

STATE OF WISCONSIN
TAX APPEALS COMMISSION

NOVARTIS PHARMACEUTICALS CORPORATION, DOCKET NO. 06-I-241

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DIANE E. NORMAN, COMMISSIONER:

This case comes before the Commission on a motion of the Wisconsin Department of Revenue ("respondent") to dismiss the petition for review on the basis that it was not timely filed under Wis. Stat. § 73.01(5)(a).

Petitioner represents itself and has filed no objection to the motion. Attorney Mark S. Zimmer represents respondent, and has filed an affidavit with exhibits and a brief in support of the motion.

Having considered the entire record, including the motion, affidavit, exhibits, and brief of respondent, the Commission hereby finds, rules, and orders as follows:

MATERIAL FACTS

1. By notice dated September 29, 2003, respondent issued an assessment of franchise/income tax and interest to petitioner in the total amount of

\$63,295.24 for the tax years 1998 through 2001.

2. Under date of October 21, 2003, petitioner filed with respondent a timely petition for redetermination of the assessment.

3. By certified mail dated July 19, 2006, respondent issued a Notice of Action to petitioner denying the petition for redetermination. Petitioner signed for and received the Notice of Action on July 24, 2006.

4. On October 3, 2006, petitioner filed its petition for review with the Commission. The petition was dated October 3, 2006 and was mailed by certified mail postmarked October 3, 2006.

5. On November 15, 2006, respondent filed a motion to dismiss the petition for review on the basis of untimely filing, along with an affidavit and brief in support of the motion.

6. On November 17, 2006, the Commission issued a Briefing Order scheduling petitioner's response brief on the motion. Petitioner failed to file any response to the motion.

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 respondent's Notice of Action on a petition for redetermination. A petition sent by certified mail is considered filed on the date on which the petition and filing fee is mailed in a properly addressed envelope with postage duly prepaid. Wis. Stat. § 73.01(5); Wis. Admin. Code § TA 1.13(2). 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 from respondent on July 24, 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 September 22, 2006. Petitioner filed its petition for review October 3, 2006, eleven days after the expiration of the 60-day period.

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

ORDER

Respondent's motion is granted, and the petition for review is dismissed.

Dated at Madison, Wisconsin, this 26th day of January, 2007.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"