

STATE OF WISCONSIN
TAX APPEALS COMMISSION

PATRICIA ROHNER,

DOCKET NO. 08-I-163

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

ROGER W. LEGRAND, COMMISSIONER:

This matter comes before the Commission on respondent's motion to dismiss the petition for review for failure to file the petition within 60 days after receipt of respondent's notice of denial of the related petition for redetermination, as required by Section 73.01(5)(a), Stats. Petitioner appears *pro se*, and respondent, the Wisconsin Department of Revenue (the "Department"), is represented by Attorney Peter Kafkas.

FINDINGS OF FACT

1. On March 27, 2008, the Department issued an Assessment of Income Tax against the petitioner in the amount of \$165,868.41 for the period January 1, 2003 through December 31, 2005. (Affidavit of Peter Kafkas, Exhibit A.)

2. Petitioner filed a Petition for Redetermination with the Department dated May 29, 2008. (Affidavit of Peter Kafkas, Exhibit B.)

3. The Department issued a Notice of Action dated August 12, 2008 denying the Petition for Redetermination. (Affidavit of Peter Kafkas, Exhibit C.)

4. Petitioner appealed to the Commission in a letter dated October 21, 2008, which was received by the Commission via USPS Express Mail and filed on October 22, 2008. (Affidavit of Peter Kafkas, Exhibit D.)

5. On November 6, 2008, the Department filed an answer and affirmative defense, and a notice of motion and motion to dismiss the petition for review on the basis of untimely filing, with an affidavit and exhibits in support of the motion.

6. On November 12, 2008, the Commission issued a Briefing Order requiring petitioner to file a response to the motion by December 12, 2008.

7. Petitioner filed no response to the motion.

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. If no petition is filed within that timeframe, the related assessment becomes "final and conclusive." Wis. Stat. § 71.88(2). Unless sent by certified mail, a petition is considered filed on the date of its receipt by the Commission. Wis. Stat. § 73.01(5); Wis. Admin. Code § TA 1.13(2). The requirement of timely filing is strictly construed. *See McDonald Lumber Co. v. Dep't of Revenue*, 117 Wis. 2d 446 (1984).

The Notice of Action from the Department was delivered via certified mail to petitioner's address of record on August 13, 2008. Proof of delivery at the

petitioner's address of record is sufficient to begin tolling the 60-day period under Wis. Stat. § 73.01(5)(a), and the Department has provided that proof.

The 60-day period permitted under Wis. Stat. § 73.01(5)(a) for petitioner to file a timely petition for review with the Commission expired on October 13, 2008.¹ Petitioner mailed the petition via USPS Express Mail, and the Commission received the petition on October 22, 2008, nine days after the expiration of the 60-day period.

In a handwritten note received by the Commission on October 22, 2008, petitioner stated that she mailed her appeal to the wrong department and address. However, the denial of the petition for redetermination states clearly in bold print that appeals in writing must be made to the Wisconsin Tax Appeals Commission at 5005 University Avenue, Suite 110, Madison, Wisconsin, 53705. The appeal in writing was received by the Commission on October 22, 2008, which was not within 60 days of petitioner's receipt of the notice. Consequently, the Commission lacks jurisdiction to hear this matter.

Petitioner did not file a petition for review with the Commission within 60 days after her receipt of the Notice of Action on her petition for redetermination. The Commission has no authority under the Wisconsin Statutes to ignore or make exceptions to the 60-day provision. The Commission cannot act on a petition for review filed after the statutory due date other than to dismiss it for lack of timely filing.

¹ The 60-day period ended on October 12, 2008; however, since that fell on a Sunday, the statutory 60-day period under Wis. Stat. § 73.01(5)(a) ended on Monday, October 13, 2008.

ORDER

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

Dated at Madison, Wisconsin, this 11th day of March, 2009.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger W. Le Grand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"