

STATE OF WISCONSIN
TAX APPEALS COMMISSION

ROY J. MALLIET,

DOCKET NOS. 06-I-293
AND 06-I-294

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DIANE E. NORMAN, ACTING CHAIRPERSON:

This case comes before the Commission on the motion of the Wisconsin Department of Revenue ("Department") to dismiss the petitions for review.

Petitioner appears *pro se* and has filed a response to the motion. Attorney Sheree Robertson represents the Department and has filed an affidavit with exhibits and a brief in support of the motion.

Having considered the entire record, including the motion, affidavits, exhibits, and brief of the Department, and petitioner's response, the Commission hereby finds, rules, and orders as follows:

JURISDICTIONAL AND MATERIAL FACTS

1. By notice dated August 30, 2005, the Department issued an assessment of individual income tax, interest, late filing fee and negligence penalty ("the 2002 Assessment") to petitioner in the total amount of \$1,341.79. (Docket No. 06-I-

294, Affidavit of Sheree Robertson, Exhibit 1.)

2. By notice dated November 28, 2005, the Department issued an assessment of individual income tax and interest (“the 2003 and 2004 Assessment”) to petitioner in the total amount of \$3,582.80. (Docket No. 06-I-293, Affidavit of Sheree Robertson, Exh. 1.)

3. On September 28, 2005, petitioner filed a petition for redetermination of the 2002 Assessment with the Department. (Docket No. 06I-294, Affidavit of Sheree Robertson, Exh. 2.)

4. On December 20, 2005, petitioner filed a petition for redetermination of the 2003 and 2004 Assessment with the Department. (Docket No. 06I-293, Affidavit of Sheree Robertson, Exh. 2.)

5. On June 15, 2006, the Department issued a Notice of Action to petitioner denying his petition for redetermination of the 2003 and 2004 Assessment. (Docket No. 06-I-293, Affidavit of Sheree Robertson, Exh. 3.) This Notice was mailed by certified mail via the United States Postal Service and was received by petitioner on June 19, 2006. (Docket No. 06-I-293, Affidavit of Sheree Robertson, Exh. 4.)

6. On August 28, 2006, the Department issued a Notice of Action to petitioner denying his petition for redetermination of the 2002 Assessment. (Docket No. 06-I-294, Affidavit of Sheree Robertson, Exh. 3.)

7. On October 25, 2006, petitioner filed a petition for review with the Commission objecting to the Department’s action on petitioner’s petitions for review for both the 2002 Assessment and the 2003 and 2004 Assessment. The 2002 Assessment

was assigned Docket No. 06-I-294 and the 2003 and 2004 Assessment was assigned Docket No. 06-I-293.

8. Petitioner failed to remit the \$25 filing fee with his petitions for review as required by Wis. Stat. § 73.01(5).

9. The 60-day period provided for in Wis. Stat. § 73.01(5)(a) for filing a timely petition for review of the action of the Department on petitioner's petition for redetermination in Docket No. 06-I-293 expired on August 18, 2006.

10. On January 24, 2007, the Commission issued an Order which stated in relevant part that "[p]etitioner must submit a filing fee for both docket numbers by February 7, 2007 or his appeals will be dismissed for failure to file the appropriate filing fee."

11. On February 22, 2007, the Department filed motions to dismiss both petitions for review.

12. Petitioner failed to pay the \$25.00 filing fee for either Docket Nos. 06-I-293 or -6-I-294.

RULING

Docket No. 06-I-293

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 respondent's Notice of Action on a petition for redetermination. A petition sent by ordinary mail is considered filed on the date on which the petition and filing fee are received by the Commission. Wis. Admin. Code § TA 1.13. The requirement of timely filing has been strictly

interpreted by the Commission and by the judiciary. *See McDonald Lumber Co. v. Dep't of Revenue*, 117 Wis. 2d 446 (1984).

Petitioner received the Notice of Action on the 2003 and 2004 Assessment from respondent on June 19, 2006. Thus, the 60-day period permitted under Wis. Stat. § 73.01(5)(a) for petitioner to file a timely petition for review with the Commission expired on August 18, 2006. Petitioner failed to file his petition for review for this assessment with the Commission until October 25, 2006, over two months past the 60th day for filing a timely petition for review in this case.

Petitioner did not file his petition for review with the Commission within 60 days after receipt of the Notice of Action on his petition for redetermination of his 2003 and 2004 Assessment. 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 with it after the statutory due date other than to dismiss it for lack of timely filing.

Docket No. 06-I-294

Petitioner's petition for review of the 2002 Assessment must also be dismissed for failure to comply with an order of the Commission and lack of jurisdiction. When petitioner filed his petition for review with the Commission, he did not enclose the \$25 filing fee required by Wis. Stat. § 73.01(5)(a). The Commission ordered petitioner to pay the filing fee by letter dated February 7, 2007 or his appeals would be dismissed. Petitioner failed to pay the filing fee.

The Commission has no authority under the Wisconsin Statutes to ignore

or make exceptions to the \$25.00 statutory filing fee requirement. When a petitioner neglects or refuses to pay the statutory filing fee even after receiving a direct request for payment from the Commission, the Commission cannot act on the related petition for review other than to dismiss it for lack of jurisdiction.

IT IS ORDERED

The Department's motion to dismiss is granted, and its action on petitioner's petitions for redetermination is affirmed.

Dated at Madison, Wisconsin, this 13th day of June, 2007.

WISCONSIN TAX APPEALS COMMISSION

Diane E. Norman, Acting Chairperson

David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"