

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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MARY T. ENNIS AND  
ESTATE OF EDWARD G. ENNIS

DOCKET NO. 16-I-271

Petitioners,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**RULING AND ORDER**

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**DAVID L. COON, COMMISSIONER:**

This case comes before the Commission for decision on Respondent's Motion to Dismiss Petitioners' Petition for Review as untimely. Petitioners, Mary T. Ennis and the Estate of Edward G. Ennis are represented by J.A. Schneiberg, Schneiberg & Associates. Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Chief Counsel Dana J. Erlandsen. The Department filed a brief and affidavit with exhibits in support of its Motion. Petitioners provided a brief and documents in response. The Department filed a letter as a reply.

The Commission finds that Petitioners' Petition for Review was not filed within the required 60-day period. As such, it was not timely. The Commission lacks jurisdiction and therefore must dismiss this matter.

## FACTS

1. On April 12, 2016, the Department issued to Petitioners a Notice of Amount Due for the calendar years 2013 and 2014 in the amount of \$30,713.18. (Dep't Ex. A.)

2. On or about June 3, 2016, Petitioners filed a timely Petition for Redetermination with the Department. (Dep't Ex. B.)

3. On September 6, 2016, the Department issued a Notice of Action denying the Petition for Redetermination, which Petitioners received on September 8, 2016. (Dep't Ex. C.) The Notice contained information regarding the 60-day time limit for appeal.

4. Petitioners' deadline for filing with the Commission was 60 days from September 8, 2016. That date was Monday, November 7, 2016.

5. Petitioners' Petition for Review was filed with the Commission by ordinary mail received at the Commission on November 18, 2016. (Commission file.)

6. On December 20, 2016, the Department filed a Motion to Dismiss, along with an affidavit with exhibits and a brief in support of the Motion. Petitioners filed a Response on February 6, 2017, and the Department filed a reply letter on February 15, 2017. (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. See *Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002). The specific statutes at issue here outline 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.

Wis. Stat. § 71.88(2): *Appeal of the department's redetermination of assessments and claims for refund.* A person feeling aggrieved by the department's redetermination may appeal to the tax appeals commission by filing a petition with the clerk of the commission as provided by law and the rules of practice promulgated by the commission. If a petition is not filed with the commission within the time provided in s. 73.01 . . . the assessment, refund, or denial of refund shall be final and conclusive.

### ANALYSIS

The Wisconsin Tax Appeals Commission lacks jurisdiction to hear an appeal in cases where a petitioner fails to file a timely petition for review with the Commission. *Barth v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-527 (WTAC 2012).

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.

Petitioners received the notice on September 8, 2016. The Notice included language explaining that Petitioners may appeal to the Tax Appeals Commission within 60 days of receiving the notice if they were in disagreement. The 60-day deadline to file expired on November 7, 2016. Petitioners mailed their Petition using ordinary mail rather than certified mail. The Petition was not received at the Commission until November 18, 2016, over a week after the deadline allowed by statute.

In their Response Brief, Petitioners simply ask that matter not be dismissed due to being untimely and provide some documentation related to their argument on the merits of their appeal, not the issue of the untimeliness of filing the appeal. The Department states in its reply letter that it prefers to have matters heard on the merits. The Commission also prefers to have matters heard on the merits and understands the desire of Petitioners to have their matter fully heard.

Nevertheless, where the Commission lacks jurisdiction, the Commission cannot hear the matter. Because the Petition was not timely filed, the Commission has no jurisdiction and must dismiss the Petition. 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). This matter is not properly before the Commission.

#### CONCLUSIONS OF LAW

1. The Notice of Action denying Petitioners' Petition for Redetermination became "final and conclusive" pursuant to Wis. Stat. § 71.88(2)(a)

because Petitioners failed to file the Petition for Review with the Commission within 60 days of the Notice.

2. The Commission lacks jurisdiction over the Petition for Review under Wis. Stat. § 73.01(5) because it was untimely. Therefore, the Department is entitled to dismissal as a matter of law.

**ORDER**

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

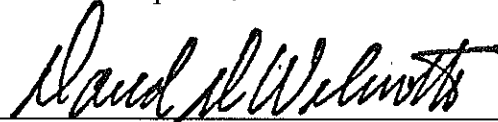
Dated at Madison, Wisconsin, this 2nd day of March, 2017.

**WISCONSIN TAX APPEALS COMMISSION**



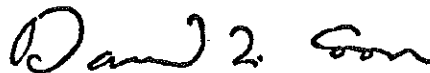
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Lorna Hemp Boll, Chair



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David D. Wilmoth, Commissioner



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David L. Coon, 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.