

STATE OF WISCONSIN
TAX APPEALS COMMISSION

DAVID AND NOREEN RYBAK,

DOCKET NO. 11-M-321

Petitioners,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

ROGER W. LEGRAND, COMMISSIONER:

This matter comes before the Tax Appeals Commission on a Motion to Dismiss the Petition for Review, filed by the Respondent, Wisconsin Department of Revenue. Respondent argues that the Commission lacks jurisdiction to hear this matter because Petitioners did not timely file their objection to the State Board of Assessors as prescribed by Wis. Stat. § 70.995(8)(b)1.

Having considered the record before it in its entirety, the Commission makes the following:

FINDINGS OF FACT

1. On June 27, 2011, a Notice of Assessment was issued to Petitioners, David J. and Noreen J. Rybak, for their property located at 2644 - 61st Avenue, Farmington, Wisconsin, 54020. (Affidavit of LaKeisha Wright Butler ("Butler Affidavit"), dated April 11, 2012, Exhibit A.)

2. Pursuant to Wis. Stat. § 70.995(8)(b)1, Petitioners' objection to the Department's assessment was to be filed with the State Board of Assessors on or before August 26, 2011. (Butler Affidavit, ¶3.)

3. Petitioners mailed their Form of Objection to Real Estate Assessment (PA-132) to the Wisconsin State Board of Assessors in an envelope postmarked September 2, 2011. (Exhibit B.)

4. Petitioners' Form of Objection to Real Estate Assessment was received by the State Board of Assessors on September 6, 2011. (Exhibit C.)

5. The State Board of Assessors issued an Order for Dismissal on September 26, 2011, stating that because the objection form and filing fee were filed on September 2, 2011, the Board lacked jurisdiction to hear the appeal. (Exhibit D.)

6. Petitioners filed a Petition for Review of the Board's dismissal with the Tax Appeals Commission on November 25, 2011.

CONCLUSION OF LAW

The Commission lacks jurisdiction in this matter because Petitioners failed to file their Form of Objection to Real Estate Assessment (PA-132) with the Board of Assessors within 60 days as required by Wis. Stat. § 70.995(8)(b)1.

Statutes in Question

Wis. Stat. § 70.995(8)(b)1, reads in pertinent part: The department of revenue shall annually notify each manufacturer assessed under this section and the municipality in which the manufacturing property is located of the full value of all real and personal property owned by the manufacturer. The notice shall be in writing and shall be sent by 1st class mail or electronic mail. In addition, the

notice shall specify that objections to valuation, amount, or taxability must be filed with the state board of assessors within 60 days of issuance of the notice of assessment, that objections to a change from assessment under this section to assessment under s. 70.32(1) must be filed within 60 days after receipt of the notice, that the fee under par. (c) 1. or (d) must be paid and that the objection is not filed until the fee is paid. . . .

* * *

Wis. Stat. § 73.01(5)(a), reads in pertinent part: (a) Any person who is aggrieved by a determination of the state board of assessors under s. 70.995 (8) . . . may, within 60 days of the determination of the state board of assessors . . . but not thereafter, file with the clerk of the commission a petition for review of the action of the department of revenue . . .

DISCUSSION

This case involves the interrelationship of Wis. Stats. §§ 70.995(8)(b)1 and 73.01(5)(a). The Department issued a Notice of Assessment for Petitioners' property located at 2644 – 61st Avenue, Farmington, Wisconsin, 54020 on June 27, 2011. Pursuant to Wis. Stat. § 70.995(8)(b)(1), Petitioners objected to the assessment to the Wisconsin State Board of Assessors. (Exhibit B.) The objection was received on September 6, 2011. Under the 60-day rule found in the statute, the objection should have been filed by August 26, 2011. Based upon the late filing, the State Board of Assessors dismissed the objection on September 26, 2011 for lack of jurisdiction. Petitioners appealed the dismissal to the Commission. They argued that in the absence of an express definition for a “filing” under Wis. Stat. § 70.995(8)(b)(1), a mailing is equivalent to a filing for purposes of making an objection to the State Board of Assessors. According to an affidavit by Amy R. Mason, attorney for Petitioners, Petitioners' objection to the Board

was dated on August 25, 2011, and forwarded to the mailing system on August 25, 2011. Although the mailing was postmarked September 2, 2011, and not received by the Board until September 6, 2011, Petitioners contend that the mailing date of August 25, 2011 is sufficient to satisfy the 60-day requirement of Wis. Stat. § 70.995(8)(b)(1).

The Commission last considered this situation in *Pierce Milwaukee, LLC, v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶401-271 (WTAC 2009), and *Thermo Electron, LLC v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶401-298 (WTAC 2010). Both *Pierce* and *Thermo Electron* make it clear that Wis. Stats. § 70.995(8)(b)(1) and 73.01(5)(a) must be read together in a two-step process. To invoke jurisdiction of the State Board of Assessors, a taxpayer must first file an objection in writing within 60 days of the notice of assessment. Jurisdiction of the Commission under Wis. Stat. § 73.01(5)(a) can only be obtained if the requirements of Wis. Stat. § 70.995(8)(b)(1) are complied with. In this case, Petitioners did not comply with the requirements of Wis. Stat. § 70.995(8)(b)(1), in that they did not file their objection within 60 days. In the first step of the jurisdictional process, the State Board of Assessors correctly dismissed the objection of the assessment because it was filed on September 6, 2011. It should have been filed by August 26, 2011 to be within the 60-day requirement. Because of the dismissal by the State Board of Assessors for failure to timely file an objection, the Commission has no jurisdiction to hear an appeal under Wis. Stat. § 73.01(5)(a). An appeal under Wis. Stat. § 73.01(5)(a) can only be made by a person “aggrieved” by a determination of the State Board of Assessors under Wis. Stat. § 70.995(8)(b)(1). Here, as in *Pierce Milwaukee, LLC, v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶401-271 (WTAC 2009), Petitioners were not aggrieved

by a determination of the State Board of Assessors because the Board dismissed the case without making a determination.

Petitioners contend that the State Board of Assessors was wrong in dismissing its objection as untimely. They point out that there is no definition of “file” in Wis. Stat. § 70.995(8)(b)(1), and that mailing constitutes filing. In situations where a statute has not provided a specific definition of “filing,” the Commission has held that filing occurs upon physical receipt of the instrument by the appropriate party. *See Souter v. Dep’t of Revenue*, Wis. Tax Rptr. (CCH) ¶401-515 (WTAC Jan. 10, 2012). The State Board of Assessors takes a more lenient view on the timeliness of filing an objection, as it apparently allows an objection to be timely “filed” if it is postmarked on or before the 60-day time limit. Under either the date of receipt or date of postmark definition of “filing,” Petitioners’ objection to the State Board of Assessors was untimely. The objection was received by the State Board of Assessors on September 6, 2011. It was postmarked on September 2, 2011. Under the definition of “filing” most favorable to Petitioners, the objection would have had to be postmarked by August 26, 2011 to be timely. Clearly it was not, and the State Board of Assessors was correct to dismiss the objection.

Petitioners have failed to meet the requirements of the two-step process to confer jurisdiction on the Commission. Therefore,

IT IS ORDERED

1. Respondent’s motion to dismiss is granted.
2. The Petition for Review is dismissed.

Dated at Madison, Wisconsin, this 27th day of September, 2012.

WISCONSIN TAX APPEALS COMMISSION

Lorna Hemp Boll, Chair

Roger W. Le Grand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"