

STATE OF WISCONSIN
TAX APPEALS COMMISSION



INFORMATION SYSTEMS EXPERTS, INC.,

DOCKET NO. 19-W-160

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

LORNA HEMP BOLL, CHAIR:

This case comes before the Commission for decision on Respondent's motion to dismiss Petitioner's petition for review for failure to file a timely petition for redetermination. The Petitioner, Information Systems Experts, Inc., Carmel, Indiana, appears by Michael L. Lowry, CPA. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Sheree Robertson. Respondent has filed a brief and affidavit in support of its motion. Petitioner has filed a response in opposition, and Respondent replies with a letter to the Commission. For the reasons stated below, we find for the Respondent.

FINDINGS OF FACT

1. On or about May 17, 2018, the Department issued Notices of Amount Due - Pass-through Withholding, assessing Petitioner for amounts due for tax years ending

December 31, 2014; December 31, 2015; and December 31, 2016. The amounts due included interest, late filing fees, underpayment interest, and negligence penalties. (Affidavit of Attorney Sheree Robertson (“Robertson Aff.”), ¶¶ 1-2, Exs. 1, 2, and 3.)

2. In a letter dated August 30, 2018, which was deemed a petition for redetermination, Petitioner objected to the Notices of Amount Due, specifically with regard to the underpayment interest and negligence penalties. (Robertson Aff., ¶ 3, Ex. 4.)

3. In a Notice of Action dated March 21, 2019, the Department denied the Petition for Redetermination as untimely. (Robertson Aff., ¶ 4, Ex. 5.)

4. On May 13, 2019, Petitioner filed a Petition for Review with the Commission. (Commission file.)

5. Petitioner’s Petition for Review affirmatively concedes that the Petition for Redetermination was filed “six weeks outside the appeal deadline.” (Commission file.)

6. Petitioner’s Petition for Review calls upon the Commission to waive the statutory time limit for filing the Petition for Redetermination because the result is “inequitable.” (Commission file.)

APPLICABLE LAW

State statutes outline the requirements for filing a valid and timely petition for redetermination:

Wis. Stat. § 71.88(1)(a): . . . any person feeling aggrieved by a notice of additional assessment, refund, or notice of denial of refund may, within 60 days after receipt of the notice, petition the department of revenue for redetermination.

Wis. Stat. § 71.88(2)(a): [I]f no timely petition for redetermination is made within the time provided, the assessment, refund, or denial of refund shall be final and conclusive.

ANALYSIS

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).

In order to contest a notice of amount due from the Department, a person must petition the Department for redetermination of the assessment within 60 days after receipt of the notice. Wis. Stat. § 71.88(1)(a). Except for certain claims for refund not at issue in this case, "if no petition for redetermination is made within the time provided the assessment, refund, or denial of refund shall be final and conclusive." Wis. Stat. § 71.88(2)(a).

The Commission has long held that, pursuant to Wis. Stat. § 71.88(2)(a), it does not have jurisdiction to review actions of the Department where a Petitioner fails to file a timely petition for redetermination with the Department. *See Lyman v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-917 (WTAC 2006). The reasoning is that, because an assessment becomes final after 60 days, any redetermination after that time essentially has no effect. A petitioner must be "aggrieved" by the Department's redetermination in order to bring the issue to the Commission. Wis. Stat. § 71.88(2)(a). When an assessment is already final, a petitioner cannot be aggrieved by the Department's redetermination.

In this case, Petitioner's Petition for Redetermination, dated August 30, 2018, was admittedly filed six weeks beyond the end of the 60-day time frame in which to appeal the Department's Notices, which were dated May 17, 2018. Therefore, the assessments are final and conclusive. 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).

The Petitioner includes a request for equitable relief. While we often sympathize with petitioners who miss a deadline for a variety of reasons, the Commission has not been granted such equitable powers. "The legislature has empowered this agency to determine and apply Wisconsin tax statutes, but not to preempt application of a statute under a doctrine of equity." *Peterson v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 203-026 (WTAC 1989). While the Department may have compromised the fees and penalties for other years, without jurisdiction, we cannot require the Department to do so for the years at issue.

CONCLUSIONS OF LAW

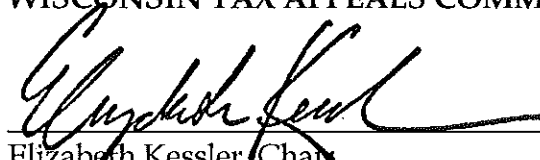
1. Petitioner failed to file a timely Petition for Redetermination.
2. The Commission lacks jurisdiction to hear this appeal.
3. The Department is entitled to dismissal as a matter of law.

ORDER

Based on the foregoing, it is the order of this Commission that the Department's motion to dismiss is granted and the Petitioner's Petition is dismissed.

Dated in Madison, Wisconsin, this 5th day of November, 2019.

WISCONSIN TAX APPEALS COMMISSION


Elizabeth Kessler, Chair


Lorna Hemp Boll, Commissioner


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. 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.