

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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LARRY IVERSON,

DOCKET NO. 22-W-152

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**JESSICA ROULETTE, COMMISSIONER:**

This case comes before the Commission for decision on Respondent's Motion to Dismiss Petitioner's Petition for Review for failure to file within the statutory time limit. The Petitioner, Larry Iverson, appears by Attorney Jesse W. Fleet, of J. David Tax Law, of Jacksonville, Florida. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney James W. McNeilly, Jr. of Madison, Wisconsin. The Department has filed a brief and affidavit in support of its Motion, as well as a reply brief in response to the Petitioner's letter to the Tax Appeals Commission ("Commission"). Petitioner's representative sent a brief in opposition to the Department's motion to dismiss. Petitioner submitted no sworn statements in support of his motion. For the reasons stated below, we find for the Department.

**FACTS**

1. On October 14, 2019, the Department issued Petitioner a Notice of Amount Due ("Notice") for the calendar year ending 2016, in the amount of \$193,539.61.

(Affidavit of Carrie Kloss, Tax Resolution Officer, Wisconsin Department of Revenue ("Kloss Aff."), ¶ 2, Ex. A.)

2. On November 15, 2019, Petitioner submitted a petition for redetermination to the Department by mailing an abatement letter. (Kloss Aff., ¶ 3, Ex. B.)

3. On February 16, 2022, the Department denied Petitioner's Petition for Redetermination in a Notice of Action. (Kloss Aff., ¶ 4, Ex. C.)

4. The Notice of Action, sent by Certified Mail through the USPS in an envelope bearing USPS Tracking/ Article Number 7021 1970 0001 9843 6932, was received by Petitioner on February 22, 2022. (Kloss Aff. ¶ 5, Ex. D.)

5. Sixty days from February 22, 2022, was April 23, 2022.

6. On April 26, 2022, the Commission received Petitioner's Petition for Review to the Tax Appeals Commission by Priority 2-Day USPS mail. (Commission file.)

#### APPLICABLE LAW

The specific statute at issue here outlines 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.

Thus, if a petitioner fails to file a petition for review within 60 days of receipt of the denial

of redetermination, the Commission has no jurisdiction and must dismiss.

### ANALYSIS

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).

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. The exception does not apply in this case because the Petitioner sent his Petition by ordinary mail.

Petitioner received the Notice of Action on February 22, 2022. Petitioner does not allege any particular date of receipt of the Notice of Action. In contrast, the Department has provided a sworn statement from Tax Resolution Officer Carrie Kloss describing the mailing of the Notice of Action by certified mail. We have no basis upon which we can disregard the Department's evidence that Petitioner received the Notice of Action on February 22, 2022. Accordingly, Petitioner's 60-day timeframe in which to appeal expired on Monday, April 25, 2022.<sup>1</sup> For this Commission to have jurisdiction over

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<sup>1</sup> Saturday, April 23, 2022 is the 60<sup>th</sup> day after February 22, 2022. The Wisconsin Tax Appeals Commission is closed on Saturdays. The next business day after Saturday, April 23, 2022 was Monday, April 25, 2022.

the matter, Petitioner needed to file his appeal with the Commission by that date. Petitioner did not file the appeal until April 26, 2022.

Petitioner argues that, because he used USPS Priority 2-Day mail to send his petition, he did not use ordinary mail to file the petition. While it is true that USPS Priority 2-Day mail is not ordinary mail, this argument does not carry the day. The relevant statute does not refer to “non-ordinary mail.” The relevant statute specifies “certified mail” as the type of mail that allows jurisdiction to attach at the Commission as of the date of mailing. The petitioner argues that Wis. Stat. § 73.01(5)(a) is outdated and does not recognize advancements in USPS delivery options. The Commission is sympathetic to the Petitioner’s frustration and arguments. Nonetheless, the jurisdictional statute is specific and binding on the Commission, and the Commission cannot create jurisdiction where none has been granted by the Legislature. If a petition is not filed with the Commission within the time provided in Wis. Stat. § 73.01, the assessment becomes final and conclusive. Wis. Stat. § 71.88(2).

While many due dates have been extended due to the coronavirus pandemic, statutory jurisdictional deadlines have not. 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 Notice became final and conclusive because Petitioner failed to file a timely Petition for Review; therefore, the Commission lacks jurisdiction to hear this appeal.


2. The Department is entitled to dismissal as a matter of law.

**ORDER**

Based on the foregoing, it is the order of this Commission that the Department's Motion to Dismiss is granted and the Petition for Review is dismissed.

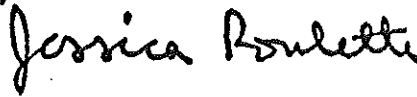
Dated in Madison, Wisconsin, this 19<sup>th</sup> day of October, 2022.

**WISCONSIN TAX APPEALS COMMISSION**



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Elizabeth Kessler, Chair



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Jessica Roulette, Commissioner



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Kenneth P. Adler, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION  
101 E Wilson Street, Floor 5  
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 <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.