

STATE OF WISCONSIN
TAX APPEALS COMMISSION



SYED M. MOIZ,

DOCKET NO. 21-S-025
DOCKET NO. 21-W-027-SC

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

JESSICA ROULETTE, COMMISSIONER:

This case comes before the Commission for decision on Respondent's Motions to Dismiss Petitioner's Petitions for Review for failure to file a timely Petition for Review with the Tax Appeals Commission ("the Commission"). The Petitioner, Syed M. Moiz, appears *pro se*. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Jeffrey A. Evans. The Department has filed briefs and affidavits in support of its Motions, as well as a reply brief and affidavit. Petitioner sent a letter to the Commission with attachments. Petitioner did not provide any sworn statements in support of that letter. For the reasons stated below, we find for the Department.

FACTS

1. On November 28, 2018, the Department issued Mr. Moiz a Notice of Amount Due ("Notice") for the tax period ending April 30, 2018, of \$7,565.43. That Notice

forms the basis for the Commission's Docket No. 21-S-025. (Affidavit of Mary Nelson, Resolution Office Audit Supervisor, Wisconsin Department of Revenue, submitted in Docket No. 21-S-025 ("Nelson Aff. 025"), ¶ 3, Ex. A.)

2. On November 28, 2018, the Department issued Mr. Moiz a Notice of Amount Due ("Notice") for the tax period ending December 31, 2017, of \$962.30. That Notice forms the basis for the Commission's Docket No. 21-W-027-SC. (Affidavit of Mary Nelson, Resolution Office Audit Supervisor, Wisconsin Department of Revenue, submitted in Docket No. 21-W-027-SC. ("Nelson Aff. 027"), ¶ 3, Ex. A.)

3. On January 28, 2019, Mr. Moiz submitted a Petition for Redetermination to the Department for both tax matters in a single document. (Nelson Aff. 025, ¶ 4, Ex. B, and Nelson Aff. 027, ¶ 4, Ex. B.)

4. In two separate Notices of Action, both dated November 12, 2020, the Department denied Mr. Moiz's Petition for Redetermination. (Nelson Aff. 025, ¶ 5, Ex. C, and Nelson Aff. 027, ¶ 5, Ex. C.)

5. On November 12, 2020, the Department sent the Notices of Action in both matters, by Certified Mail with USPS Tracking/ Article Number 7019 1640 0002 0188 1633. (Affidavit of Anthony J. Davidson, Paralegal on the Legal Staff, Wisconsin Department of Revenue ("Davidson Aff."), ¶¶ 4(b) and (c), Ex. 1.)

6. The Notices of Action, sent in a single envelope by Certified Mail through the USPS, were received by Mr. Moiz on November 14, 2020. (Nelson Aff. ¶ 5, Ex. D.)

7. On January 20, 2021, Mr. Moiz sent, by Certified Mail, a Petition for Review to the Tax Appeals Commission for both matters. (Commission file.)

APPLICABLE LAW

The specific statute at issue here outlines 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.

Thus, if a petitioner fails to file a petition for review within 60 days of receipt of the denial of redetermination, the Commission has no jurisdiction and must dismiss.

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).

The Department has provided confirmation showing that Petitioner received the Notices on November 14, 2020. Petitioner alleges that the Notices were not mailed until November 18, 2020. However, this allegation is not sworn, and he does not provide any sworn statement as to when he received the Notices he asserts were mailed on November 18, 2020. In contrast, the Department has provided detailed, sworn

statements from paralegal Anthony J. Davidson describing the mailing of the Notices by Certified Mail. We have no basis upon which we can disregard the Department's submissions regarding the date on which Petitioner received the Notices.

Sixty days from receipt was Wednesday, January 13, 2021. For this Commission to have jurisdiction over the matter, Petitioner needed to file his appeals with the Commission by that date. Petitioner did not file the appeals until January 20, 2021. While many due dates have been extended due to the coronavirus pandemic, statutory jurisdictional deadlines have not. 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).

CONCLUSIONS OF LAW

1. Because Petitioner failed to file a timely Petition for Review in either matter, the Commission lacks jurisdiction to hear these appeals.
2. 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 Motions to Dismiss are granted and the Petitions for Review in both matters are dismissed.

Dated in Madison, Wisconsin, this 4th day of August, 2021.

WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Chair



Lorna Hemp Boll, Commissioner



Jessica Roulette, 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.