

**STATE OF WISCONSIN**  
**TAX APPEALS COMMISSION**

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**ROBERT VOLZ**  
**(d/b/a ROBERT VOLZ TRUCKING, INC. and**  
**BVT, INC.),**

**DOCKET NO. 07-V-14**

Petitioner,

vs.

**RULING AND ORDER**

**WISCONSIN DEPARTMENT OF TRANSPORTATION,**

Respondent.

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**DAVID C. SWANSON, COMMISSIONER:**

This case comes before the Commission on its own motion to dismiss the petition for review on the basis that petitioner never paid the \$25.00 statutory filing fee required under Wis. Stat. § 73.01(5)(a). The Wisconsin Department of Transportation ("respondent") has filed a notice of motion to dismiss the petition for review on the basis that the Commission lacks jurisdiction over the petition due to untimely filing under Wis. Stat. § 73.01(5)(a). Petitioner appears by Adam Volz, President of BVT, Inc., and has filed no objection or other response to the notice of motion. Attorney Allyn Lepeska represents respondent and has filed an affidavit in support of the notice of motion.

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

## JURISDICTIONAL FACTS

1. By notice dated November 17, 2006, respondent issued to petitioner an assessment of International Fuel Tax Agreement (“IFTA”), Single State Registration System (“SSR”) and International Registration Plan (“IRP”) fees,<sup>1</sup> plus interest, in the total amount of \$5,526.97.

2. On December 22, 2006, petitioner filed with respondent a timely petition for redetermination of the assessment.

3. By notice dated December 26, 2006 and sent to petitioner by First Class Mail, respondent denied the petition for redetermination.

4. On January 26, 2007, the Commission received via regular mail petitioner’s petition for review of respondent’s action on the petition for redetermination; however, the Commission did not receive the \$25.00 statutory filing fee required under Wis. Stat. § 73.01(5)(a).

5. By notice dated January 31, 2007, the Commission informed petitioner that the required filing fee had not been paid and requested immediate payment thereof.

6. On February 27, 2007, respondent filed a notice of motion to dismiss the petition for review on the basis of lack of jurisdiction due to untimely filing and non-payment of the statutory filing fee, with a supporting affidavit. The notice of motion stated that respondent would move the Commission to dismiss the petition at the time and place for hearing to be set by the Commission.

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<sup>1</sup> See Wis. Stats. §§ 73.01(5)(a), 341.405 and 341.45.

7. On March 6, 2007, the Commission issued a Briefing Order that required petitioner to file a response to the notice of motion by April 5, 2007.

8. Petitioner has not responded to the Briefing Order and has not filed any response to the notice of motion.

### **RULING**

Section 73.01(5)(a) of the Wisconsin Statutes requires that a petition for review be filed with the Commission within 30 days of receipt of respondent's final determination of an assessment issued pursuant to Wis. Stats. §§ 341.405 and 341.45, and that the petitioner pay a \$25.00 filing fee to the Commission. Unless sent by certified mail, a petition is considered filed on the date of its receipt by the Commission. Wis. Stat. § 73.01(5); Wis. Admin. Code § TA 1.13(2).

Respondent sent notice to petitioner of its denial of his petition for redetermination on December 26, 2006. The Commission received the petition for review on January 26, 2007, which, assuming petitioner received respondent's notice on or about December 28, 2006, was within the 30-day period permitted under Wis. Stat. § 73.01(5)(a). However, petitioner never paid the \$25.00 statutory filing fee also required under Wis. Stat. § 73.01(5)(a) to confer jurisdiction upon the Commission over the petition for review. Petitioner never responded to any subsequent filing, notice or order issued in this case, including the Commission's request for payment dated January 31, 2007, respondent's notice of motion dated February 27, 2007 and the Commission's Briefing Order dated March 6, 2007.

The Commission has no authority under the Wisconsin Statutes to ignore or make exceptions to the \$25.00 statutory filing fee requirement. When a petitioner neglects or refuses to pay the statutory filing fee even after receiving a direct request for payment from the Commission, the Commission cannot act on the related petition for review other than to dismiss it for lack of jurisdiction.

**ORDER**

The petition for review is dismissed.

Dated at Madison, Wisconsin, this 13th day of June, 2007.

**WISCONSIN TAX APPEALS COMMISSION**

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Diane E. Norman, Acting Chairperson

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David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"