

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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**RELIABLE PLATING WORKS, INC.,**

**DOCKET NO. 08-I-139**

Petitioner,

vs.

**WISCONSIN DEPARTMENT OF REVENUE,**

**RULING AND ORDER**

Respondent.

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**ROGER W. LEGRAND, COMMISSIONER:**

This matter comes before the Commission on Respondent's motion to dismiss the petition for review based upon Petitioner's alleged failure to file the petition for review within 60 days after receipt of Respondent's notice of denial of the petition for redetermination, as required by Wis. Stat. § 73.01(5)(a). Petitioner is represented by Barbara Lasky, CPA, of Hafner, Lasky and Loewen, S.C., of Milwaukee, Wisconsin. Respondent is represented by Attorney Sheree Robertson.

**JURISDICTIONAL FACTS**

1. By a notice of amount due dated December 17, 2007, Respondent, the Wisconsin Department of Revenue, issued an assessment of franchise/income tax to Petitioner in the amount of \$35,808.54. (Dept. Ex. 1.)

2. Petitioner filed a Petition for Redetermination with Respondent dated January 4, 2008. (Dept. Ex. 2.)

3. By a Notice of Action letter dated July 3, 2008, mailed to Petitioner by certified mail and received by Petitioner on July 7, 2008, Respondent denied Petitioner's

Petition for Redetermination of the assessment. The United States Postal Service (USPS) Track/Confirm record shows that Petitioner received the Notice of Action letter on July 7, 2008. (Dept. Ex. 3 & 4.)

4. The Commission received Petitioner's Petition for Review of Respondent's action on the Petition for Redetermination on September 8, 2008 via USPS regular mail. (Dept. Ex. 5.)

5. On October 3, 2008, Respondent filed with the Commission a notice of motion and motion to dismiss the Petition for Review, with supporting affidavit and exhibits, on the grounds that the 60-day period allowed for filing this Petition had expired on September 5, 2008.

6. The Commission issued a briefing schedule requiring Petitioner to file a response to the motion by November 7, 2008. Petitioner filed no response to the motion.

### **RULING**

Section 73.01(5)(a), Wis. Stats., provides in pertinent part as follows:

**(5) APPEALS TO COMMISSION.** (a) Any person who is aggrieved by a determination of the state board of assessors under s. 70.995(8) or who has filed a petition for redetermination with the department of revenue and who is aggrieved by the redetermination of the department of revenue may, within 60 days of the determination of the state board of assessors or of the department of revenue or, in all other cases, within 60 days after the redetermination but not thereafter, file with a clerk of the commission a petition for review of the action of the department of revenue and the number of copies of the petition required by rule adopted by the commission.

In this case, Petitioner received Respondent's denial of the Petition for

Redetermination on July 7, 2008. (Ex. 4.) Petitioner sent its Petition for Review to the Commission via regular mail, and the Commission received the Petition on September 8, 2008, the date of its filing. (Ex. 5; Wis. Stat. § 73.01(5); Wis. Admin. Code § TA 1.13(2).) The 60-day time period provided under Section 73.01(5)(a), Stats., expired on September 5, 2008. The words of the statute are clear that petitions for review may not be filed “thereafter.” If no petition is filed within that allotted timeframe, then the related assessment becomes “final and conclusive.” Wis. Stat. § 71.88(2).

The Commission therefore lacks jurisdiction to review the alleged grievances of the Petitioner. *See, McDonald Lumber Co. v. Dep't of Revenue*, 117 Wis. 2d 446 (1984). Because Petitioner did not file the Petition for Review within the 60-day statutory time period, the Respondent’s motion to dismiss must be granted.

**ORDER**

Respondent’s motion is granted, and the petition for review is dismissed.

Dated at Madison, Wisconsin, this 5<sup>th</sup> day of February, 2009.

**WISCONSIN TAX APPEALS COMMISSION**

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David C. Swanson, Chairperson

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Roger W. LeGrand, Commissioner

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Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"