

STATE OF WISCONSIN
TAX APPEALS COMMISSION

DUSAN AND DIANE MARKOVICH
102 Howard Avenue
Muscodia, WI 53573,

DOCKET NO. 04-I-336

Petitioners,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8907
Madison, WI 53708-8907,

Respondent.

JENNIFER E. NASHOLD, COMMISSIONER:

This case comes before the Commission on the motion of the respondent, Wisconsin Department of Revenue (Department), to dismiss the petition for review on the basis that it was not timely filed under Wis. Stat. § 73.01(5)(a).

Petitioners represent themselves and have filed an affidavit with exhibits objecting to the motion. Deputy Chief Counsel Robert J. Hackman represents the Department and has filed an affidavit with exhibits and a reply brief in support of the motion.

Having considered the entire record, the Commission hereby finds, rules, and orders as follows:

FACTS

1. By notice dated June 14, 2001, the Department issued an assessment

of income tax, interest, and penalty in the total amount of \$200,045.32 to petitioners for tax years 1996-1999 (Affidavit of Robert J. Hackman, Ex. A).

2. Under date of July 13, 2001, petitioners filed with the Department a timely petition for redetermination of the assessment (Hackman Affidavit, Ex. B).

3. By certified mail dated October 4, 2004, the Department issued a notice of action denying the petition for redetermination (Hackman Affidavit, Ex. C). Petitioners received the notice of action on October 7, 2004 (Affidavit of Dusan Z. Markovich, para. 5).

4. On December 3, 2004, the clerk of the Commission received an Express Mail envelope with the name "D. Markovich" as the sender. The clerk signed a Postal Service return receipt card for the envelope. Inside the envelope was an empty cardboard Express Mail envelope. The clerk reviewed the Commission's alphabetical list of petitioners, determined that it contained no petitioner named "D. Markovich", and placed the Express Mail envelopes in the general correspondence file (Hackman Affidavit, Ex. D).

5. On December 22, 2004, an envelope from petitioners sent by ordinary mail was received in the office of the Commission. The envelope contained: (1) a one-page letter addressed to the Commission signed by Dusan Z. Markovich, dated December 2, 2004; (2) a copy of the Department's October 4, 2004 notice of action letter denying the petition for redetermination; and (3) a \$25.00 filing fee. The Commission deemed the one-page letter to be a petition for review.

6. On January 4, 2005, a docket number was assigned to the petition

for review and an acknowledgement was sent to petitioners, with a copy to the Department, notifying the parties that the Commission received the petition for review on December 22, 2004.

7. On February 3, 2005, the Department filed an Answer to the petition, asserting, *inter alia*, that the petition was not timely filed.

8. The Commission's clerk received a telephone call from the Office of General Counsel of the Wisconsin Department of Revenue informing the clerk that petitioners claimed to have a certified mail return receipt card signed by the clerk, showing a delivery date of December 3, 2004.

9. On February 7, 2005, the Department faxed to the Commission clerk a copy of the Postal Service return card for Express Mail, dated December 3, 2004, containing the clerk's signature. The Express Mail was mailed from Avoca, Wisconsin, on December 2, 2004. The clerk then recalled the Express Mail envelope and empty cardboard Express Mail envelope in the general correspondence file, matched the "D. Markovich" name of the sender with the name of petitioner Dusan Markovich, and placed those Express Mail envelopes in the file for this case.

10. On May 10, 2005, the Department filed its motion to dismiss.

11. On May 12, 2005, the Commission issued a Briefing Order scheduling briefs on the motion. Petitioners filed an affidavit with exhibits on June 8, 2005, and the Department filed its reply brief on June 27, 2005.

12. The 60-day period under Wis. Stat. § 73.01(5)(a) for petitioners to file a timely petition for review with the Commission expired on December 6, 2004.

RULING

Section 73.01(5)(a) of the Wisconsin Statutes requires that a petition for review be filed with the Commission within 60 days of receipt of the Department's notice of action on a petition for redetermination. In this case, the 60th day was December 6, 2004. As stated in *David A. and Jane L. Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002), "[t]his means the petition had to be either physically filed with the Commission or 'mailed by certified mail in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight'" of December 6, 2004. The Commission and courts have consistently required strict compliance with the time limitations set forth in Wis. Stat. § 73.01(5)(a). *Kurtis and Donna Borre v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-540 (WTAC 2001), and cases cited therein. Failure to comply with the statutory time limitations deprives the Commission of subject matter jurisdiction. *Id.*

This case is unusual. It is undisputed that the Commission received two Express Mail envelopes from Dusan Markovich on December 3, 2004. As stated in the sworn affidavit of the Commission's clerk, the Express Mail envelopes did not contain a petition or filing fee (Hackman Affidavit, Ex. D).

Petitioners assert that their petition and filing fee were in those envelopes (Markovich Affidavit, para. 5). If that were true, it is curious that petitioners — presumably on their own volition — subsequently sent *another* petition and filing fee via ordinary mail, which the Commission received on December 22, 2004. A reasonable inference to be drawn from these events is that petitioners realized their error and

promptly sent in their petition and filing fee.¹ Unfortunately for petitioners, the deadline for filing a timely petition had already passed.

Petitioners did not file their petition for review with the Commission within 60 days after receipt of the notice of action on their petition for redetermination. Therefore, the Commission lacks jurisdiction over the appeal and must grant the Department's motion to dismiss.

ORDER

The Department's motion is granted, and the petition for review is dismissed.

Dated at Madison, Wisconsin, this 13th day of July, 2005.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"

¹ Such an inference is not necessary to the Commission's resolution of this case, however. The bottom line is that the Commission did not receive petitioners' petition by the mandatory deadline.