FILED

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Wisconsin Tax Appeals Commission
Katelyn Bowman - Legal Secretary

STATE OF WISCONSIN

TAX APPEALS COMMISSION

JAMES & TALIA LUECKE, **DOCKET NO. 24-I-211**

Petitioners,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

CORRECTED[1] RULING AND ORDER

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

[1] The Commission reissues this Ruling and Order because the Notice of Appeal Information attached to the Ruling and Order issued on March 26, 2025, 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.

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).[2]

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[2] The Commission notes the Affidavit of Alexander Hans states there is an Exhibit F attached to the

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.

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

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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.

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).[3]

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 been filed with the Commission. Without jurisdiction to hear the matter, the Commission has no alternative other than to dismiss the action.[4]

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

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

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.[5] 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.[6]

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.[7]

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.

[5] See *Edward Mischler v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-159 (WTAC 1983)
[6] See *Laurence H. Grange v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-017 (Dane Co. Cir. Ct. 1993).
[7] *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 22nd day of October, 2025.

WISCONSIN TAX APPEALS COMMISSION

Elizabeth Kessler, Chair

Jessica Roulette

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.