

**STATE OF WISCONSIN
TAX APPEALS COMMISSION**

JACK A. LANGJAHR,

DOCKET NO. 10-S-222

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DAVID C. SWANSON, COMMISSIONER:

This case comes before the Commission on the motion of the Wisconsin Department of Revenue (the "Department") to dismiss the petition for review on the basis that it was not timely filed under Wis. Stat. § 73.01(5)(a). Attorney Julie Zimmer represents the Department and has filed a notice of motion and motion to dismiss with supporting affidavit, exhibits, brief and reply. The Petitioner represents himself in this matter and filed a response to the motion.

Having considered the entire record in this matter, the Commission hereby finds, rules and orders as follows:

FINDINGS OF FACT

1. By a Notice of Amount Due with attached worksheets dated November 16, 2009, the Department issued an assessment to the Petitioner in the total amount of \$6,662.01 (including sales and use tax of \$4,560.20, plus \$961.76 in interest and a penalty of \$1,140.05) for the period January 1, 2005 through June 30, 2009 (the

“period at issue”). According to the Adjustment Explanations, the assessment primarily consists of use tax assessed on purchases of tangible personal property and taxable services used in the Petitioner’s landscape business. (Affidavit of Department Resolution Officer Jerome J. Gebert dated October 14, 2010 (“Gebert Aff.”), ¶ 2, Ex. 1.)

2. By letter dated January 12, 2010, the Petitioner filed a petition for redetermination of the assessment with the Department. (Gebert Aff. ¶ 3, Ex. 2.)

3. By Notice of Action dated July 9, 2010 (the “Notice”) sent to the Petitioner by certified mail, the Department denied the petition for redetermination. (Gebert Aff. ¶ 4, Ex. 3.)

4. The Petitioner received the Notice on July 10, 2010. (Gebert Aff. ¶ 5, Ex. 4.)

5. The Notice informed the Petitioner as follows:

If you disagree with this decision, you may appeal in writing to the

**Wisconsin Tax Appeals Commission
5005 University Ave., Ste. 110
Madison, Wisconsin 53705**

within 60 days of receiving this notice. If you appeal, you must pay a **\$25.00 filing fee** to the Commission at the time you file.

If you do not file an appeal within the 60 day period, this action will become final and conclusive and the additional liability will be payable on or before the date indicated on the attached statement.

(Gebert Aff. ¶ 4, Ex. 3) (emphasis in original).

6. On September 10, 2010, the Commission received the Petitioner’s

petition for review sent by certified mail date-stamped September 9, 2010.

7. On October 12, 2010, the Department filed its answer.

8. On October 28, 2010, the Department filed a notice of motion and motion to dismiss the petition for review on the basis of untimely filing with supporting affidavit, exhibits and brief.

9. On November 29, 2010, the Petitioner filed a response to the motion.

10. On December 7, 2010, the Department filed a reply.

CONCLUSION OF LAW

The Commission does not have jurisdiction to consider the Petitioner's petition for review because it was filed after the statutory due date specified in § 73.01(5)(a), Wis. Stats.

RULING

Section 73.01(5)(a) of the Wisconsin Statutes requires that a petition for review be filed with the Commission within 60 days of receipt of the Department's notice of action on a petition for redetermination. If no petition is filed within that allotted timeframe, then the related action of the Department becomes "final and conclusive." Wis. Stat. § 71.88(2). A petition sent by certified mail to the Commission is considered filed on the date of its mailing. Wis. Stat. § 73.01(5); Wis. Admin. Code § TA 1.13(2). The requirement of timely filing is strictly construed. *See, McDonald Lumber Co. v. Dep't of Revenue*, 117 Wis. 2d 446 (1984).

The Notice of Action from the Department was delivered via certified

mail to the Petitioner on July 10, 2010. The 60-day period permitted under Wis. Stat. § 73.01(5)(a) for the Petitioner to file a timely petition for review with the Commission expired on Wednesday, September 8, 2010. The Petitioner sent the petition to the Commission via certified mail on Thursday, September 9, 2010, one day after the 60-day appeal period had expired.

In his response, the Petitioner explains that he is in very poor health and cannot pay the assessment, and offers to provide records to resolve at least some part of it. The Petitioner does not dispute the relevant dates at issue nor the Department's position that his petition for review was untimely filed.

Due to the petition's untimely filing, the Commission is required to dismiss it for lack of jurisdiction pursuant to longstanding precedent. "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." *Currier v. Dep't of Revenue*, 288 Wis. 2d 693, 706, 709 N.W.2d 520 (Ct. App. 2005), quoting *Ryan v. Dep't of Revenue*, 68 Wis. 2d 467, 472, 228 N.W.2d 357 (1975). Moreover, even if we could address the merits of this case, the Commission could not relieve the Petitioner of the assessment due to his poor health. If the Petitioner wishes to discuss a settlement of this matter, he still may pursue that option through the Department's Petition for Compromise program regardless of the outcome of this appeal to the Commission.

The Petitioner did not file a petition for review with the Commission within 60 days after his receipt of the Notice of Action on his petition for redetermination. The Commission has no authority under the Wisconsin Statutes to

ignore or make exceptions to the 60-day provision. The Commission cannot act on a petition for review filed after the statutory due date other than to dismiss it for lack of timely filing.

ORDER

The Department's motion is granted and the petition for review is dismissed.

Dated at Madison, Wisconsin, this 24th day of February, 2011.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger W. Le Grand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"