

STATE OF WISCONSIN
TAX APPEALS COMMISSION

DEMARCO PARKS, SR.,

DOCKET NO. 19-I-246

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

ELIZABETH KESSLER, CHAIR:

This case comes before the Commission for decision on Respondent's Motion to Dismiss Petitioner's Petition for Review as untimely. The Petitioner, Demarco Parks, of Forestville, Wisconsin, appears *pro se*. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Jeffrey A. Evans. The Department filed a brief, answer, and affidavit with exhibits in support of its Motion. Petitioner has not provided a response.

The Commission finds that the Petitioner's Petition for Review was not filed within the required 60-day period. As such, it was not timely. The Commission lacks jurisdiction and, therefore, must dismiss this matter.

FACTS

1. The Department issued a Notice of Office Audit Amount Due - Individual Income Tax ("Notice") to the Petitioner on December 4, 2018 (Affidavit of Carrie A. Kloss, Resolution Officer, Wisconsin Department of Revenue, ("Kloss Aff.") ¶ 2, Ex. 1.)

2. The Petitioner filed a timely Petition for Redetermination dated December 27, 2018. (Kloss Aff., ¶ 3, Ex. 2.)

3. On June 28, 2019, the Department issued a Notice of Action pursuant to Wis. Stat. § 71.88(1) denying Petitioner's Petition for Redetermination. That Notice, including which information about the 60-day time period in which to file an appeal and the mailing address where a Petition for Review should be filed, was sent via USPS Certified Mail and was received by the Petitioner on July 6, 2019. (Kloss Aff., ¶ 4, Exs. 3 and 4.)

4. The 60-day statutory deadline for filing a petition for review by means other than certified mail under Wis. Stat. § 73.01(5)(a) was September 4, 2019.

5. On October 2, 2019, Petitioner's Petition for Review was filed by regular mail with the Commission. (Commission file.)

6. On October 28, 2019, the Department filed a Motion to Dismiss, along with an affidavit, including exhibits as well as a brief, and answer in support of the Motion. Petitioner was ordered to file a response by November 27, 2019, but Petitioner did not do so. On December 5, 2019, the Commission sent a letter, including a copy of the briefing order dated October 31, 2019, reminding the Petitioner to submit his brief in a timely manner to the Commission. Again, the Petitioner did not respond. (Commission file.)

APPLICABLE LAW

Motion to Dismiss

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. *Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002).

Applicable Statutes

Wis. Stat. § 71.88(2)(a): *Appeal of the department's redetermination of assessments and claims for refund.* A person feeling aggrieved by a determination of the state board of assessors under s. 70.995(8) or who has filed a petition for redetermination with the department of revenue and who is aggrieved by the redetermination of the department of revenue may, within 60 days of the determination of the state board of assessors or of the department of revenue or, in all other cases, within 60 days after the redetermination but not thereafter, file with the clerk of the commission a petition for review of the action of the department of revenue and the number of copies of the petition required by rule adopted by the commission. . . .

Wis. Stat. § 73.01(5)(a): Any person ... who has filed a petition for redetermination with the department of revenue and 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

ANALYSIS

Pursuant to Wis. Stat. § 73.01(5)(a), any person who is aggrieved by a redetermination of the Department may file a petition for review with the Wisconsin Tax Appeals Commission within 60 days of the redetermination. The requirement of timely filing is strictly construed. *Grinyer v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-324

(WTAC 2010); *USF Holland, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-301 (WTAC 2010). The Commission does not have jurisdiction over untimely petitions for review. *McDonald Lumber Co. v. Dep't of Revenue*, 117 Wis. 2d 446, 447, 344 N.W.2d 210 (Ct. App. 1984).

The Petition for Review in this case was filed with the Commission on October 2, 2019, by US Postal Service regular mail. Having received the Notice of Action on July 6, 2019, Petitioner's deadline for filing a petition for review was September 4, 2019. The Commission is without jurisdiction to hear the appeal because the Petition was received 28 days after the statutory deadline.

The Commission only has jurisdiction to review the Department of Revenue's actions against persons who have filed petitions for review within the 60-day period stated in Wis. Stat. § 73.01(5)(a). If a petition for review is not timely filed with the Tax Appeals Commission, the Department's determination shall be final and conclusive under Wis. Stat. § 71.88(2)(a).

CONCLUSION OF LAW

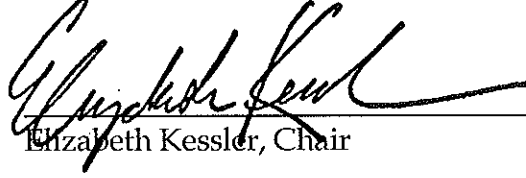
Because the Petitioner's Petition for Review was not timely filed as required by Wis. Stats. §§ 71.88(2)(a) and 73.01(5)(a), the Department's determination became final. Therefore, the Commission lacks jurisdiction in this matter.


ORDER

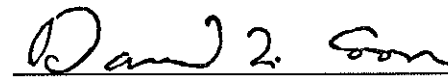
The Department's Motion to Dismiss is hereby granted, and the Petition for Review is dismissed.

Dated at Madison, Wisconsin, this 6th day of February, 2020.

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.