

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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MAMOUN R. THAHER,

DOCKET NO. 18-S-217

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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RULING AND ORDER

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**DAVID L. COON, COMMISSIONER:**

This case comes before the Commission for decision on Respondent's Motion to Dismiss Petitioner's Petition for Review for lack of jurisdiction. Petitioner, Mamoun R. Thaher, of Oak Creek, Wisconsin, is represented by Jamal Amro, Dura Services, Greenfield, Wisconsin. Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Kelly A. Altschul. 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 Redetermination was not filed within the required 60-day period. As such, it was not timely and there is no action on a Petition for Redetermination from which the Petitioner can be aggrieved. Therefore, the Commission lacks jurisdiction and therefore must dismiss this matter.

## FACTS

1. The Department issued a Notice of Field Audit Amount Due (“Notice”) on March 15, 2018, to the Petitioner which contained his appeal rights including the 60-day time period in which to file an appeal. The appeal rights also clearly stated where the Petition for Redetermination should be filed, including a Madison, Wisconsin, address, an online website, and a fax number. (Affidavit of Jerome Gebert, Field Audit Resolution Unit Supervisor, Wisconsin Department of Revenue, (“Gebert Aff.”) ¶ 3, Ex. A.)

2. The Petitioner faxed to the Department Resolution Unit a letter dated October 1, 2018, that the Department treated as a late filed Petition for Redetermination. In the letter, Petitioner claimed he had attempted to appeal the March 15, 2018 Notice by a letter faxed<sup>1</sup> on April 20, 2018, to the Department’s Eau Claire, Wisconsin, office. Petitioner further stated that staff at the Eau Claire office advised that they never received his fax. (Gebert Aff., ¶ 3, Ex. B.)

3. On October 12, 2018, the Department issued a Notice of Action pursuant to Wis. Stat. § 77.59(6)(a) denying Petitioner's Petition for Redetermination due to being untimely. (Gebert Aff., ¶ 4, Ex. C.)

4. On October 22, 2018, Petitioner’s Petition for Review was filed with the Commission. In the Petition, Petitioner again stated that he had attempted to file an appeal with the Department’s Eau Claire office by fax, that the Eau Claire office “could not find any

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<sup>1</sup> The number he claimed to fax the letter to in Eau Claire is different from the fax number contained in the appeal rights given in the Notice.

trace” of any fax from the Petitioner and that the Petitioner “could not produce any evidence” of receipt by the Department of his appeal. (Commission file.)

5. On February 5, 2019, the Department filed a Motion to Dismiss, along with an affidavit and exhibits as well as a brief in support of the Motion. Petitioner was ordered to file a response by March 15, 2019, but Petitioner did not do so. The Commission, on its own motion, granted Petitioner an additional opportunity to file a response by April 3, 2019. 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. *See Alexander v. Dep’t of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002).

#### *Applicable Statutes*

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 ....

Wis. Stat. § 77.59(6): Except as provided in sub. (4) (b), a determination by the department is final unless, within 60 days after receipt of the notice of the determination, the taxpayer, or other person directly interested, petitions the department for a redetermination....

Wis. Stat. § 77.59(6)(a): Within 6 months of the receipt by the department of the petition for redetermination, the department

shall notify the petitioner of its redetermination. The redetermination shall become final 60 days after receipt by the petitioner of notice of the redetermination unless, within that 60-day period, the petitioner appeals the redetermination under par. (b).

Wis. Stat. § 77.59(6)(b): Appeals from the department's redeterminations shall be governed by the statutes applicable to income or franchise tax appeals....

### ANALYSIS

In sales tax matters, under Wis. Stat. § 77.59(6), any person disagreeing with a determination of the Department may file a petition for redetermination with the Department within 60 days of receipt of that determination. If a petition for redetermination is not filed within 60 days, the Department's determination becomes final and conclusive. Appeals of the Department's action on a petition for redetermination are governed by the same statutes for similar appeals in franchise and income tax matters, including Wis. Stat. § 73.01(5)(a).

The Commission has repeatedly ruled that it does not have jurisdiction to hear appeals of cases in which a petitioner has not filed a timely petition for redetermination. *Jones v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-730 (WTAC 2013); *Kaminske v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-638 (WTAC 2012); *Williams v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-880 (WTAC 2006). The reasoning behind these decisions is that, if a person does not timely file a petition for redetermination, the Department's initial determination becomes final and conclusive and he or she cannot be "aggrieved by the redetermination of the Department of Revenue." Under Wis. Stat. §

73.01(5)(a), the Tax Appeals Commission only has jurisdiction over cases in which a person has timely filed a petition for redetermination and is aggrieved by the redetermination of the Department.

In this case, the Department's Notice was issued on March 15, 2018. The Petitioner had 60 days from his receipt of the Notice to timely file a petition for redetermination. The Department does not provide proof as to the date that the Petitioner received the Notice, but Petitioner, in his October 1, 2018 letter, acknowledges an attempt to appeal the Notice on April 20, 2018. Even assuming that he received the Notice as late as April 20, 2018, he would have needed to file a timely petition for redetermination no later than June 19, 2018. The Department states that the first document they received from the Petitioner was the October 1, 2018 letter, which they treated as a late filed petition for redetermination. That letter was received well beyond the latest possible date by which Petitioner needed to file a petition for redetermination to be timely.

The Petitioner has failed to respond to the Department's Motion to Dismiss and has provided no additional affidavits or evidence related to his filing of a petition for redetermination with the Department beyond the allegations contained in the Petition for Review. While the Petitioner does allege that he attempted to fax an appeal to the Department's Eau Claire office, he acknowledges that the Eau Claire office "could not find any trace" of the documents he claims to have faxed and he also acknowledges that he has

no “evidence” showing that he filed anything with the Department that we could construe as a timely petition for redetermination.<sup>2</sup>

The Commission concludes that the Petitioner failed to file a timely Petition for Redetermination within 60 days after receipt of the Notice from the Department. Thus, the Commission lacks subject matter jurisdiction over this case. 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).

#### CONCLUSION OF LAW

The Petitioner’s Petition for Redetermination was not timely filed as required by Wis. Stats. §§ 73.01(5)(a) and 77.59(6). The Department’s determination became final. Therefore, the Commission lacks jurisdiction in this matter.

#### ORDER

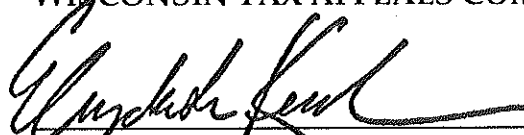
The Department’s Motion to Dismiss is hereby granted, and the Petition for Review is dismissed.

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<sup>2</sup> Because Petitioner has provided no evidence of any timely filing even with a wrong address, email, or fax number and makes no arguments in response to the Motion to Dismiss, we do not need to address whether a filing to a wrong location within the Department would be effective as a timely filing.

Dated at Madison, Wisconsin, this 24th day of May, 2019.

WISCONSIN TAX APPEALS COMMISSION



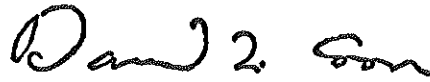
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Elizabeth Kessler, Chair



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Lorna Hemp Boll, 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. 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.