

STATE OF WISCONSIN
TAX APPEALS COMMISSION

KURT DOERR,

DOCKET NO. 21-V-040

Petitioner,

v.

WISCONSIN DEPARTMENT OF TRANSPORTATION,

Respondent.

RULING & ORDER

ELIZABETH KESSLER, CHAIR:

This case comes before the Commission for decision on Respondent's Motion to Dismiss Petitioner's Petition for Review as untimely. The Petitioner, Kurt Doerr, appears *pro se*. The Respondent, the Wisconsin Department of Transportation ("the Department"), is represented by Attorneys Michelle D. Ziegler and Paul E. Nilsen. The Department has filed a brief and exhibits in support of its motion. Petitioner has made oral arguments during telephone status conferences but has not filed briefs or exhibits in support of his appeal. For the reasons stated below, we find that the Petitioner did not file his petition in a timely manner as required by statute and, therefore, dismissal is appropriate.

FACTS

1. On November 30, 2020, the Department issued a Notice of Audit Assessment, assessing the Petitioner an additional \$6,839.51. (Ex. R1.)
2. The Notice of Audit Assessment included the language, "you have 30 days from the date of this notice to request further appeal with the tax appeals commission." (Ex. R1.)
3. On December 9, 2020, Tax Appeals Commission staff emailed Petitioner a copy of the Tax Commission Code. (Commission file.)
4. The December 9, 2020, email from the Tax Appeals Commission staff was in response to Petitioner requesting information on appealing his dispute with the Department. (Commission file.)
5. Although the date that Petitioner received the Notice of Audit Assessment is not clearly identified in the record, the inquiry and email that took place on December 9, 2020, indicate that it could not have been later than that date.
6. The filing period for Petitioner's appeal formally expired 30 days after receipt of the Notice of Audit Assessment. Wis. Stat. § 73.01(5)(a). Thirty days after December 9, 2020, is January 9, 2021. Because January 9, 2021, fell on a weekend, Petitioner's deadline would have been extended to Monday, January 11, 2021.
7. On February 2, 2021, the Commission received via ordinary mail Petitioner's Petition for Review. (Commission file.)

8. On March 3, 2021, the Department filed a Motion to Dismiss the Petitioner's Petition as untimely, along with a brief and exhibits in support of the Motion.

9. Petitioner filed nothing in response to the Motion.

APPLICABLE LAW

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

The specific statute at issue here outlines, in relevant part, 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 a determination of the department of transportation under s. 341.405 or 342.45 may, within 30 days after the determination of the department of transportation, file with the clerk of the commission a petition for review of the action of the department of transportation.

ANALYSIS

The date on which a petition for review is "filed" with this Commission under Wis. Stat. § 73.01(5)(a) has consistently been held to be the date on which the petition has been physically received in the Commission office. *See Edward Mischler v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-159 (WTAC 1983). Unless otherwise provided by statute, a document is filed on the date it is *received* by the Commission, not

the date it is mailed. See *Laurence H. Grange v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-017 (Cir. Ct. 1993).

The one exception in Wis. Stat. § 73.01(5)(a) states that a petition 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. In this case, Petitioner mailed his Petition by regular mail, so that exception does not apply.

The Petition for Review was received by the Commission more than three weeks after the time for appeal had expired. We conclude that Petitioner failed to file a timely petition for review with the Commission within 30 days after receipt of the Notice of Audit Assessment. Thus, the Commission lacks subject matter jurisdiction over the Petition for Review. This is not a matter for discretion; the Commission has no choice in the matter. *Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002).

CONCLUSIONS OF LAW

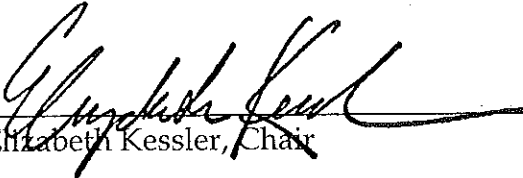
1. Petitioner's Petition for Review was not timely filed as defined by state statutes and, thus, this Commission lacks jurisdiction in this matter.
2. The Department is entitled to dismissal as a matter of law.

ORDER

The Department's Motion to Dismiss is granted, and the Petition is dismissed.

Dated at Madison, Wisconsin, this 8th day of December, 2021.

WISCONSIN TAX APPEALS COMMISSION


Elizabeth Kessler, Chair


Lorna Hemp Boll, Commissioner


Jessica Roulette, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION
5005 University Avenue - Suite 110
Madison, Wisconsin 53705

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.