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Wisconsin Tax Appeals Commission

Drew Fox - Clerk

STATE OF WISCONSIN

TAX APPEALS COMMISSION

DON AND SUE UTTER, **DOCKET NO. 25-I-116**

Petitioners,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DECISION & ORDER

KENNETH P. ADLER, COMMISSIONER:

This case comes before the Commission for decision on Respondent's Motion to Dismiss Petitioner's Petition for Review for lack of jurisdiction because Petitioners failed to timely file a Petition for Redetermination pursuant to Wis. Stat. § 71.88(1). The Petitioners, Donald and Susan Utter, appear *pro se* in this matter. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Nicole Pellerin. A hearing on the motion was held on Tuesday, March 27, 2026. For the reasons stated below, we find for Petitioners.

FINDINGS OF FACT

1. On October 12, 2023, the Department mailed a Field Audit Notification to Petitioners at 2726 Rolling View Road, Stoughton, WI 53589. (Hearing Exhibit A.)

2. On October 18, 2023, Petitioners completed Department Form A-222, titled **Power of Attorney**. Under **Part 1 – Taxpayer Information**, Petitioners provided their contact information. Under **Part 2 – Representative**(s), Petitioners checked the box "[a]ppointing a new or additional representative." Under **Part 3 – Representative is an Entity or Individual**, Petitioners checked the box "to grant authority to an entire entity or firm" and listed Consulting Services Tax & Accounting Inc, Jaime Laing, 7633 Ganser Way, Suite 202, Madison, WI 53719. The bottom of the second page of the Power of Attorney form states "Note: All notices that are automatically generated by the department's computer system (e.g. Notice of Amount Due or Notice of Refund/Offset) will be sent only to the taxpayer. Representatives may access copies of most notices through My Tax Account, if the taxpayer authorizes online access to the representative." (Hearing Exhibit B.)

3. On October 16, 2024, the Department issued a packet of information to Consulting Services Tax & Accounting Inc, 7633 Ganser Way, Suite 202.

Enclosed were:

a. A letter dated October 16, 2024, addressed to Consulting Services Tax & Accounting Inc, 7633 Ganser Way, Ste. STE 202, Madison, WI 53719. stating "[t]he enclosed field audit report and related documents regarding the income tax field audit of Donald L Utter II and Susan Utter are being sent to you in accordance with the instructions contained in the power of attorney form executed by the taxpayer. *Those instructions indicated that only you, as attorney in fact, were to receive* ***<u>all</u>*** *documents, including any bill or refund notice, relating to the field audit and the taxpayer was not to receive a copy. Accordingly, the taxpayer has not been sent any of the enclosed documents.*" [bold and underline in original, italics added][1]

[1] Exhibit C, WDOR 0005

b. A second letter dated October 16, 2024, addressed to Donald L Utter II & Susan Utter, 2726 Rolling View Rd., Stoughton WI 53589. That letter stated "[i]f you are of the opinion that this notice is incorrect you may file your appeal online . . . or send your written appeal to the Wisconsin Department of Revenue." At the bottom, the letter indicated it was cc'd to "Consulting Services Tax & Accounting Inc, c/o Jamie Laing."[2]

c. A Notice of Field Audit Amount Due – Individual Income Tax, dated October 16, 2024, addressed to Donald L Utter II and Susan Utter, 2726 Rolling View Rd. Stoughton WI 53589. The total amount due was $48,309.70 and attached was information informing Petitioners when and how to appeal that Notice to the Department.[3] The Notice also contained 31 pages of Audit Worksheets. None of the pages, including the Notice of Field Audit Amount Due – Individual Income Tax, were addressed to anyone other than Petitioners.[4]

d. A third letter dated October 16, 2024, addressed to Donald L Utter II and Susan Utter, 2726 Rolling View Rd., Stoughton WI 53589. This was a notice of better records required. The bottom of the letter indicated "certified mail; RRR" and "cc: Consulting Services Tax & Accounting Inc., c/o of Jamie Laing"[5]
(Hearing Exhibit C.)

4. A USPS Tracking outline indicates Tracking Number 9589071052701185094843 (the packet with correspondence dated October 16, 2024), was delivered, left with an individual, at an address of "Madison, WI 53719." at 1:03 PM on October 23, 2024, in Madison WI 53719. (Hearing Exhibit D.)

5. The United States Postal Service submitted confirmation to the Department, indicating the packet with correspondence dated October 16, 2024 (Tracking Number 9589071052701185094843), was "Delivered, Left with Individual" at "7633 Ganser Way, Madison, WI 53719-2092" on October 23, 2024 at 1:30 pm. In the Recipient

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[2] Exhibit C, WDOR 0006
[3] Exhibit C, WDOR 0009
[4] Exhibit C, WDOR 0007-0041
[5] Exhibit C, WDOR 0042-WDOR 0043

Signature box, "Jaime L. Laing" was written as well as a signature appearing to be that of Jaime Laing.[6] (Hearing Exhibit E.)

6. On January 8, 2025, the Department issued a Collection Notice. That Notice was mailed directly to Petitioners at their home address.

7. On or about February 7, 2025, Donald L Utter II personally visited the Department of Revenue to discuss the collection notice and explained the couple had received no paperwork from their Power of Attorney but also had received no prior notices from the Department regarding the audit and subsequent collection determination. On that date, Mr. Utter spoke with Department employee Jane Morgan and then submitted an online Petition for Redetermination, of the Notice of Field Amount Audit Due - Individual Income Tax. (Hearing Exhibit F.)

8. On or about July 21, 2025, the Department Resolution Officer issued a Notice of Action (pursuant to section 71.88.1 of the Wisconsin statutes), denying Petitioner's February 7, 2025, Petition for Redetermination. This Notice was issued directly to Petitioners and cc'd to their agent. (Hearing Exhibit G.)

9. On September 11, 2025, Petitioners timely appealed the July 21, 2025, Notice of Action to the Tax Appeals Commission.[7]

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[6] This verification was dated December 23, 20<u>25</u>, as it was requested during the preparation for the hearing.

[7] The Commission file indicates that Petition for Review was sent certified mail on September 11, 2025.

APPLICABLE LAW

State statutes outline the requirements for filing a valid and timely Request for Redetermination with the Department, a necessary step for a taxpayer to take before the Tax Appeals Commission has jurisdiction to consider a Petition for Review from a taxpayer.

> **Wis. Stats. § 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.
>
> **Wis. Stat. § 71.88(1)(a):** . . . any person feeling aggrieved by a notice of additional assessment, refund, or notice of denial of refund may, within 60 days after receipt of the notice, petition the department of revenue for redetermination.
>
> **Wis. Stat. § 71.88(2)(a):** [I]f no timely petition for redetermination is made within the time provided, the assessment, refund, or denial of refund shall be final and conclusive.
>
> **Wis. Stat. § 71.74 Department audits, additional assessments and refunds.**
> **(1)** Office audit. The department shall, as soon as practicable, office audit such returns as it deems advisable and if it is found from such office audit that a person has been over or under assessed, or found that no assessment has been made when one should have been made, the department shall correct or assess the income of such person.
> . . .
> **(10)** Notice to taxpayer of adjustment. The department shall notify the taxpayer, as provided in sub. (11), of any adjustment, correction and assessment made under sub. (1).
> **(11)** Notice of additional assessment. The department shall notify the taxpayer in writing of any additional assessment by office audit or field investigation. The department shall serve that notice as provided in s. 73.03 (73m).

Wis. Stat § 73.03 Powers and duties defined. It shall be the duty of the department of revenue, and it shall have power and authority:

. . .

(73m)

(a) To serve notice in any of the following ways, unless otherwise provided by law:

1. By serving notice as a circuit court summons is served.

2. By certified or registered mail.

3. By regular mail, if the intended recipient admits receipt or there is satisfactory evidence of receipt.

. . .

(c) For purposes of this subsection, if the intended recipient has appointed another person or entity to act on the intended recipient's behalf as its agent under a power of attorney, then service upon the agent constitutes service upon the intended recipient.

[underline added]

ANALYSIS

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 a petitioner's appeal to the Commission.[8]

The statutes explain a person must submit a Request for Redetermination to the Department within 60 days after receipt of a Department assessment, refund or notice of denial, if they wish to contest that notice.[9] If no Petition for Redetermination (Request for Redetermination) is made within the time provided the assessment, refund, or denial of refund is considered final and conclusive.[10]

Based upon the above, the Commission has long held that it does not have

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

[9] Wis. Stat. § 71.88(1)(b)

[10] Wis. Stat. § 71.88(2)(a)

jurisdiction to review actions of the Department where a person fails to file a timely Request for Redetermination with the Department[11]. This is because a person must be "aggrieved" by the Department's response to the Request for Redetermination to bring the issue to the Commission by filing a Petition for Review.[12] And a person cannot be aggrieved by the Department's response to a Request for Redetermination, when there is no Request for Redetermination made. In that situation, the Department's initial determination becomes final and the Commission does not have jurisdiction to consider a taxpayer appeal of that initial Department determination.

In this case, the factual question at the hearing on the Motion to Dismiss was whether Petitioners' designated agent, as indicated on the Department's Power of Attorney Form A-222, received the Department's Notice of Field Audit Amount Due - Individual Income Tax with the appeal language explaining the right to file a Petition for Redetermination with the Department. The Department asserted it was received by Petitioners' agent in October 2024 as indicated on the United States Postal Service documentation, and therefore Petitioners' February 2025 Petition for Redetermination was untimely.[13] The agent asserted she did not sign for or receive the packet. And Petitioners asserted they should also have received a copy, regardless of the designation of an agency. Secondary to this determination was the question whether Petitioners' February 6, 2025, Petition for Redetermination was timely filed after their receipt of the Notice of Field Audit

[11] Wis. Stat. § 71.88(2)(a). *See also Lyman v. Dep't of Revenue,* Wis. Tax Rptr. (CCH) ¶ 400-917 (WTAC 2006)
[12] Wis. Stat. § 71.88(2)(a)
[13] Hearing Exhibits D and E.

Amount Due – Individual Income Tax on February 6, 2025.

Notification Only Sent to Petitioner's Designated Agent

The Department asserts the notifications sent to Petitioners' representative as designated on the Department's Power of Attorney (POA) Form A-222, were all that was necessary pursuant to Wis. Stat. § 73.03(73m). And the fact no Petition for Redetermination was filed with the Department within 60 days of receipt of those notices by Petitioners' designated representative means Petitioners' February 6, 2025, Petition for Redetermination was not timely filed. Therefore, Petitioners could not be aggrieved under Wis. Stat. §§ 73.01(5)(a), 71.88(1)(a) and the Petition for Review to the Commission should be dismissed pursuant to Wis. Stat. § 71.88(2)(a).

Petitioners' agent acknowledged under oath that it looked like her signature in the Recipient Signature Box but testified she had not signed it.[14] When asked whether someone else in the office would have signed her signature she testified "absolutely not." However, it appears more likely than not that it was her signature, as there was no other explanation for someone signing her name at that address. Therefore, the Commission finds the Department notice was received by Petitioners' agent on October 23, 2024.

However, the specifics of this case do not make that situation a final resolution. Even if Petitioners' agent *did* receive the documents for which her signature is

[14] Hearing Exhibit E.

indicated, the Commission finds other facts of this case which question the Department's process, procedures, and correspondence.

Notification not Sent to Taxpayers

Wis. Stat. § 71.74 requires the Department (1) to notify a taxpayer of any additional assessment by office audit or field investigation and (2) to serve that notice as provided in Wis. Stat. § 73.03(73m), which sets forth various methods by which the Department may serve notice.

The Department correctly restates the language of Wis. Stat. § 73.03(73m), "[i]f the intended recipient has appointed another person or entity to act on the intended recipients behalf as its agent under a power of attorney, then service upon the agent constitutes service upon the intended recipient."[15] However, based upon Petitioners' designation of Consulting Services Tax & Accounting Inc., c/o of Jamie Laing to act as their agent, using the Department's Form A-222 Power of Attorney, the Department reads Wis. Stat. § 73.03(73m) as *only* requiring service on the agent. The Department's assertion is that no notice is required to be sent to the taxpayer who executed the Department's power of attorney.

Petitioners explain their agent did not provide them with the Department's October 14, 2024, correspondence and notices. More importantly, they were unaware the designation of an agent meant they would receive no correspondence from the Department related to their audit or the Department's assessment of any liability under that audit. Ms.

[15] Department Brief in Support of Motion to Dismiss, October 30, 2025, p. 5.

Utter explained that while they designated Ms. Laing to be their agent, they believed they were still representing themselves and therefore they – as well as their representative - would receive all paperwork relative to their audit.

Petitioners argued at hearing that the Department's Form A-222 does not clearly state that designating another person to act on their behalf meant that they themselves would no longer receive any written communication from the Department. In fact, Petitioners questioned the Department witness as to whether they themselves retain the ability to represent themselves even with the designation of a representative. The witness simply asserted "Part 4 always controls." [16]

Mr. Utter testified that on February 7, 2025, he visited the Department after receiving the January 8, 2025, Collection Notice which *was* mailed to Petitioners, notifying them of the tax liability. That January correspondence was the first time Petitioners had been notified directly by the Department of the audit amount assessed by the Department. Petitioners were then able to access the October 16, 2024, documents comprising Exhibit C.[17] It was then that they immediately filed the Petition for Redetermination – on the same day they first received the Notice of Field Audit Amount Due – Individual Income Tax.

[16] Part 4 is the section entitled Full or Limited Authority. Hearing Exhibit B.

[17] Ms. Utter asserted (while questioning Ms. Laing), that Petitioners had received page 3 of Exhibit C – which was addressed to them – on February 7, 2025. The Department then objected, stating that was not in the Exhibit and did not have appeal rights. However, page 3 of Exhibit C, WDOR0007, Notice of Field Audit Amount Due – Individual Income Tax, DOES have appeal information at WDOR0009. And the Commissioner incorrectly stated, "we do not have that in front of us."

Power of Attorney, Form A-222

Department Form A-222 is titled Power of Attorney. The Department asserts that it is the form referenced in Wis. Stat. § 73.03(73m). However, that statutory section does not provide any detail regarding *how* that power of attorney form is written or *what* directives are included in that power of attorney form.[18]

The major components of Form A-222 Power of Attorney were completed by Petitioners are as follows: **Part 1 – Taxpayer Information**, is where Petitioners provided their contact information. **Part 2 – Representative(s)**, is where Petitioners checked the box "[a]ppointing a new or additional representative." Ms. Utter testified she believed "additional representative" meant they were *adding* Consulting Services Tax & Accounting Inc. as a representative – not that the representative would *replace* the Utters as a contact for communications from the Department. **Part 3 – Representative is an Entity or Individual**, is where Petitioners checked the box "to grant authority to an entire entity or firm." The entity or firm Petitioners listed was Consulting Services Tax & Accounting Inc, Jaime Laing, 7633 Ganser Way, Suite 202, Madison, WI 53719. **Part 4 – Full or Limited Authority**, is where Petitioners checked the box stating "I grant full authority to the representative . . . named above [who] has full authority to perform any act with respect to matters before the department that the taxpayer(s) can and may perform." The bottom of the second page of the Power of Attorney form states:

> Note: All notices that are automatically generated by the

[18] Prior decisions of the Commission have reviewed Department power of attorney forms which were found flawed. See *Capricio Salon & Spa v. Wisconsin Department of Revenue*, (WTAC 2021). The Department has changed the form several times over the past seven years. The Commission takes administrative notice of versions R. 9/19 and R. 10/21 found online and on the Department's website.

> department's computer system (e.g. *Notice of Amount Due* or Notice of Refund/Offset) will be sent only to the taxpayer. Representatives may access copies of most notices through My Tax Account, if the taxpayer authorizes online access to the representative. [italics added]

The current form, however, does not inform taxpayers that signing the form will prevent most Department correspondence from being sent to them directly and such correspondence will *only* go to the designated agent. Interestingly, as noted above, the form *does* inform taxpayers that some Department correspondence will be sent to them only *regardless of submitting the Department's power of attorney form.*[19]

The general definition of "power of attorney" is "[a]n instrument granting someone authority to act as agent or attorney-in-fact for the grantor."[20] An "attorney-in-fact" is generally understood to mean an "attorney." And "attorney" is simply defined as "[s]trictly, one who is designated to transact business for another; a legal agent."[21] The Department's position that implementing a power of attorney means the individual is (1) refusing to receive any further communication and (2) requesting only the representative receive all communication is not reasonable.

A simple solution would be a directive on Form A-222 stating "upon submission of this power of attorney, service upon your appointed agent constitutes service upon you – *and no correspondence will be issued to you directly* pursuant to Wis. Stat. § 73.03(73m)."

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[19] Hearing Exhibit B, Note at the bottom of page WDOR 0004.
[20] *Power of Attorney*, Black's Law Dictionary, 8th Edition, p. 1209
[21] *Id*, p. 138

The Department Correspondence

In addition to the Department's Power of Attorney form not clearly indicating the consequence of signing the form or what communication will or will not be directed to the taxpayer, subsequent Department communications were also confusing.

The Department's documents were sometimes addressed to Petitioners, sometimes addressed to Petitioners' agent, and sometimes addressed to Petitioners and cc'd to Petitioners' agent. Yet none of those documents were, as confirmed by the Department, actually sent to Petitioners.

As an example, the second letter in the packet of correspondence issued on October 16, 2024, was addressed to Donald L Utter II and Susan Utter, 2726 Rolling View Rd., Stoughton WI 53589. That letter stated "[i]f you are of the opinion that this notice is incorrect you may file your appeal online . . . or send your written appeal to the Wisconsin Department of Revenue." That letter also stated it was cc'd to "Consulting Services Tax & Accounting Inc, c/o Jamie Laing." But the packet of letters was only issued to Jaime Laing, even though the Utter's address was on them as the primary addressee.

Prior Commission decisions on the delivery of Department notices to taxpayers with representatives

Finally, the Commission has, for the past 13 years, followed the logic detailed in *Mark & Barbara Pomasl v. Wisconsin Department of Revenue,* (WTAC 2013). In that case, the taxpayers selected a representative and both the taxpayer and the representative received Department notices. The question was whether the date of receipt by the taxpayer or the designated representative began the timeclock for filing a Petition for Redetermination. The Commission completed a helpful review of applicable statutory and case law and stated:

> While taxpayers may be represented by counsel, the gravity of a final decision requires it to be delivered to the taxpayer directly. It is the taxpayer who needs to decide whether to accept the decision or to appeal from it. Running these important decisions through a third party, even if it is an attorney or other competent representative, can result in delay or confusion and could potentially shorten the time for filing of an appeal. We hold that receipt by the taxpayer is controlling to trigger the 60 days in which to file an appeal.[22]

In the *Pomasl* case, the Commission asserted "[d]espite silence in the actual verbiage of the statute, the traditional interpretation of Wis. Stat. § 73.01(5) has been to start the time for appeal when taxpayer receives the notice."[23] The Commission continues by noting "this stance dates back at least as far as 1948."[24] Finally, the Commission referenced the *Kulas* case and stated "Kulas held that the clock began to tick when the taxpayer was served, regardless of whether the taxpayer was represented by counsel and regardless of when or even if the taxpayer's representative was served with the redetermination."[25]

Based upon the above, in this case, the Commission concludes that signing the power of attorney granted the authority for exactly what it said. Nowhere on the Department's form (1) is the taxpayer notified that designating a representative means

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[22] *Mark & Barbara Pomasl v. Wisconsin Department of Revenue*, (WTAC 2013), p. 10.
[23] *Id., p. 7*
[24] *Id.*
[25] *Id.*, p. 8

the taxpayer will no longer receive *any* communication from the Department until a collections notice nor (2) is there a place where the taxpayer can affirmatively request no correspondence be sent to them. While it is correct that the Commission does not possess equitable powers, and must apply the law as written, the simple legal directive regarding a "power of attorney" does not make any document to which the Department applies that title, a meaningful document.[26]

CONCLUSIONS OF LAW

1. That Wis. Stat. § 73.03(73m) does not specify what language a power of attorney directive must have to make that statutory section applicable.

2. That the Department's Power of Attorney Form A-222, does not clearly notify a taxpayer that they will not receive all correspondence when designating an agent to make it binding under Wis. Stat. § 73.03(73m).

3. That Petitioners' Petition for Redetermination was not untimely as Petitioners were not notified of the right to appeal the Department's amount due until February 7, 2025, and therefore the Commission has jurisdiction to hear this appeal pursuant to Wis. Stat. § 71.88(1)(a) and (b).

ORDER

That the Department's Motion to Dismiss is denied. Further proceedings to address the underlying issue will be scheduled shortly.

[26] *Capricio Salon & Spa v. Wisconsin Department of Revenue*, (WTAC 2021).

Dated at Madison, Wisconsin, this 24th day of June, 2026.

WISCONSIN TAX APPEALS COMMISSION

Elizabeth Kessler, Chair

Jessica Roulette, Commissioner

Kenneth P. Adler, Commissioner