

**STATE OF WISCONSIN
TAX APPEALS COMMISSION**

USF HOLLAND, INC.,

DOCKET NO. 09-I-204

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DAVID C. SWANSON, COMMISSIONER:

This case comes before the Commission on the motion of the Wisconsin Department of Revenue (the "Department") to dismiss the petition for review on the basis that it was not timely filed under Wis. Stat. § 73.01(5)(a). Attorney John R. Evans represents the Department and has filed a notice of motion and motion to dismiss with an affidavit with exhibits in support of the motion, and an alternative answer to the petition. Terry L. Gerrond represents the Petitioner and has not filed a response to the motion.

Having considered the entire record, including the motion, affidavit and exhibits, the Commission hereby finds, rules and orders as follows:

FINDINGS OF FACT

1. By Notice of Amount Due and Office Audit Worksheet dated July 3, 2008 issued to the Petitioner, the Department assessed the Petitioner additional income tax plus interest in the total amount of \$2,311.85 for the period 2000-2003 (the

“period at issue”). (Affidavit of Attorney John R. Evans dated November 17, 2009 (“Evans Aff.”), ¶ 2, Ex. A.)

2. On September 3, 2008, the Petitioner filed with the Department a petition for redetermination. (Evans Aff. ¶ 3, Ex. B.)

3. By Notice of Action dated August 18, 2009 (the “Notice”) sent to the Petitioner by certified mail, the Department denied the Petitioner’s petition for redetermination. (Evans Aff. ¶ 4, Ex. C.)

4. The Notice was delivered to the Petitioner on August 20, 2009. (Evans Aff. ¶ 4, Ex. C.)

5. The Notice informed the Petitioner as follows:

If you disagree with this decision, you may appeal in writing to the

**Wisconsin Tax Appeals Commission
5005 University Avenue, Ste. 110
Madison, Wisconsin 53705**

within 60 days of receiving this notice. If you appeal, you must pay **a \$25.00 filing fee** to the Commission at the time you file.

If you do not file an appeal within the 60 day period, this action will become final and conclusive and the additional liability will be payable on or before the date indicated on the attached statement.

(Evans Aff. ¶ 4, Ex. C) (emphasis in original).

6. On October 21, 2009, the Commission received the Petitioner’s petition for review sent via UPS Next Day Air.

7. On November 17, 2009, the Department filed a notice of motion and

motion to dismiss the petition for review on the basis of untimely filing with an affidavit with exhibits in support of the motion, and an alternative answer.

8. On November 23, 2009, the Commission issued a Briefing Order requiring the Petitioner to file a response to the motion by December 23, 2009.

9. The Petitioner filed no response to the motion.

CONCLUSION OF LAW

The Commission does not have jurisdiction to consider the Petitioner's petition for review because it was filed after the statutory due date specified in § 73.01(5)(a), Wis. Stats.

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 allotted timeframe, then the related action of the Department 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 the Petitioner on August 20, 2009. The 60-day period permitted under Wis. Stat. § 73.01(5)(a) for the Petitioner to file a timely petition for review with the Commission thus expired on October 19, 2009. The Petitioner sent its petition for review to the

Commission via UPS Next Day Air and it was delivered to the Commission on October 21, 2009, two days after the 60-day appeal period had expired.

The Petitioner did not file a petition for review with the Commission within 60 days after its receipt of the Notice of Action on its 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.

ORDER

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

Dated at Madison, Wisconsin, this 22nd day of March, 2010.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger W. Le Grand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"