

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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**PROSSER RV, INC.,**

**DOCKET NOS. 18-S-038  
AND 18-S-039**

Petitioner,

vs.

**WISCONSIN DEPARTMENT OF REVENUE,**

Respondent.

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**RULING AND ORDER**

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**LORNA HEMP BOLL, CHAIR:**

This case comes before the Commission for decision on Respondent's Motion to Dismiss Petitioner's Petition for Review as untimely. Petitioner, Prosser RV, Inc., of Sturtevant, Wisconsin, appears by Kutler Tax Resolution, Inc. Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Julie A. Zimmer. The Department filed a brief and affidavit with exhibits in support of its Motion. Petitioner has not provided a response.

The Commission finds that 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. On June 23, 2016, the Department issued to Petitioner two Notices of Amounts Due. One Notice resulted from an audit of Petitioner's Rental Vehicle Fee Returns for the tax period January 1, 2009 through December 31, 2014. The other resulted from an audit of Petitioner's Sales and Use Tax returns for the tax period January 1, 2011, to December 31, 2014. (Affidavit of Mustafa O. Kharoub, Resolution Officer, Wisconsin Department of Revenue ("Kharoub Aff."), Exs. 1 and 2.)

2. On August 18, 2016, Petitioner filed a timely Petition for Redetermination of both Notices with the Department. (Kharoub Aff., Ex. 3.)

3. On December 7, 2017, the Department denied the Petition for Redetermination regarding the Rental Vehicle Fee, and on December 11, 2017, the Department denied the Petition for Redetermination regarding the Sales and Use Tax. Both Notices contained a statement of Petitioner's appeal rights. (Kharoub Aff., Exs. 4 and 5.)

4. Petitioner received the denial Notices by certified mail on December 8 and December 14, 2017. (Kharoub Aff., Ex. 6 and 7.)

5. Petitioner's deadline for filing with the Commission was 60 days from the dates of receipt. Those dates were February 6 and February 12, 2018, respectively.

6. Petitioner's Petition for Review was filed with the Commission by regular mail received at the Commission on February 13, 2018. (Commission file.)

7. On March 5, 2018, the Department filed a Motion to Dismiss, along with an affidavit with exhibits and a brief in support of the Motion. Petitioners have not responded. (Commission file.)

## APPLICABLE LAW

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 specific statutes at issue here outline 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.

Wis. Stat. § 71.88(2): *Appeal of the department's redetermination of assessments and claims for refund.* A person feeling aggrieved by the department's redetermination may appeal to the tax appeals commission by filing a petition with the clerk of the commission as provided by law and the rules of practice promulgated by the commission. If a petition is not filed with the commission within the time provided in s. 73.01 . . . the assessment, refund, or denial of refund shall be final and conclusive.

## ANALYSIS

The Wisconsin Tax Appeals Commission lacks jurisdiction to hear an appeal in cases where a petitioner fails to file a timely petition for review with the Commission. *Barth v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-527 (WTAC 2012).

Unless otherwise provided by statute, a document is filed on the date it is received by the Commission, not the date it is mailed. *Laurence H. Grange v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-017 (Dane Co. Cir. Ct. 1993). The one exception in Wis. Stat. § 73.01(5)(a) states that a petition is timely if it is mailed (1) by certified mail (2) in a properly addressed envelope (3) with postage prepaid, and (4) postmarked before midnight of the last day for filing.

Petitioner received the Notices on December 8 and December 14, 2017. The Notices included language explaining that Petitioner may appeal to the Tax Appeals Commission within 60 days of receiving the Notice if Petitioner disagreed with the Notices. The 60-day deadlines to file expired on February 6 and February 12, 2018. Petitioner's Petition<sup>1</sup> was mailed via ordinary mail rather than certified mail. The Petition was not received at the Commission until February 13, 2018, a week after the deadline allowed by statute for the first Notice and a day after the deadline for the second.

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<sup>1</sup> The Petitioner filed one petition addressing both notices. The Petitioner was technically required to file a separate petition for each notice pursuant to Wis. Admin. Code § 1.15(2m). Consequently, an additional filing fee was required and was paid.

Because the Petition was not timely filed, the Commission has no jurisdiction and must dismiss the Petition. 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. The Notices of Action denying Petitioner's Petition for Redetermination became "final and conclusive" pursuant to Wis. Stat. § 71.88(2)(a) because Petitioner's Petition for Review with the Commission was not filed within 60 days of the Notices.

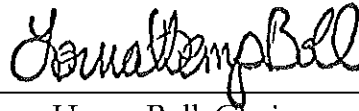
2. The Commission lacks jurisdiction over the Petition for Review because it was untimely. Therefore, the Department is entitled to dismissal as a matter of law.

### ORDER

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

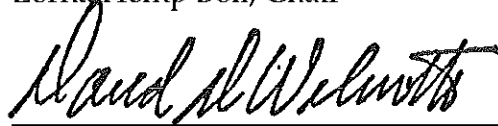
Dated at Madison, Wisconsin, this 27th day of August, 2018.

WISCONSIN TAX APPEALS COMMISSION



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Lorna Hemp Boll, Chair



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David D. Wilmoth, Commissioner



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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. Alternatively, 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 Appeals 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 <http://wicourts.gov>.

This notice is part of the decision and incorporated therein.