

FILED

JUN 19 2025

Wisconsin Tax Appeals Commission

STATE OF WISCONSIN
TAX APPEALS COMMISSION

Drew Fox - Clerk

THANHLAN NGUYEN,

DOCKET NO. 25-I-053-SC

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DECISION AND ORDER

KENNETH P. ADLER, COMMISSIONER:

The Petitioner, Thanhlan Nguyen, appeared *pro se* in this matter. The Respondent, the Wisconsin Department of Revenue ("the Department"), was represented by Chief Counsel Dana Erlandsen. A Vietnamese interpreter interpreted the hearing as Petitioner's first language is Vietnamese and not English. The Respondent submitted a Motion to Dismiss Petitioner's Petition for Review as untimely and filed an affidavit and a supplemental letter in support of its Motion. The Petitioner filed no response. For the reasons stated below, the Commission concludes that Petitioner did not file her Petition for Review with the Commission in a timely manner as required by statute and therefore the Department's Motion to Dismiss is granted.

FACTS

1. On July 18, 2024, the Department issued Petitioner a *Notice of Amount Due – Individual Income Tax* for the tax year ending December 31, 2022. The Notice assessed

an amount due of \$1,467.54 and informed Petitioner she could appeal the assessment by filing a Petition for Redetermination with the Department. (Affidavit of Mary Nelson ¶ 2, Exhibit A).

2. On or about August 7, 2024, Petitioner submitted numerous documents to the Department which the Department considered a Petition for Redetermination. (Nelson Aff. ¶ 3, Exhibit B).

3. On December 5, 2024, the Department issued a *Notice of Action*, which denied Petitioner's Petition for Redetermination. That *Notice of Action* stated "if you disagree with this decision, you may appeal to the [Tax Appeals Commission]" and provided the address of the Commission, as well as the explanation that if an appeal was not taken to the Commission within 60 days, "the additional tax and interest will become final and due by the date indicated on the attached statement." The Department's USPS Tracking verifies that *Notice of Action* was retrieved from the post office on December 9, 2024. (Nelson Aff. ¶ 4, Exhibit C).

4. Upon receipt of the December 5, 2024, *Notice of Action*, Petitioner took the letter to her tax preparer in Chicago for advice as to what to do. Her tax preparer speaks Vietnamese and English. The tax preparer told Petitioner to submit additional information to the Department.

5. On January 23, 2025, the Department received additional information from Petitioner. (Nelson Aff. ¶ 5, Exhibit D). Petitioner mailed this information to the Department.

6. On January 31, 2025, Mary Nelson, the Department's Resolution Office Audit Supervisor, issued a letter to Petitioner, acknowledging receipt of the additional information and stating it did not change the decision of the Department. The letter further explained "[s]ince the Department of Revenue denied your appeal per the December 5, 2024, notice (copy enclosed), your next step is to appeal to the Wisconsin Tax Appeals Commission." The letter further confirmed "[i]nstructions that accompanied the notice of action [December 5, 2024] summarize the appeal rights available to you and the procedures for filing an appeal" and again stated if Petitioner appealed to the Commission she must do so "within 60 days of receiving your notice of action." A copy of the December 5, 2024, *Notice of Action* was included with the letter. (Nelson Aff. ¶ 5, Exhibit E).

7. The 60 day appeal period expired on Saturday, February 8, 2025. Therefore, the last day for Petitioner to file an appeal with the Commission was Monday, February 10, 2025. The Commission received Petitioner's Petition for Review on Wednesday, February 26, 2025. (Nelson Aff. ¶ 7, Exhibit F).

8. Petitioner received the Department's January 31, 2025, letter referencing and enclosing the December 5, 2024, *Notice of Action*. Petitioner again took those notices to her tax preparer within days of receipt. The tax preparer explained to Petitioner what the notices told Petitioner to do and told her to immediately mail her appeal to the Commission. However, Petitioner then placed those notices in the back of her car and left the country in early February 2025. Upon return in late February 2025,

Petitioner discovered the notices and hand-delivered her appeal to the Commission on Wednesday, February 26, 2025.

ISSUE

The issue in this case concerns the timeliness of Petitioner's Petition for Review to the Tax Appeals Commission. The Department argues Petitioner's Petition for Review was not timely submitted to the Commission and therefore the Commission does not have jurisdiction to review the underlying issue of Petitioner's income tax assessment.

Petitioner acknowledges she received all Department correspondence in a timely manner, was instructed what to do by her tax preparer, but testified she placed the January 31, 2025, letter in the back seat of her car and forgot about it. She then left the country for a period of time, and upon return found the letter and hand-delivered her appeal to the Commission on February 26, 2025.

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.¹

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

¹ See *Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002).

clerk of the commission a petition for review of the action of the department of revenue . . .

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.² Petitioners’ Petition for Review was required to be received at the Commission on or before Monday, February 10, 2025 – 60 days after receipt of the Department’s Notice of Action on December 9, 2024 as explained in Wis. Stat. § 990.001(4)(a).

Unfortunately, the Petition for Review in this case was received at the Commission 16 days late on February 26, 2025. Timely receiving, and then forgetting, a Notice of Action is not a valid reason for filing a late appeal. This is not a matter for discretion; the Commission has no choice in the matter.³

² 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.² The one exception in Wis. Stat. § 73.01(5)(a) states that a Petition for Review is timely 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.

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

CONCLUSIONS OF LAW

1. That as Petitioner 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.

ORDER

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

Dated at Madison, Wisconsin, this 19th day of June, 2025.

WISCONSIN TAX APPEALS COMMISSION



Kenneth P. Adler Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"

cc: Thanhlan Nguyen
Chief Counsel Dana J. Erlandsen

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.