

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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QUAD/GRAPHICS, INC.  
W224 N3322 Duplainville Road  
Pewaukee, WI 53072

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE  
P.O. Box 8933  
Madison, WI 53708

Respondent.

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\* DOCKET NO. 94-M-1209

\* RULING AND ORDER

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JOSEPH P. METTNER, COMMISSIONER:

This matter is before this commission based upon the respondent's Motion to Dismiss, filed on December 22, 1994.

Both parties have filed affidavits and briefs in support of their respective positions in this case. The petitioner is represented by Attorney Michael B. Apfeld of Godfrey & Kahn, S.C. The respondent is represented by Attorney Veronica Folstad.

Having reviewed the submissions of the parties in their entirety, this commission finds, concludes, and orders as follows:

On June 9, 1994, the respondent issued a notice of real property assessment ("the assessment notice") to Giddings & Lewis, 142 Doty Street, Fond du Lac, WI 53935-3316, for a parcel bearing Computer Number 77-40-292-R000070, located in the City of West Allis, or municipality 40-292 according to the respondent's records. Giddings & Lewis was the owner of record of the subject property as of January 1, 1994.

In conjunction with the issuance of the assessment notice, the respondent sent an assessment roll for the City of West Allis to the municipality by first class mail on June 9, 1994, along with an Affidavit of Mailing executed by a property tax technician of the respondent as required pursuant to § 70.995 (8)(b), Stats. The Affidavit of Mailing identified the person who mailed the assessment rolls and noted that notices of assessment were mailed by that individual on June 9, 1994 to several municipalities, among them West Allis, identified in the affidavit as municipality number 40-292.

The real property which was the subject of the assessment notice was sold by Giddings & Lewis in a multi-party transaction which ultimately resulted in the conveyance of the property to the petitioner on May 31, 1994. Sometime afterward, in mid-July, a copy of the warranty deed for this transaction was mailed to the respondent.

On June 17, 1994, a representative of the City of West Allis telephoned the Southeastern District Manufacturing Assessment Office of the respondent and requested that a copy of the assessment notice be mailed to the petitioner. Soon afterward, a copy of the assessment notice was mailed by the respondent to the petitioner.

On August 10, 1994, the State Board of Assessors received a Manufacturer's Form of Objection from the petitioner objecting to the assessment of Computer Number 77-40-292-R000070. The form was sent by certified mail bearing a postage cancellation mark of

August 9, 1994.

On September 26, 1994, the State Board of Assessors issued an Order for Dismissal to the petitioner, based on the petitioner's failure to file a timely objection with the Board within 60 days after the issuance of the assessment notice, pursuant to § 70.995(8)(b), Stats.

On November 23, 1994, the petitioner filed a petition for review with this commission.

The respondent has shown good and sufficient grounds for the granting of its motion under § 802.06(2)(a)2., Stats., because the Commission lacks subject matter jurisdiction over this controversy due to the petitioner's failure to timely file its objection with the State Board of Assessors within 60 days of the issuance of the assessment notice as required under § 70.995 (8)(b), Stats.

It is the position of the petitioner in this case that the otherwise clear application of the 60-day limitation period found in § 70.995 (8)(b), Stats., does not apply to bar the subject matter jurisdiction of the Commission to hear the controversy.

The petitioner has advanced three arguments in support of its position. First, the petitioner contends that the respondent's Affidavit of Mailing accompanying the assessment roll mailed to the City of West Allis failed to meet the requirements articulated by the Commission in the case of Jos. Schlitz Brewing Co. v. Wisconsin Department of Revenue, WTAC Docket No. 53-MP-82 (June 13, 1983). Second, the petitioner contends that the assessment notice issued

by the respondent should not be regarded as an effective notice of the assessment because it was mailed to the previous owner of the property. Finally, the petitioner argues in the alternative that the Commission should find that the respondent effectively reissued a notice of assessment to the petitioner on June 17, 1994 when it mailed a copy of the original assessment notice to the petitioner.

As noted above, we are not persuaded by the petitioner's arguments, because each argument errs in applying the procedural law surrounding manufacturing assessments to the facts at hand.

First, we note with respect to the petitioner's citation of the Jos. Schlitz Brewing Co. case that this commission has recently repudiated those portions of the Schlitz case holding which rely upon the procedural requirements of § 879.07, Stats. See, Snap-On Tools Corp. v. Wisconsin Department of Revenue, WTAC Docket Nos. 95-M-1212 through 94-M-1214 (July 20, 1995). In Snap-On Tools Corp., we determined that § 879.07, Stats., is a probate procedure statute, and that its more particular affidavit content requirements have no application in the setting of manufacturing property tax assessments. For its part, the respondent has amply demonstrated in the exhibits accompanying its motion that the controversial June 9, 1994 Affidavit of Mailing clearly met the requirements of § 70.995 (8)(b), Stats.

Second, with respect to the argument that the notice of assessment was ineffective due to its direction to the previous property owner, we observe that Giddings & Lewis, the previous owner of the subject property, was a manufacturing establishment

included in the assessable classifications of §§ 70.995(1) and (2), Stats., and the owner of record of the subject property as of the close of January 1, 1994. January 1 marks the technical date of each annual assessment under § 70.995 (5), Stats., and owners of record as of that date are the parties to whom notices of assessment shall subsequently be sent. Significantly, failure to receive an assessment notice does not affect the validity of the assessment. It is the assessment's issuance date, rather than the date of receipt, which marks the beginning of the 60-day limitation period within which notices of objection must be filed with the State Board of Assessors. § 70.995(8)(b), Stats.

Finally, the petitioner's argument that the respondent subsequently reissued its assessment on June 17, 1994 also fails, because the mere mailing of a copy of a previously issued assessment does not itself meet the notice requirements detailed in § 70.995(8)(b), Stats. Where these formalities are not observed, there can be no issuance.

Because June 9, 1994 is the only issuance date to be found under the facts set forth above, that is the date triggering the 60-day limitation period set forth in § 70.995(8)(b), Stats., which makes August 8, 1994 the last date upon which the petitioner could have filed its objection to the assessment with the State Board of Assessors. The petitioner failed to file its objection within the time period allowed by statute. Accordingly, the petition for review must be dismissed.

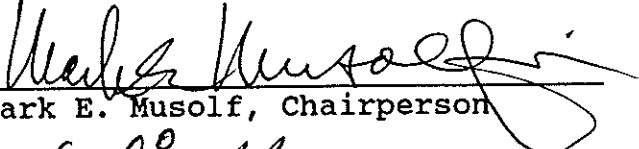
Therefore,


**IT IS ORDERED**

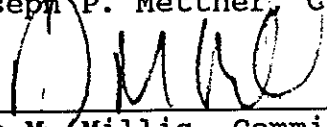
That the respondent's motion to dismiss is granted, and its action on petitioner's petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 1st day of November, 1995.

**WISCONSIN TAX APPEALS COMMISSION**

  
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Mark E. Musolf, Chairperson

  
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Joseph P. Mettner, Commissioner

  
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Don M. Millis, Commissioner

ATTACHMENT:  
"Notice of Appeal Information"

WISCONSIN TAX APPEALS COMMISSION

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

The following notice is served on you as part of the Commission's decision rendered:

Any party has a right to petition for a rehearing of this decision within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences the day after personal service or mailing of this decision. (Decisions of the Tax Appeals Commission are mailed the day they are dated. In the case of an oral decision, personal service is the oral pronouncement of the decision at the hearing.) The petition for rehearing should be filed with the Wisconsin Tax Appeals Commission. Nevertheless, an appeal can be taken directly to circuit court through a petition for judicial review. It is not necessary to petition for a rehearing.

Any party has a right to petition for a judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes. **The petition must be filed in circuit court and served upon the Wisconsin Tax Appeals Commission and the Department of Revenue** within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of law of any petition for rehearing. (Decisions of the Tax Appeals Commission are mailed the day they are dated. In the case of an oral decision, personal service is the oral pronouncement of the decision at the hearing.) **The petition for judicial review should name the Department of Revenue as respondent.**

This notice is part of the decision and incorporated therein.