laurence H. Grange v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-017 (Dane Co. Cir. Ct. 1993).

a disputed issue of material fact sufficient to contradict the Department's sworn statements regarding the timeline of this controversy.

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.⁹ 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, 2024.¹⁰ 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.¹¹

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.

⁹ *McDonald Lumber Co. v. Dep't of Revenue*, 117 Wis. 2d 446, 447, 344 N.W.2d 210 (Wis. Ct. App. 1984).

¹⁰ Wis. Stat. § 990.001(4)(a).

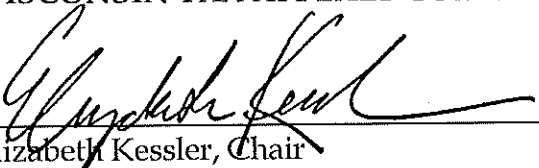
¹¹ *Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002).

ORDER

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

Dated at Madison, Wisconsin, this 6th day of November, 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 St, 5th Floor
Madison, Wisconsin 53703

NOTICE OF APPEAL INFORMATION

NOTICE OF RIGHTS FOR REHEARING, OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH,
AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternately, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, 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.