

STATE OF WISCONSIN
TAX APPEALS COMMISSION

LIZETTE M. ECHEVARRIA,

DOCKET NO. 15-I-028

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING & ORDER

DAVID D. WILMOTH, COMMISSIONER:

This case comes before the Commission for decision on the Respondent's Motion to Dismiss the Petitioner's Petition for Review as untimely. The Petitioner, Lizette M. Echevarria, of Green Bay, Wisconsin, appears *pro se* in this matter. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Chief Counsel Dana J. Erlandsen. For the reasons stated below, the Commission finds that the Petitioner did not file her Petition in a timely manner as required by statute and, therefore, concludes that dismissal is appropriate.

FACTS

1. The Department issued to the Petitioner a Notice of Amount Due dated September 12, 2014, assessing additional income tax for calendar years 2010 through 2012. (Affidavit of Department Resolution Office Audit Supervisor Mary E. Nelson

("Nelson Aff."), ¶ 2, Ex. A.)

2. On or about October 9, 2014, the Petitioner submitted a Petition for Redetermination to the Department. (Nelson Aff. ¶ 3, Ex. B.)

3. The Department denied the Petition for Redetermination by Notice of Action dated December 18, 2014, which, prior to mailing, was provided to and signed for by the Petitioner at an in-person meeting at the Department's offices on December 17, 2014. (Nelson Aff. ¶ 4, Ex. C.)

4. The Petitioner's Petition for Review, appealing the Department's denial of her Petition for Redetermination, was received in the office of the Commission on February 19, 2015. The Petition for Review was sent via Priority Mail Express on February 18, 2015. (Nelson Aff. ¶ 5, Commission file.)

5. Because the 60th day after the date on which the Petitioner received the Notice of Action denying her Petition for Redetermination fell on Sunday, February 15, 2015, the 60-day period for the timely filing a Petition for Review in this case expired on Monday, February 16, 2015. Wis. Stat. § 990.001(4)(b).

6. On March 20, 2015, the Department filed a Motion to Dismiss the Petitioner's Petition for Review as untimely, along with an affidavit, exhibits, and a Brief in support of the Motion. (Commission file.)

7. On March 25, 2015, the Commission issued a Briefing Order, directing the Petitioner to file a response to the Department's Motion to Dismiss no later than April 20, 2015. The Petitioner did not file a response on or before such date. (Commission file.)

8. On April 21, 2015, the Commission issued a revised Briefing Order, directing the Petitioner to file a response to the Department's Motion to Dismiss no later than May 5, 2015, and stating that if the Petitioner did not file a response, the case would be decided based upon the record as presently constituted. The Petitioner did not file a response on or before such date. (Commission file.)

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

The specific statute at issue here 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 clerk of the commission a petition for review of the action of the department of revenue For purposes of this subsection, a petition for review is considered timely filed if mailed by certified mail in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the last day for filing.

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 is physically received in the Commission's 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. *Laurence H. Grange v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-017 (Dane Co. 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.

The Petitioner mailed her Petition by Priority Mail Express on February 18, 2015, two days after the final date for filing. Even if the Petitioner had taken advantage of the statutory exception for certified mail, the mailing date would still have been two days after the statutory deadline.¹

The Petition was received by the Commission on February 19, 2015, three days after the final date for filing. Under any of the rules of Wis. Stat. § 73.01(5)(a) applicable to the time for filing a petition for review with the Commission, the Petition in this matter was not timely filed. As the Wisconsin Supreme Court has said: "To dismiss an appeal because it comes one day late may seem harsh. However, if statutory time limits to obtain appellate jurisdiction are to be meaningful they must be unbending." *Ryan et al. v. Dep't of Revenue*, 68 Wis. 2d 467, 472, 228 N.W.2d 357, (1975), quoting *Kohnke v. ILHR Dep't*, 52 Wis.2d 687, 690, 191 N.W.2d 1 (1971).

CONCLUSION OF LAW

The Petitioner's Petition for Review was not timely filed as required by Wis. Stat. § 73.01(5)(a) and, thus, the Commission lacks jurisdiction in this matter.

¹ *Vasudeva v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶401-601, (WTAC 2012) (Use of Priority Mail instead of certified mail found insufficient to meet the requirements of Wis. Stat. § 73.01(5)(a)).

ORDER

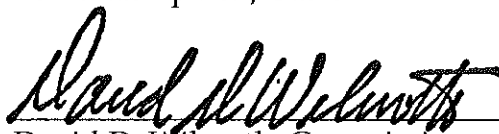
The Department's Motion to Dismiss is hereby granted and the Petition for Review is dismissed.

Dated at Madison, Wisconsin, this 23rd day of July, 2015.

WISCONSIN TAX APPEALS COMMISSION



Lorna Hemp Boll, Chair



David D. Wilmoth, 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. Alternatively, 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 Appeals 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 <http://wicourts.gov>.

This notice is part of the decision and incorporated therein.