

FILED

MAR 14 2024

Wisconsin Tax Appeals Commission
Nicole Allee - Legal Assistant

STATE OF WISCONSIN
TAX APPEALS COMMISSION

MICHELLE PRIEBE,

DOCKET NO. 23-I-194

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

JESSICA ROULETTE, COMMISSIONER:

This case comes before the Tax Appeals Commission (“the Commission”) for decision on Respondent’s Motion to Dismiss Petitioner’s Petition for Review for lack of subject matter jurisdiction. The Petitioner, Michelle Priebe, appears by Mr. Genaro Cardaropoli, CPA. The Respondent, the Wisconsin Department of Revenue (“the Department”), is represented by Attorney Dominic L. Weisse. The Department has filed a brief and affidavit in support of its Motion. Petitioner has filed nothing with the Commission in response to the Department’s Motion to Dismiss. For the reasons stated below, we find for the Department.

FACTS

1. On October 19, 2023, the Department issued to Ms. Priebe a Notice denying Ms. Priebe's claim for refund in the amount of \$3,055.00 for tax year 2018.¹ (Affidavit of Mary Nelson ("Nelson Aff."), ¶ 3, Ex. A.)

2. On October 24, 2023, the Department issued to Ms. Priebe a Notice denying Ms. Priebe's claims for refund for three tax years as follows: \$9,230.00 for tax year 2019, \$7,021.00 for tax year 2020, and \$5,575.00 for tax year 2021. (Nelson Aff., ¶ 4, Ex. B.)

3. On October 24, 2023, the Department received Ms. Priebe's first petition for redetermination of the Notice for tax year 2018 issued by the Department on October 19, 2023. (Nelson Aff., ¶ 6.)

4. On October 30, 2023, the Department received Ms. Priebe's first petitions for redetermination of the Notice for tax years 2019, 2020, and 2021 issued by the Department on October 24, 2023. (Nelson Aff., ¶ 7.)

5. The Department is treating Ms. Priebe's petitions for redetermination as timely. (Nelson Aff., ¶ 8.)

6. On November 8, 2023, Ms. Priebe filed a Petition for Review with the Commission which has been docketed as appeal number 23-I-194. (Commission file.)

¹ The Nelson Affidavit states at paragraph three (3) that the Notice denying Ms. Priebe's refund was issued on October 18, 2023, while the document attached as Exhibit A to the affidavit in support of paragraph three (3) reflects a date of October 19, 2023. The Commission considers the date discrepancy a typographical error and refers to the Notice as the October 19, 2023 notice throughout this ruling.

APPLICABLE LAW

The specific statutes at issue here outline the requirements for filing a valid and timely petition for redetermination with the Department:

Wis. Stat. § 71.88(1)(a): Any person feeling aggrieved by a notice of additional assessment, refund, or notice of denial of refund may, within 60 days after receipt of the notice, petition the department of revenue for redetermination. . . . The department shall make a redetermination on the petition within 6 months after it is filed.

Wis. Stat. § 71.88(2)(a): 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.

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

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).

Under Wis. Stat. § 71.88(1)(a), a person feeling aggrieved by a notice of denial of refund may file a petition for redetermination with the Department within 60 days of receipt of such determination to deny a refund. If a petition for redetermination is filed with the Department within 60 days, the Department has 6 months to make a

redetermination as to the denied tax credit.

Under Wis. Stat. § 71.88(2)(a), a person feeling aggrieved by the Department's redetermination as to a denied tax credit may file a petition for review with the Wisconsin Tax Appeals Commission. The Wisconsin Tax Appeals Commission has jurisdiction over such appeals of Department Redeterminations when they are filed with the Commission's clerk within 60 days of receipt of the Notice of Redetermination in accordance with Wis. Stat. § 73.01(5)(a) and Wis. Admin. Code §§ TA 1.01, 1.11, 1.13, and 1.15.

The Commission's jurisdiction is statutory, and "where a method of review is prescribed by statute, the prescribed method is exclusive." *S&D Development & Prototype, Inc. v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-105 (WTAC 2008), quoting *Jackson County Iron Co. v. Musolf*, 134 Wis.2d 95, 101, 396 N.W.2d 323 (1986). The Commission has repeatedly ruled that it does not have jurisdiction to hear appeals of cases in which a petitioner has not received a final decision from the Department regarding a properly filed Petition for Redetermination. See, *Greg Acker Family Trust v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-413 (WTAC 1984); *Hogan et al. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 203-336 (WTAC 1992); *Thomas v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-150 (WTAC 2017); *De Rango v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-655 (WTAC 2003). The logic of decisions is that, if a taxpayer does not receive a redetermination from the Department, the taxpayer cannot be aggrieved by the redetermination of the Department of Revenue. This logic is controlling, because under Wis. Stat. § 73.01(5)(a), the Commission only has jurisdiction over cases in which a person

has filed a petition for redetermination and is aggrieved by the redetermination of the Department. Where the Department has not issued a notice of redetermination, a taxpayer cannot be aggrieved by the redetermination of the Department of Revenue, since no such redetermination exists. Wis. Stat. § 73.01(5)(a).

In this case, the Department has submitted a sworn affidavit attesting to the fact that it is treating Petitioner's October 24, 2023, and October 30, 2023, petitions for redetermination as having been timely filed. Under the applicable statute, the Department must issue a Notice of Redetermination within 6 months of the filing of the Petition for Redetermination. Wis. Stat. § 71.88(a). Because the Department has not yet issued a Notice of Redetermination, and because 6 months has not yet elapsed since Petitioner filed her Petitions for Redetermination, the Petitioner could not be "aggrieved by the redetermination of the department" under Wis. Stat. § 71.88(2)(a). It follows that the Commission has no jurisdiction to hear this matter under Wis. Stat. § 73.01(5)(a).

In its Notices dated October 19, 2023, and October 24, 2023, the Department notified Petitioner that the Department had determined the amount due Petitioner for tax years 2018, 2019, 2020, and 2021. Petitioner's first Petitions for Redetermination were filed within 60 days of the Department's Notices, and those Petitions for Redetermination are being treated by the Department as timely filed. The Department has until at least April 19, 2024, and April 24, 2024, respectively, to issue a Notice of Redetermination. Accordingly, the Petitioner was not aggrieved by a redetermination of the Department at the time she filed her Petition with the Commission in this matter. Consequently, this

matter is not within the subject matter jurisdiction granted to the Commission by Wis. Stat. § 73.01(5)(a).

CONCLUSIONS OF LAW

1. Petitioner's timely Petitions for Redetermination with the Department were filed less than six months ago and are still pending, and the Department has neither issued nor has the Petitioner received a Notice of Redetermination.

2. Because Petitioner has not received a Notice of Redetermination, she is not aggrieved by a redetermination of the Department, and the Commission lacks jurisdiction to hear this appeal, pursuant to Wis. Stat. §§ 71.88(2)(a) and 73.01(5)(a).

3. The Department is entitled to dismissal without prejudice to refile as a matter of law.

ORDER

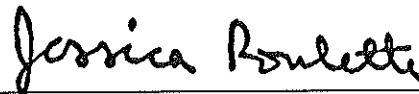
Based on the foregoing, it is the order of this Commission that the Department's Motion to Dismiss is granted and the Petition for Review is dismissed without prejudice to refileing.

Dated in Madison, Wisconsin, this 14th day of March, 2024.

WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Chair



Jessica Roulette, Commissioner



Kenneth P. Adler, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION