

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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LAO SAM YANG AND VALERIA CHANG,

DOCKET NO. 17-I-188

Petitioners,

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 Petitioners' Petition for Review as untimely. The Petitioners, Lao Sam Yang and Valeria Chang, of Milwaukee, Wisconsin, are represented by J. F. DePetris, Jr., CPA. Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Chief Counsel Dana J. Erlandsen. The Department filed a brief and affidavit with exhibits in support of its Motion. Petitioners have not provided a response.

The Commission finds that Petitioners' 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 November 8, 2016, the Department issued to Petitioners a Notice of Amount Due. (Affidavit of Mary E. Nelson (“Dep’t Aff.”), Ex. A.)
2. On or about January 6, 2017, Petitioners filed a timely Petition for Redetermination with the Department. (Dep’t Aff., Ex. B.)
3. On March 28, 2016, the Department issued a Notice of Action denying the Petition for Redetermination, which Petitioners received on March 29, 2017. The Notice contained language indicating that the Department’s decision would be final and conclusive if not appealed within the 60-day time limit. (Dep’t Aff., Ex. C.)
4. Petitioners’ deadline for filing with the Commission was 60 days from March 29, 2017. That date was Sunday, May 28, 2017. Because of the weekend and the Memorial Day holiday, Petitioners’ last day to file was Tuesday, May 30, 2017.
5. Petitioners’ Petition for Review was mailed to the Commission by Priority Mail on June 30, 2017, and was received at the Commission on July 3, 2017. That Petition, in the form of a letter from Petitioners’ representative, states that the redetermination denial “had a 60-day response period which was missed by my office.” The letter went on to ask for an opportunity to reopen the matter. (Commission file.)
6. On August 11, 2017, 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 *Freeman v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶402-052 (WTAC 2016). 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).

Petitioners received the Notice on March 29, 2017. The Notice included language explaining that Petitioners may appeal to the Tax Appeals Commission within

60 days of receiving the notice if they were in disagreement. The 60-day deadline to file expired on May 30, 2017. Unless otherwise provided by statute, a document is filed on the date it is received by the Commission. *Laurence H. Grange v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-017 (Dane Co. Cir. Ct. 1993). Petitioners' representative mailed the Petition on June 30, 2017, using Priority Mail. The Petition was not received at the Commission until July 3, 2017, over a month after the deadline allowed by statute.

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. Petitioners did not use certified mail but instead used Priority Mail, to which the exception does not apply. *Vasudeva v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-601 (WTAC 2012). Given the mailing date of June 30, 2017, even if the mailing had been certified, it would not have been timely.

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).

Procedures for appeal are fraught with pitfalls. Petitioners were right to seek assistance. We note with some sympathy that more than one professional has failed the Petitioners. According to their Petition, after receiving the initial Notice, the Petitioners first turned to their tax preparer, who at best failed to communicate with them effectively. Although he did file the Petition for Redetermination, it appears he did little

to follow up. Once, the Petition for Redetermination was denied, the Petitioners seemed to be on their own. At that point, they believed that their case had been “passed to” the Tax Appeals Commission, so they retained a CPA to represent them at the Commission.

Cases do not move automatically to the Commission; there are procedural rules which must be followed in order for a case to be properly before the Commission, one of which is the filing of a petition for review within 60 days of receipt of the denial of a petition for redetermination. Although the Petitioners sought representation, this time from a CPA, that representative failed them by missing the 60-day deadline. The timely filing of a petition for review is a requirement to establish jurisdiction; without that, the Commission has no authority to act on the petition and no power to reopen the matter.

#### **CONCLUSIONS OF LAW**

1. The Notice of Action denying Petitioners’ Petition for Redetermination became “final and conclusive” pursuant to Wis. Stat. § 71.88(2)(a) because Petitioners failed to file the Petition for Review with the Commission within 60 days of receipt of the Notice.
2. The Commission lacks jurisdiction over the Petition for Review under Wis. Stat. § 73.01(5) 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.

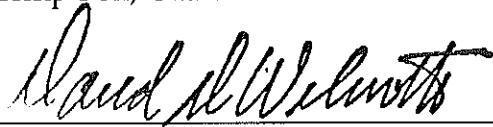
Dated at Madison, Wisconsin, this 21<sup>st</sup> day of November, 2017.

WISCONSIN TAX APPEALS COMMISSION



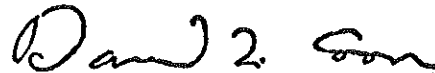
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Lorna Hemp Boll, Chair



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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 either in-person, by certified mail, or by courier, and served upon the other party (which usually is the Department of Revenue) 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.