STATE OF WISCONSIN

TAX APPEALS COMMISSION

PIERCE MILWAUKEE, LLC,

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DOCKET NOS. 09-M-045 AND 09-M-046

RULING AND ORDER

(CORRECTED COPY)

THOMAS J. MCADAMS, COMMISSIONER:

This matter comes before the Tax Appeals Commission on the Respondent's Motion to Dismiss the Petition for Review, filed with the Commission on April 29, 2009. In brief, the Respondent (also referred to in this decision as "The Department") argues that the Commission lacks jurisdiction in these appeals from the Board of Assessors because of invalid agent authorizations. The Department has filed briefs along with supporting affidavits and exhibits and is represented in these appeals by Attorney Lisa A. Gilmore. The Petitioner has filed a brief opposing the Department's motion and is represented in the matters before the Commission by Attorney Kevin B. Hynes, of O'Keefe, Lyons & Hynes of Chicago, Illinois.

Having considered the record before it in its entirety, the Commission hereby finds, decides, rules, and orders as follows:

FINDINGS OF FACT[1]

1. On June 30, 2008, the Department issued 2008 real estate assessment notices to Pierce Milwaukee, LLC (hereinafter referred to as "Pierce") for each of the two manufacturing properties located at 2202 North Bartlett Avenue in Milwaukee, Wisconsin which are at issue in these two cases. (Affidavit of Lisa A. Gilmore). Docket Number 09-M-45 relates to Computer Number 77-40-251-R005710 and Docket Number 09-M-46 relates to Computer No. 77-40-251-R005680. (Exhibit 12). The assessment for Docket Number 09-M-45 was $3,902,100 for the land and $100 for the improvements for a total of $3,902,200. (Exhibit 10). This parcel is also referred to by the number 00000-4883. (Exhibit 3). The assessment for Docket Number 09-M-46 was $1,992,700 for the land and $100 for the improvements for a total of $1,992,800. (Exhibit 11). This parcel is also referred to by the number 00000-4885. (Exhibit 4).

2. Mr. Rory O'Conor, a Director at Cushman & Wakefield, Inc. of Illinois, filed a PA-132 Form of Objection to the 2008 Notice of Real Property Assessments for each parcel of property of Pierce at issue with the State Board of Assessors (the "Board") on August 29, 2008. June 18, 2009, Affidavit of Timothy J. Drascic, ¶11, ("Drascic Aff.").

3. On August 22, 2008, Mr. O'Conor also filed five Forms of Objection with the Board concerning three taxpayers other than Pierce. (Drascic Aff., ¶15).

4. Mr. Drascic reviewed Mr. O'Conor's August 22, 2008 and August 29, 2008 submissions and determined that the agent authorizations were uniform in

[1] The findings of fact have been compiled by the Commission from the pleadings, the affidavits, and the exhibits. We have, however, made edits for form, clarity, and punctuation.

appearance as they contained similar handwriting and signatures for the corporate officers (who were not the same individuals), and Mr. Drascic noticed that each of the telephone numbers listed for the corporate officers Mr. O'Conor represented ended in the number "1000." (Drascic Aff., ¶22).

5. Mr. Drascic attempted to verify each authorization by contacting the corporate officer who allegedly authorized the objection by calling the corporate officer at the telephone number listed on each of the authorizations, but Mr. Drascic was unable to verify any of the authorizations. (Drascic Aff., ¶23).

6. Mr. Drascic attempted to verify Mr. Jenkins' (a corporate officer of Pierce) authorization on behalf of Pierce and another taxpayer by calling the telephone number listed on the Agent Authorization form (412-480-1000). The telephone number was not associated with any of the petitioners named on the forms, nor was it associated with Mr. Jenkins. (Drascic Aff. ¶25).

7. The Board determined that the unverifiable agent authorizations represented a defect in the objection filed pursuant to Wis. Stat. § 70.995(8)(c) and provided the alleged agent, Mr. Rory O'Conor, with a two week period to cure the defects by way of correspondence the Board sent Mr. O'Conor which was dated September 4, 2008. (Drascic Aff., ¶26).

8. The Board's September 4, 2008 letter to Mr. O'Conor stated in part as follows:

> In order to protect taxpayers from fraudulent use of their names and unauthorized access to their confidential tax information, the Department needs verifiable agency authorizations with an officer's actual signature (the

> Department will accept faxes or scanned actual signatures). We have attempted to verify C&W's agency authorization with the several property owners. However, our attempts to contact the Corporate Officers (owner's representative) at the telephone numbers listed on the "Authorization of Agent" letters you have submitted were unsuccessful on the following appeals:
>
> * * *
>
> Many of the telephone numbers listed were out of service (not valid) or were the personal phone numbers of people totally unrelated to the property owner. We are at a loss to explain the discrepancy.
>
> Additionally, it appears that proxy signatures, which are not accepted by this Department, may have been used on several of your appeals rather than the officer's actual signature. If this occurred because of logistical concerns, please be advised that the Department accepts faxed or scanned copies of actual signatures.
>
> We will provide you with an opportunity to correct this oversight. Please submit corrected "Authorization of Agency" forms to us no later than Thursday, September 18, 2008. If we are unable to verify any agency authorization after that date based on the forms submitted, we will deny those appeals.

(Drascic Aff., Exhibit 3).

9. On November 17, 2008, Mr. Drascic received a telephone call from Mr. O'Conor in which Mr. O'Conor provided his new address and telephone number. Mr. Drascic then faxed a copy of the Board's September 4, 2008 letter to Mr. O'Conor. (Drascic Aff. ¶¶30 and 31).

10. On November 28, 2008, Mr. O'Conor submitted a second set of authorizations with the Board on behalf of Pierce and additional taxpayers. (Drascic Aff. ¶32).

11. Mr. Drascic took note of both the September 18, 2008 deadline for verification of the Petitioner's agent authorization and the 60-day deadline for objectors to provide data in support of its submissions under Wis. Stat. § 70.995(8)(c)2, and on December 30, 2008, Mr. Drascic directed an employee to issue denial letters for the two Pierce parcels. (Drascic Aff. ¶¶34 and 36).

12. On January 7, 2009, the Board issued Orders for Dismissal to Pierce for each of the properties. The Order states in part:

> Please take notice that the objection to the 2008 assessment for the above listed parcel/account has been reviewed by the State Board of Assessors pursuant to s. 70.995(8)(a) of the Wisconsin Statutes.
>
> WI Stats 70.995 8 (c) states: 'Persons who own land and improvements to that land may object to the aggregate value of that land and improvements . . . .'
>
> The State Board of Assessors was unable to verify agent's authorizations to represent appellant. In absence of the owner's authorization, the State Board of Assessors lacks jurisdiction to hear the appeal under s. 70.995(8)(a), and the appeal is dismissed.

13. On March 13, 2009, Pierce filed a timely Petition for Review for each of the two parcels with this Commission. (Gilmore Affidavit, Exhibits 10 and 11).

14. In response to the Respondent's Motion to Dismiss, Pierce submitted an affidavit dated June, 2009 from Mr. William Jenkins, a corporate officer of Pierce, which states in relevant part as follows:

> 4. At all times relevant to these appeals, Rory O'Conor and his agents have been and are authorized to represent Pierce's interests before the Wisconsin Board of Assessors and the Wisconsin Tax Appeals Commission.

5. Mr. O'Conor was authorized to represent Pierce before the Wisconsin Board of Assessors regarding the 2008 assessment.

(Jenkins Affidavit, ¶¶4 and 5).

CONCLUSION OF LAW

The Respondent has shown that it is entitled to judgment as a matter of law and the Petitioner has not rebutted the Respondent's *prima facie* case.

RULING

This appeal is one of several that concern a number of cases that were filed by Mr. Rory O'Conor before the Board in August of 2008.[2] In brief, Mr. Rory O'Conor of the real estate firm of Cushman & Wakefield filed the Departmental form (the "PA-132 Form of Objection" or "PA-132") that commences appeals before the Board concerning five separate taxpayers within a one-week period in late August of 2008. A member of the Board noticed potential problems with the signatures and the phone numbers listed for Pierce on its Form.[3] The Board sent a letter to Mr. O'Conor, the agent named on the Form, on September 4, 2008 requesting proper verification and extending the deadline to September 18, 2008 for the forms to be corrected. The Board's specific concern was protecting the taxpayer's confidential information from

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[2] The following information about the Board is in the *Wisconsin Bluebook*:

The State Board of Assessors investigates objections to the amount, valuation, or taxability of real or personal manufacturing property, as well as objections to the penalties issued for late filing or nonfiling of required manufacturing property report forms. The number of board members is determined by the secretary, but all must be department employees. The board was created by Chapter 90, Laws of 1973, and its composition and duties are prescribed in Section 70.995(8) of the statutes.

Available at http//ww.legis.wisconsin.gov/lrb/bb/09bb/pdf/321-571.pdf.

[3] The Board is an administrative and investigatory arm of the Department authorized under the provisions of §70.995(8)(a) of the Wisconsin Statutes. It is not quasi-judicial in nature. *United States Shoe Corporation v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-035 (WTAC 1994).

unwarranted intrusion.[4] The Board's letter went unanswered. On November 17, 2008, Mr. O'Conor called a member of the Board and provided his new address and telephone number and the Board then faxed a copy of its September 4, 2008 letter to Mr. O'Conor. Mr. O'Conor filed a new PA-132 form on November 28, 2008, apparently with the appropriate signatures and telephone numbers. The Board, however, dismissed the appeals in January of 2009 as untimely with no substantive review by the Board. Pierce subsequently filed these two appeals before this Commission.

This is a summary judgment motion.[5] The legal question here that the Department posits is whether or not we have jurisdiction given the problems with the agent authorization.[6] There is no controversy or doubt as to the facts. The first part of this ruling will summarize the law applicable to this question and the second part of this ruling will state why we grant the Department's motion.

A. SUMMARY JUDGMENT STANDARDS

A motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the

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[4] The record in this case does not reveal if the Department notified the taxpayer directly of the problems with the agent authorizations or if the correspondence went only to Mr. O'Conor.

[5] The Department has filed a motion to dismiss the Petitioner's Petitions for Review. Because the Department also filed affidavits and a brief in support of the motion, the Commission treats the Department's motion as a motion for summary judgment. *See* Wis. Stats. §§ 802.06(3) and 802.06(2)(b); *see also Mrotek, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-315 (WTAC 1997) (where the Department submitted matters outside of the pleadings, motion for judgment on the pleadings treated as motion for summary judgment) and *City of Milwaukee v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-405 (WTAC 1999) (where parties submitted affidavits and briefs, motion to dismiss for failure to state a claim treated as motion for summary judgment).

[6] It appears from our review of these cases that the importance of the telephone number is that the Board verifies the agent's representation by calling the representative of the taxpayer who signed the form.

moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2). The purpose of summary judgment is "to avoid trials where there is nothing to try." *Transportation Ins. Co. v. Hunzinger Construction Co.,* 179 Wis. 2d 281, 507 N.W.2d 136, 139 (Ct. App. 1993). The party moving for summary judgment has the burden to establish the absence of a genuine, that is, disputed, issue as to any material fact. *Grams v. Boss,* 97 Wis. 2d 332, 294 N.W.2d 473 (1980). The court must view the evidence, or the inferences therefrom, in the light most favorable to the party opposing the motion. *Kraemer Bros. v. United States Fire Ins. Co.,* 89 Wis. 2d 555, 567, 278 N.W.2d 857, 862 (1979).

If the moving party establishes a *prima facie* case for summary judgment, the court then examines the affidavits in opposition to the motion to see if the other party's affidavits show facts sufficient to entitle him to trial. *Artmar, Inc. v. United Fire & Casualty Co.,* 34 Wis. 2d 181, 188, 148 N.W.2d 641 (1967). Once a *prima facie* case is established, "the party in opposition to the motion may not rest upon the mere allegations or denials of the pleadings, but must, by affidavits or other statutory means, set forth specific facts showing that there exists a genuine issue requiring a trial." *Board of Regents v. Mussallem*, 94 Wis. 2d 657, 673, 289 N.W.2d 801 (1980), *citing* Wis. Stat. § 802.08(3). Any evidentiary facts in an affidavit are to be taken as true, unless contradicted by other opposing affidavits or proof. *Artmar,* 34 Wis.2d at 188. Where the party opposing summary judgment fails to respond or raise an issue of material fact, the trial court is authorized to grant summary judgment pursuant to Wis. Stat. § 802.08(3). *Board of Regents,* 94 Wis.2d at 673.

B. THE DEPARTMENT'S ARGUMENTS FOR ITS MOTION

The Department makes the argument that the Petitioner's right to appeal to the Commission is conscribed to an adverse determination by the State Board of Assessors and a timely Petition for Review. The Department notes that in the instant cases, the State Board of Assessors has not made any substantive review or determination regarding the assessed values of the subject properties and no determination was issued. Therefore, the Petitioner's appeal here is necessarily limited to whether the Respondent properly dismissed the Petitioner's objections for lack of jurisdiction due to unverifiable agent authorizations. In the Department's view, this matter is appropriate for summary judgment. Respondent's Reply Brief at 1.

C. THE PETITIONER'S RESPONSES TO THE MOTION

The Petitioner responds that the only issue here is whether the Petitioner authorized the appeals of the 2008 assessments to the Board. The Petitioner offers an affidavit from Mr. William M. Jenkins, an officer of the Petitioner, in support of its contention that Mr. O'Conor was at all times authorized to file the 2008 appeals to the Board. The Petitioner notes that the Board's dismissal order did not bar the Petitioner from seeking relief before the Commission. The Petitioner argues that Wis. Stat. § 70.995(8)(a) states that the only precursor to the Commission's jurisdiction is that a person be "aggrieved" by a determination of the Board and there is no doubt that the Petitioner was aggrieved when the Board dismissed the Petitioner's cases. Finally, the Petitioner states that denying the motion to dismiss here will not prejudice the Department because the process is straightforward and the issues with the assessment are not unique.

D. RELEVANT LAW AND STATUTES

1. Rules of Statutory Construction

When interpreting a statute, we assume that the legislature's intent is expressed in the statutory language. Statutory interpretation "begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry." *State ex rel. Kalal v. Circuit Court*, 271 Wis. 2d 633, 663, 681 N.W.2d 110 (2004). "Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." *Id.; see also,* Wis. Stat. § 990.01(1). Context and structure are also important factors, and construction should strive to avoid absurd or unreasonable results. "If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning." *Id*.

2. Wis. Stat. § 70.995(8)

Both parties agree that the controlling statute at issue in these matters is Wis. Stat. § 70.995(8). The relevant portions provide as follows:

> (a) The secretary of revenue shall establish a state board of assessors, which shall be comprised of the members of the department of revenue whom the secretary designates. The state board of assessors shall investigate any objection filed under par. (c) or (d) if the fee under that paragraph is paid. The state board of assessors, after having made the investigation, shall notify the person assessed or the person's agent and the municipality of its determination by 1st class mail or electronic mail.
>
> (b)1. The department of revenue shall annually notify each manufacturer assessed under this section and the municipality in which the manufacturing property is located

of the full value of all real and personal property owned by the manufacturer. The notice shall be in writing and shall be sent by 1st class mail or electronic mail. In addition, the notice shall specify that objections to valuation, amount, or taxability must be filed with the state board of assessors within 60 days of issuance of the notice of assessment, that objections to a change from assessment under this section to assessment under s. 70.32 (1) must be filed within 60 days after receipt of the notice, that the fee under par. (c) 1. or (d) must be paid and that the objection is not filed until the fee is paid. A statement shall be attached to the assessment roll indicating that the notices required by this section have been mailed and failure to receive the notice does not affect the validity of the assessments, the resulting tax on real or personal property, the procedures of the tax appeals commission or of the state board of assessors, or the enforcement of delinquent taxes by statutory means.

* * *

(c)1. All objections to the amount, valuation, taxability, or change from assessment under this section to assessment under s. 70.32 (1) of property shall be first made in writing on a form prescribed by the department of revenue that specifies that the objector shall set forth the reasons for the objection, the objector's estimate of the correct assessment, and the basis under s. 70.32 (1) for the objector's estimate of the correct assessment. An objection shall be filed with the state board of assessors within the time prescribed in par. (b) 1. A $45 fee shall be paid when the objection is filed unless a fee has been paid in respect to the same piece of property and that appeal has not been finally adjudicated. The objection is not filed until the fee is paid. Neither the state board of assessors nor the tax appeals commission may waive the requirement that objections be in writing. Persons who own land and improvements to that land may object to the aggregate value of that land and improvements to that land, but no person who owns land and improvements to that land may object only to the valuation of that land or only to the valuation of improvements to that land.

(c)2. A manufacturer who files an objection under subd. 1. may file supplemental information to support the manufacturer's objection within 60 days from the date the objection is filed. The state board of assessors shall notify the

> municipality in which the manufacturer's property is located of supplemental information filed by the manufacturer under this subdivision, if the municipality has filed an appeal related to the objection.

Wis. Stat. § 70.995(8)(b)1. and (c)1.-2.[7]

E. Discussion

This case raises several jurisdictional and procedural questions concerning manufacturing property tax appeals taken from the Board of Assessors to the Tax Appeals Commission. The initial question we must answer is if the Department is correct that we have no jurisdiction and the first part of this opinion will analyze the relevant statutes. The second part of this opinion will explain why the motion before us is granted on these facts.

1. Judgment as a Matter of Law

a. The Tax Appeals Commission's Jurisdiction

In order to appeal a "determination" of the State Board of Assessors, the Petitioner must be a party who is "aggrieved" by the Board's determination. Wis. Stat. § 73.01(5)(a).[8] Under Wisconsin case law, it is black letter law that only "aggrieved parties" have a right to appeal decisions of courts. *Tierney v. Lacenski,* 114 Wis. 2d 298, 302, 338 N.W.2d 522, 524 (Ct.App. 1983). Chapter 73 of the Wisconsin Statutes, which defines the Commission's jurisdiction, does not provide a definition of "aggrieved."[9]

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[7] The legislative history of Wis. Stat. § 70.995 is discussed in *City of Niagara* and will not be repeated here, *See* n. 10.

[8] Appeal to the Commission is made on a *de novo* basis. *Bedynek v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-693 at 5 (WTAC 2003); *Dye v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-597 at 6 (WTAC 2002).

[9] Wis. Stat. § 227.01(9), however, defines a "person aggrieved" as a person "whose substantial interests are adversely affected by a determination of an agency." Because Ch. 227 has some applicability to appeals from the Respondent to the Commission, this definition has been thought to apply to appeals under s.73.01(5)(a). *APV N. America, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-651 (WTAC 2002).

The Commission has stated that if a party seeks relief from the State Board of Assessors and receives the relief it seeks, it is not an "aggrieved" party and may not file a petition for review. But if a party seeks relief and does not receive everything it seeks, it is aggrieved. *City of Niagara v. Department of Revenue and Niagara of Wisconsin Paper Corp.*, Wis. Tax Rptr. (CCH) ¶400-329 (WTAC 1997).[10] We decide as a matter of law whether an appellant is an aggrieved party and whether this Commission has jurisdiction to hear and determine the appeal. *Snopek v. Lakeland Med. Ctr.,* 215 Wis. 2d 539, 544, 573 N.W.2d 213, 215 (Ct.App.1997), *rev'd on other grounds,* 223 Wis.2d 288, 588 N.W.2d 19 (1999).

While we have no doubt that the Petitioner feels "aggrieved" by the Board's dismissal of this appeal, we do not think that entirely answers the question before us. First, nothing in the statute authorizes the Commission to consider this appeal (which would amount to a bypass of the Board) and common sense and a plain reading of the statutory language seem to dictate otherwise. The Petitioner's argument would make the Board review optional. Second, as the below shows, the Commission's role and jurisdiction must be read in conjunction with the Board's. Third, what the relevant part of the statute says is "aggrieved by the Board's determination," not just "aggrieved."

b. Relevant Law and the Board's Jurisdiction

In Wisconsin, administrative boards and commissions have no inherent

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[10]In *City of Niagara*, an appeal originally filed before the Board by a municipality, the Commission's decision concerned the scope of cross-appeals. In that context, the Commission noted that the statute allows that if the taxpayer did not file an objection with the Board, the taxpayer may not file a petition for review with the Commission unless the assessment has been increased by the Board. In this situation, the petition by the taxpayer is limited to review "of the increase" in the assessment.

common law authority and their powers are limited to the statute conferring such powers expressly and to those powers that are "fairly implied." *Nekoosa-Edwards Paper Co. v. Public Service Comm'n*, 8 Wis. 2d 582, 593, 99 N.W.2d 821, 827 (1959). It is the general rule that an agency or board created by the legislature only has the powers which are either expressly conferred therein or those powers that are necessarily implied from the four corners of the statute under which the agency or board operates.[11] The effect of this rule has generally been that such statutes are strictly construed to preclude the exercise of a power which is not expressly granted. *Racine Fire and Police Comm'n v. Stanfield*, 70 Wis. 2d 395, 399, 234 N.W.2d 307, 309 (1975).

The Board of Assessors' functions and duties are set forth in the statute above. By the express terms of Wis. Stat. § 70.995(8) (a), the Board "shall investigate any objection filed ... if the [$45 filing] fee ... is paid." Wis. Stat. § 70.995(8)(c)2 allows a manufacturer to file supplemental information to support the objection within 60 days from the date the objection was filed. Wis. Stat. § 70.995(8)(a) also states that the Board, after having made the investigation, shall notify the person assessed or the person's agent of its determination by 1st class mail or electronic mail. The Board generally

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[11] Presumably, the Board's power to extend the filing deadline briefly for a defect with the PA-132 form is one of those "fairly implied" powers. In Wisconsin, there is a tradition of avoiding dismissal of civil actions based on mere technical errors and omissions. ***See, Gaddis v. La Crosse Products, Inc.***, 198 Wis. 2d 396, 542 N.W.2d 454 (1996); ***Rabideau v. Stiller***, 2006 WI App 155, 295 Wis. 2d 417, 720 N.W.2d 108 (setting forth a methodology for determining whether a pleading in circuit court is fatally defective). The Commission views the Respondent's *sua sponte* granting of one two-week extension and the placing of one phone call to the listed number as adequate, but minimally so. The Board's case would be stronger if the Board had contacted the affected corporate officer directly or, if the Board had made more mailings to Mr. O'Conor, or both. The record is unclear as to when Cushman and Wakefield and Mr. O'Conor actually received the September 4, 2008 letter prior to the fax.

convenes once per month to review objections and to issue decisions.[12] Respondent's Reply Brief at 2.

Thus, a plain reading of the statute is that there are statutory prerequisites in order for a taxpayer or a municipality[13] to invoke the Board's jurisdiction. First, all objections to the taxability of manufacturing property must be made to the Board within sixty days of the Department's notice of assessment. A second requirement in the statute is that the taxpayer use the form prescribed by the Department.[14] A third requirement is that the taxpayer set forth the reasons for the objection.[15] The fourth requirement is that the taxpayer give the taxpayer's estimate of the correct assessment.

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[12] The following information is posted on the Department's web site:

32. What happens at the State Board of Assessors?
The Board of Assessors will assign a manufacturing appraiser to your appeal. The appraiser will investigate our records, the information you provide, and related data and prepare a recommendation. The investigation may also include a physical inspection of your property. The Board does not conduct a hearing, but will review the recommendation and either approve it or ask for additional information. The Board will mail its determination to you. You may appeal the Board's decision to the Tax Appeals Commission within 60 days of receipt of the Board's decision.

Available at http://www.revenue.wi.gov/pubs/slf/pb065.pdf (last visited on December 10, 2009).

[13] In circumstances not present here, a municipality may also file a manufacturing property assessment objection to the Board under Wis. Stat. § 70.995(8)(d).

[14] While Wis. Stat. § 70.995(8)(a) states that only a person owning property can file an objection, the statute specifically contemplates that a taxpayer may use an agent because the statute uses the term once without defining it. While a summary of the law of agency is beyond the scope of this footnote, one of the elements of agency is that the principal manifest assent to the agency. Given that, it does not seem unreasonable for the Board to require proof of the agency. *See, generally*, *Central Dodge Title, LLC v. Dep't of Revenue*, (Docket Number 07-T-208), (WTAC, October 6, 2009).

[15] The PA-132 Form of Objection is tantamount to a notice pleading. Its role is to put Respondent, its Board, and the affected municipality on notice of the nature of the objection. *Seats, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-762 (WTAC 2004). Under the principle of modern notice pleading, the function of a pleading is to give general notice of the claim. *O'Leary v. Howard Young Medical Center*, 89 Wis. 2d 156, 173, 278 N.W.2d 217 (Ct. App. 1979).

Fifth, the taxpayer must give the basis under sec. 70.32(1)[16] for the objector's estimate of the correct assessment. It is the first prerequisite that is directly at issue here.[17]

c. Is the Department entitled to judgment as a matter of law on jurisdiction?

As noted above, there are a number of requirements that must be satisfied before the Board of Assessors can act. First and perhaps foremost, the PA-132 form must be filed within 60 days of the Department's assessment.[18] The question in this case becomes whether or not the form the Petitioner submitted in August was valid. If it was, then the Commission has jurisdiction, and if the form was not timely filed, then the Commission has no jurisdiction. *See, generally, Cudahy v. Department of Revenue,* 66 Wis. 2d 253, 259-60, 224 N.W.2d 570, 573 (1974) (subject matter jurisdiction cannot be conferred by waiver or consent and strict compliance with statutory requirements is essential). The form filed in November is clearly past the statutory deadline.[19]

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[16] Wis. Stat. § 70.32(1) sets forth that real property is to be valued by the assessor in the manner specified in the Wisconsin property assessment manual from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefore at a private sale. The statute then lists factors for the assessor to consider.

[17] This list is not intended to be complete.

[18] The Commission has usually taken the position that the 60-day period begins the day after a party receives the determination of the State Board of Assessors. *See, City of Niagara*, at footnote 10.

[19] A long line of cases shows that time limits are often enforced to the letter in administrative and tax matters. *See, e.g., Kohnke v. ILHR Department,* 52 Wis. 2d 687, 191 N.W.2d 1 (1971); *Brachtl v. Dep't of Revenue*, 48 Wis. 2d 184, 179 N.W.2d 921 (1970) (holding that timely service by the taxpayer is indispensable to trigger judicial review of the Commission's decision); *Ryan v. Wisconsin Dep't of Revenue,* 68 Wis. 2d 467, 228 N.W.2d 457 (1975) (Strict compliance with the statutes is required);. *Whistle B. Currier v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-866 (WTAC 2005) ("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," quoting *Kohnke*).

The Department in support of its position points us mainly to the language of the statute concerning the Board's jurisdiction. The Petitioner, on the other hand, focuses on the language which defines the Commission's jurisdiction. According to the Petitioner, the question in this case is the Commission's jurisdiction and not that of the Board. In brief, the Petitioner argues that the Commission has jurisdiction, seemingly regardless of what happened or did not happen before the Board, because the Petitioner is "aggrieved." For the reasons that follow, we agree with the Department's reading of the statute.

First, a plain reading of the statute requires that the two provisions be read together. What the legislature set forth was a two-step process: the taxpayer initially goes to the Board, presents his or her information, and, if unsuccessful with the Board, then the taxpayer may appeal to the Commission. It is a rule of construction that every word and clause must be given effect and no part of the statute is to be rendered surplusage. *Hayne v. Progressive N. Ins. Co.*, 115 Wis. 2d 68, 339 N.W.2d 588 (1983). We cannot read one word in the statute in isolation to what is around it. Further, the language of the statute is that "all objections to the "amount, valuation, taxability, or change from assessment ... shall be *first* made in writing on a form prescribed by the department... ." The importance of the form and Board review is also bolstered by the statutory language later in the same section that provides that "Neither the state board of assessors nor the tax appeals commission may waive the requirement that objections be in writing." Where a method of review is prescribed by statute, that prescribed method is exclusive. *Association of Career Employees v. Klauser*, 195 Wis. 2d 602, 612, 536

N.W.2d 478 (Ct. App. 1995).[20]

Second, the Petitioner points out that nothing in the Board's order dismissing the petition before it prohibited the Commission from reviewing the matter. This is true and, further, the letter the Board issued pointed out the Petitioner's appeal rights to this Commission. That cannot mean, however, that the Board determines the Commission's jurisdiction. The right of a taxpayer to appeal a determination of the Respondent must be grounded in the statutes and cannot be conferred by an erroneous statement by Respondent that the taxpayer may appeal the determination. *Beck v. Dept. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-275 (WTAC 1997). In our view, it would make no sense for a Board of Assessors with training and professional certifications to refuse to act on the case but pass the case on to the Tax Appeals Commission with the expectation that the Commission will sift and winnow to make the determination. Further, as discussed above, the statute clearly outlines a two-step process of which the Commission is the second step. The statute plainly and unambiguously denominates the Board as a necessary first step.[21]

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[20] The *Klauser* court distinguishes "lack of subject matter jurisdiction" and "competency to proceed." The latter involves the failure to comply with the conditions precedent necessary to acquire jurisdiction.

[21] A determination by the State Board of Assessors is presumed to be correct. In dicta, the Commission has speculated on the limits of this presumption. *Seats, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH)¶400-762 (WTAC 2004) ("It is hard to imagine that a determination by the Board which includes known palpable errors, such as clerical errors or double assessments, could not be corrected but should nonetheless be afforded a presumption of correctness.") Wis. Stat. § 227.57(8) provides a basis for a circuit court to reverse or remand a case to an agency if it finds the agency's exercise of discretion is inconsistent with an agency rule, officially stated policy or a prior agency practice. This section, however, does not apply to the Commission's review of Respondent's actions, but will apply if and when a circuit court reviews the Commission's action. Wis. Stat. § 70.995(8) does not authorize the Commission to remand a case back to the Board.

Third, the Petitioner posits that there would be no harm to the Department if the Commission heard the case. This argument, however, has been rejected by the Commission in a closely related context. In *Food Service Products Co., d/b/a Moore's Food Products v. Dep't of Revenue,* Wis. Tax Rptr. (CCH) ¶400-117 (WTAC 1995), the Commission wrote the following in relation to a PA-132 form missing the taxpayer's proposed assessment value:

> We disagree. The respondent was indeed prejudiced by this failure because, following expiration of the 60-day appeal period specified in §70.995(8)(d), Stats., the Board of Assessors had nothing to consider in reviewing the Objection. Without an opinion of value from petitioner, there was no subject on which the Board could take action and no joinder of that issue.
>
> Just as in *State ex rel. Reiss v. Board of Review,* 29 Wis.2d 246 (1965), which involved the taxpayer's failure to provide an opinion of value on an official form specifically requesting it, the respondent here properly refused to consider petitioner's Objection where such information was not provided.
>
> In *Reiss,* the Court held that the statute gave the board of review 'reasonable latitude in specifying relevant information which must be supplied as part of a written objection.' *Id.* at 251. Here, §70.995(8)(c) similarly requires objections to be 'made in writing on a form prescribed by the department of revenue . . .' within 60 days of issuance of the assessment.
>
> We further embrace the *Reiss* court's conclusion with respect to the importance of petitioner's timely providing its opinion of fair market value as requested on the Objection form:
>
> > We consider the types of information called for . . . to be relevant to the issues ordinarily raised on objection to an assessment, helpful to the board in the performance of its duty and not unduly burdensome to the taxpayer.

Ibid.

> We accordingly reach the same conclusion as did the Supreme Court in *Reiss,* which we deem authoritative here: without a timely filed objection by petitioner under §§70.995(8)(b) and (c), including petitioner's opinion of value, the respondent properly denied jurisdiction to consider it.

As this passage makes clear, the real issue is whether or not the statutory procedure has been complied with. In this case, it clearly has not been. The form that was properly filed in November was filed on or around the 150th day after the assessment was issued, approximately 90 days late.

The Commission has ruled on numerous occasions that the various requirements of the manufacturing property statutes are jurisdictional:

****Du-Well Mfg. Co. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶202-021 (WTAC 1982)(Commission lacks jurisdiction where taxpayer failed to file standard manufacturing form with the Department).

****City of West Allis v. Dep't of Revenue and Allis Chalmers*, Wis. Tax Rptr. (CCH) ¶202-656 (WTAC 1985)(appeal to the Commission untimely where city failed formally to authorize appeal in statutory time frame; informal approval not acceptable and neither is formal authorization after the fact.)

****Prime Leather Finishes Company, Arthur W. Welch Trust and Arthur W. Welch Trust II v. Dep't of Revenue,* Wis. Tax Rptr. (CCH) ¶202-676 (WTAC 1985)(Petition for Review filed on 61st day denied for being untimely).

****Quad/ Graphics, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-174 (WTAC 1995)(60 day limit is jurisdictional where notice of assessment was mailed to the previous owner and new owner received the assessment for the first time several months later).

****Best Embroidery, LLC v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-997 (WTAC 2001). (Commission denies appeal filed 6 months after assessment).

****General Electric and GE Healthcare*, Wis. Tax Rptr. (CCH) ¶401-172 (WTAC 2009)(failure to include valuation information on the PA432 deprived both the Board and the Commission of jurisdiction).

Based on the statutes and relevant case law, the Department has made a *prima facie* case for summary judgment. Simply put, we are unable to declare "no harm, no foul." [22]

2. The Undisputed Facts

Under summary judgment methodology, once the moving party has made a *prima facie* case, as the Department has done, the opposing party must set forth specific facts showing that there is a genuine issue for trial. *Transportation Ins. Co., Inc. v. Hunzinger Constr. Co.,* 179 Wis. 2d 281, 291, 507 N.W.2d 136 (Ct.App.1993). In this case, our review of the motions and the materials submitted in connection with them establish that the material facts are not in dispute. In our view, the only possible factual dispute concerns the principal's signature on the original form. For the following reasons, we find that the Petitioner has not rebutted the Department's *prima facie* case.

A brief review of what the Petitioner submitted is in order. In response to the Department's motion for summary judgment, the Petitioner submitted with its reply brief the June, 2009 Affidavit of Mr. William M. Jenkins, who is identified as a corporate officer for Pierce Milwaukee, LLC. As relevant to the issue in this case, Mr. Jenkins avers the following:

> 4. At all times relevant to these appeals, Rory O'Conor and his agents have been and are authorized to represent Pierce's interests before the Wisconsin Board of Assessors and the Wisconsin Tax Appeals Commission.
>
> 5. Mr. O'Conor was authorized to represent Pierce before the Wisconsin Board of Assessors regarding the 2008 assessment.

[22] It appears from our searches of the *Westlaw* and *CCH* databases for the Commission that no taxpayer has ever prevailed before the Commission on a jurisdictional issue related to Wis. Stat. § 77.995(8).

The Department characterizes this submission as paltry and self-serving. Unfortunately, the affidavit does not even attempt to answer the famous question Senator Howard Baker once asked: "What did he know and when did he know it?"

The affidavit the Petitioner submitted in response to the Petitioner's motion does not rebut the *prima facie* case the Department has established for two reasons. First, the proponent does not aver that he did, in fact, sign the timely Form PA-132 that is at issue in this case, or even that it was done on his behalf by proxy. Indeed, the affidavit does not claim any specific connection with the defective PA-132. In Wisconsin, an appeal by a purported agent cannot be ratified after the cause of action or right to appeal has been terminated by the lapse of time. *Town of Nasewaupee v. City of Sturgeon Bay,* 77 Wis. 2d 110, 251 N.W.2d 845 (1977). The fact that a corrected form with a markedly different signature was submitted in November in response to the Department's stated objections indicates that the August form was not signed by the taxpayer and the affidavit submitted here does nothing to rebut that. Second, we note that the Petitioner in its response brief does not dispute the Department's recitation of the facts and the Department's recitation is therefore conceded. *See, generally, Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1992). For summary judgment purposes, the facts are not in dispute.

CONCLUSION

In sum, we believe the Department has shown that it is entitled to judgment as a matter of law. The form the Petitioner filed in August was defective. After a brief extension in which the Board received no response, the Board correctly

determined that it had no jurisdiction. A plain reading of Wis. Stat. § 70.995(8) compels us to conclude that a bypass of the Board is not possible. Construing the statute strictly as we must, we find that the form needed to establish the Board's jurisdiction over the assessment was filed late, depriving the Board of jurisdiction. Following a long line of case law, we must find that this Commission lacks statutory jurisdiction as well. The Department's motion for summary judgment is, therefore, granted.

ORDER

The Board of Assessors' actions on the Petitioner's objections to the assessments at issue are affirmed.

Dated at Madison, Wisconsin, this 16th day of December, 2009.

WISCONSIN TAX APPEALS COMMISSION

_____

David C. Swanson, Chairperson

_____

Roger W. Le Grand, Commissioner

_____

Thomas J. McAdams, Commissioner

ATTACHMENT: **"NOTICE OF APPEAL INFORMATION"**