

STEPHEN S. GREGERSON  
and DEBRA K. GREGERSON,

Petitioners,

vs.

**DECISION and ORDER**

WISCONSIN DEPARTMENT OF  
REVENUE,

Case No. 12 CV 870

Respondent.

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**FACTS**

This is a Wis. Stat. ch. 227 proceeding by Stephen S. Gregerson and Debra K. Gregerson (“taxpayers”) for judicial review of a June 5, 2012 decision of the Wisconsin Tax Appeals Commission (“Commission”) in Commission Docket Nos. 10-I-271 and 11-I-211 (Motion to Dismiss: Ex. B; R-Ap, 101-03). The Commission denied taxpayer’s Wis. Stat. § 227.49 petition for rehearing on July 17, 2012 (Motion to Dismiss: Ex. A; R-Ap, 103-06). In its June 5, 2012 decision, the Commission dismissed taxpayers’ petition for review to the Commission because neither of them appeared at the hearing that was scheduled before the Commission (R-Ap. 101).

Taxpayers filed this action with the clerk of circuit court on September 13, 2012. The notice required by Wis. Stat § 227.48(2) that is attached to the Commission’s order denying rehearing states in part:

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.

The Department of Revenue has moved for dismissal for lack of competency to proceed because taxpayers did not timely file their petition for judicial review with

the clerk of circuit court within thirty days after the issuance of the Commission's July 17, 2012 order denying rehearing.

### ANALYSIS

Wis. Stat. § 227.53(1) provides that a party desiring judicial review must serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing. The statute goes on to state that the 30 day period for serving and filing a petition under the statute commences on the day after personal service or mailing of the decision by the agency.

If a petition for judicial review is not filed with the clerk of circuit court within thirty days after the issuance of the Commission's final decision, the petition must be dismissed. *See Ryan v. Department of Revenue*, 68 Wis. 2d 467, 471, 228 N.W.2d 357 (1975).

The Commission's order denying rehearing was issued on July 17, 2012 (Motion to Dismiss: Ex. A; R-Ap. 104-06). Thirty days from that date was August 16, 2012. According to CCAP and the date stamp on the petition for judicial review, taxpayers did not file that petition with the clerk of circuit court until September 13, 2012. The petition for judicial review was therefore filed four weeks after the statutory 30 day period had expired.

Because more than 30 days elapsed between the issuance of the Commission's final order denying rehearing and the filing of taxpayers' Wis. Stat. ch. 227 Petition for Judicial Review with the clerk of circuit court, this Court is unable to proceed with that petition.

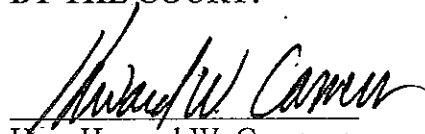
**DECISION**

Based on the foregoing, **IT IS HEREBY ORDERED** that the Motion to Dismiss is granted.

**THIS IS A FINAL ORDER FOR PURPOSES OF APPEAL.**

**BY THE COURT:**

Dated this 29 day  
of October 2012.

  
Hon. Howard W. Cameron  
St. Croix County Circuit Court Judge  
Branch IV