

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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BENNETT C. AND MICHAELENE J. FORMANACK,

DOCKET NO. 20-I-083

Petitioners,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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RULING AND ORDER

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ELIZABETH KESSLER, CHAIR:

Respondent filed a Motion for Judgment on the Pleadings or for Summary Judgment, alleging lack of jurisdiction based on the assertion that Petitioners did not timely file the claim for refund on their amended 2013 1NPR nonresident & part-year resident Wisconsin income tax return ("Amended Return"). The Petitioners, Bennett C. and Michaelene J. Formanack, appear *pro se*. The Respondent, the Wisconsin Department of Revenue (the "Department"), is represented by Attorney Sheree Robertson. As we find that the Amended Return was filed beyond the applicable four-year period in which to claim a refund, the Commission does not have jurisdiction and we dismiss the Petition for Review.

## FACTS

1. On or about April 15, 2014, Petitioners filed an original 2013 Wisconsin income tax return as residents of Wisconsin. (Supplemental Affidavit of Mary E. Nelson, Resolution Unit Supervisor, Wisconsin Department of Revenue ("Nelson Supp. Aff."), ¶ 2, Ex. 6.)

2. The Department issued to Petitioners a Notice of Amount Due - Individual Income Tax dated January 20, 2015, for an income tax assessment for tax years 2010, 2011, 2012, and 2013 in the amount of \$27,492.62 with interest computed to March 23, 2015. (Nelson Supp. Aff., ¶ 3, Ex. 7.)

3. Petitioners did not file a petition for redetermination objecting to the January 20, 2015 Notice of Amount Due, which subsequently became final and conclusive. (Nelson Supp. Aff., ¶ 4.)

4. The Department acted to collect on the amount due from the January 20, 2015 Notice plus interest, collecting \$35,943.85 from Petitioners. (Nelson Supp. Aff., ¶ 5, Ex. 8.)

5. On June 5, 2019, Petitioners filed an amended 2013 1NPR - Nonresident & part-year resident Wisconsin income tax return. On Line 1 of their 1NPR Wisconsin income tax return, Petitioners reported zero dollars (\$0.00) of wages and on Line 67 reported 2013 Wisconsin estimated tax paid and amount applied from 2012 return of \$35,944, claiming that amount as a refund on Line 79. (Nelson Supp. Aff., ¶ 6, Ex. 9.)

6. On July 10, 2019, the Department issued to Petitioners a Notice denying their claim for refund as being untimely. (Affidavit of Mary E. Nelson (“Nelson Aff.”), ¶ 3, Ex. 1.)

7. On August 23, 2019, Petitioners filed a Petition for Redetermination. (Nelson Aff., ¶ 6, Ex. 2.)

8. On January 24, 2020, the Department issued a Notice of Action to Petitioners denying the Petition for Redetermination. (Nelson Aff., ¶ 7, Ex. 3.)

9. On March 25, 2020, Petitioners filed a Petition for Review with the Commission. (Commission File.)

10. The Department filed a Motion for Judgment on the Pleadings or for Summary Judgment. Both parties filed briefs, affidavits, and exhibits. (Commission File.)

#### APPLICABLE LAW

Wis. Stat. § 71.75(5): A claim for refund may be made within 4 years after the assessment of a tax or an assessment to recover all or part of any tax credit, including penalties and interest, under this chapter, assessed by office audit or field audit and paid if the assessment was not protested by the filing of a petition for redetermination. No claim may be allowed under this subsection for any tax, interest or penalty paid with respect to any item of income, credit or deduction self-assessed or determined by the taxpayer or assessed as the result of any assessment made by the department with respect to which all the conditions specified in this subsection are not met.

#### DECISION

The Department issued a Notice of Amount Due – Individual Income Tax, dated January 20, 2015, to the Petitioners, assessing additional income tax, interest,

penalties, and fees for the 2010, 2011, 2012 and 2013 tax years. Petitioners did not protest the assessment by petition for redetermination and the Petitioners paid the assessment, albeit through Department collection actions over several years.

On or about June 5, 2019, Petitioners filed an Amended Return claiming a refund of amounts paid through collections toward the amount due in the January 20, 2015 Notice of Assessment. By Notice dated July 10, 2019, the Department denied the refund request as untimely. Petitioners subsequently filed a Petition for Redetermination which the Department also denied by Notice of Action dated January 24, 2020.

Wisconsin law requires a claim for refund to be filed within 4 years after the assessment of a tax, including penalties and interest, if the assessment was paid by the taxpayer and was not protested by the filing of a petition for redetermination<sup>1</sup> with the Department. Wis. Stat. § 71.75(5).<sup>2</sup> The four-year period for filing a claim for refund of all or any part of the assessment made in the Department's January 20, 2015 Notice of Assessment expired on or about January 20, 2019. It is clear in the statute that the critical date from which the four-year period to claim a refund begins is the date that the

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<sup>1</sup> In what purports to be an affidavit signed by Petitioners, they do not allege that the January 20, 2015 Notice was not received or was received substantially after the date of the Notice. They do allege that their first "communication" to "attempt" to "settle the matter" was sent to the Department on or about August 18, 2015, nearly seven-months after the issuance of the Notice of Assessment. The Department apparently did not consider this to be a petition for redetermination as it was filed so long after the issuance of the Notice of Assessment. Based in part upon the Department's admission that no petition for redetermination was received from the Petitioners, we find that the time-period in Wis. Stat. § 71.75(5), which requires that no protest by a petition for redetermination have been filed, would be applicable in this matter.

<sup>2</sup> The Department initially analyzes this matter under Wis. Stat. § 71.75(2) which requires a refund claim to be filed within 4 years of the "unextended date under this section on which the tax return was due." As the Department filed an assessment, which Petitioners did not protest by petition for redetermination and the amount due in the assessment was arguably paid through collections, the four-year period of Wis. Stat. § 71.75(5) appropriately applies. Regardless, as discussed, Petitioners' refund claim is still untimely.

assessment was issued. Therefore, Petitioners' claim for refund, with the filing of the Amended Return on June 5, 2019, was untimely as the four-year period allowed under the statute expired over 4 months earlier.

Here, the four-year period began with the issuance of the assessment on January 20, 2015 and expired on January 20, 2019. Petitioners' claim for refund was made on June 5, 2019, and, therefore, was untimely. Where there are "late filed claims for refund, the Commission has no jurisdiction over the matters." *Smith v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-595 (WTAC 2002).

#### CONCLUSION OF LAW

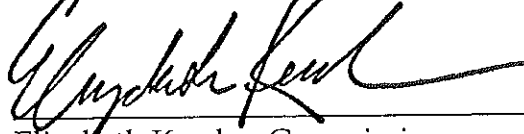
1. Petitioners failed to file their refund claim within four years of the Department's assessment, as required by Wis. Stat. § 71.75(5). Consequently, the refund claim was untimely.
2. Because the Commission lacks jurisdiction over untimely refund claims, the case must be dismissed.

#### ORDER

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

Dated at Madison, Wisconsin, this 5<sup>th</sup> day of January, 2021.

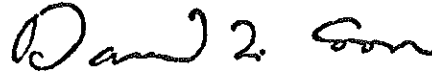
WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Commissioner



Lorna Hemp Boll, Commissioner



David 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. 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.