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STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE

JUL 13 1988
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LEGAL DIVISION

EUGENE W. RASCH *
N11 W27909 White Oak Ct. *
Waukesha, WI 53188 *

Petitioner, *

vs. *

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

Respondent. *

DOCKET NO. 88-I-186

RULING AND ORDER ON

MOTION TO DISMISS

PETITION FOR REVIEW

The respondent having filed a motion to dismiss the petition for review herein on the following grounds:

That the petitioner failed to file a proper petition for review within 60 days after receipt of the respondent's notice of partial denial of the petition for redetermination as required by sec. 73.01(5)(a), Stats., and therefore, the State of Wisconsin Tax Appeals Commission lacks jurisdiction to review the alleged grievances of the petitioner.

The above-entitled matter was presented to this Commission for a ruling based upon facts and exhibits contained in a written stipulation entered into by and between the petitioner, Eugene W. Rasch, and the respondent, Wisconsin Department of Revenue, by its attorney Deborah Rychlowski.

The respondent filed a letter brief in support of its

motion to dismiss. The petitioner was afforded an opportunity to file a brief in opposition to the motion but failed to do so.

Being fully advised in the premises, having considered the respondent's motion, the entire record herein, and the brief of the respondent in support of its motion, this Commission hereby finds as

FINDINGS OF FACT

As and for its Findings of Fact in the above-entitled matter, this Commission hereby adopts the following facts as stipulated to by the parties, deleting references to exhibits:

1. Under date of June 8, 1987, the respondent issued an income tax assessment to petitioner in the amount of \$6,509.89.
2. Under date of August 3, 1987, petitioner timely filed a petition for redetermination.
3. Under date of January 29, 1988, the respondent denied in part the petition for redetermination.
4. Petitioner's wife received the Department's action letter on February 1, 1988.
5. Petitioner's wife placed the Department's action letter on a desk with other mail.
6. On or about February 10, 1988, petitioner discovered the action letter, and opened it, and read it.
7. Petitioner made an appointment with an attorney after he had read the action letter, and in fact, met with an attorney within two weeks after February 10, 1988.

8. The attorney agreed to accept the case and file a petition for review for petitioner.

9. Despite petitioner's repeated follow-ups to the attorney, the attorney had not filed a petition for review six or seven weeks after he had agreed to take the case. At this time, petitioner went to the attorney's office and retrieved his files.

10. Petitioner then made an appointment to consult with a second attorney about his tax appeal.

11. By the time petitioner met with the second attorney, petitioner realized that his time to appeal the action had passed, but petitioner decided to file an appeal and send in his \$5.00 anyway since he still believed in the merits of his case..

12. The petition for review was received by the Wisconsin Tax Appeals Commission on April 19, 1988, by ordinary mail.

As and for additional Findings of Fact, this Commission hereby finds as follows:

13. Sec. 73.01(5), Wis. Stats., states in pertinent part:

"(5) Appeals to Commission. (a) Any person ... who has filed a petition for redetermination with the department of revenue and who is aggrieved by the redetermination of the department may ... within 60 days after the redetermination but not thereafter, file with the clerk of the commission a petition for review of the action of the department ... At the time of filing the petition, the petitioner shall pay to the commission a \$5 filing fee which the commission shall deposit in the general fund."

14. A petition for review is considered filed as of the date on which the petition for review and proper filing fee are received in the Commission's office in Madison, Wisconsin.

15. The 60-day period provided in s. 73.01(5)(a), Wis. Stats., for filing a proper petition for review with this Commission expired on April 1, 1988.

16. The respondent has shown good cause and sufficient grounds for the granting of its motion.

17. Under the provisions of s. 73.01(5)(a), Wis. Stats., the petitioner failed to file a proper petition for review within 60 days after receipt of the respondent's notice of partial denial of the petitioner's petition for redetermination; therefore, the Wisconsin Tax Appeals Commission lacks jurisdiction to review the alleged grievances of the petitioner.

Therefore,


IT IS ORDERED

That the petition for review in the above-entitled matter be dismissed.

Dated at Madison, Wisconsin, this 12th day of July, 1988.

WISCONSIN TAX APPEALS COMMISSION

pc: Petitioner
Respondent


Kevin C. Potter, Chairperson

ATTACHMENT: NOTICE OF
APPEAL INFORMATION


Thomas R. Timken, Commissioner


John P. Morris, Commissioner