

STATE OF WISCONSIN
TAX APPEALS COMMISSION

MARC JONES AND LOIS BECK,

DOCKET NO. 12-I-154

Petitioners,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

ROGER W. LEGRAND, COMMISSIONER:

This case comes before the Commission on a Motion to Dismiss filed by the Respondent, the Wisconsin Department of Revenue ("the Department"), on the grounds that the Commission has no jurisdiction over the case because Petitioners failed to file a Petition for Redetermination within 60 days after receipt of Respondent's Notice of Assessment.

Petitioners, Marc Jones and Lois Beck, are represented by Ms. Stephanie Barganz, Certified Public Accountant, of KMA Bodilly CPAs & Consultants, SC, who filed an affidavit in opposition to the Motion to Dismiss.

Respondent, the Wisconsin Department of Revenue, is represented by Attorney Sheree Robertson, who filed a brief and affidavit in support of the motion. The facts are as follows:

1. The Department issued to Petitioners a Notice of Assessment of additional income tax dated September 30, 2011. (Affidavit of Attorney Sheree Robertson, ("Robertson Affidavit"), Ex. 1.)

2. The Department sent to Petitioners the additional assessment by United States Postal Service (USPS) Certified Mail assigned tracking number 7010 1870 0003 5368 3480. A copy of a redacted page from the Wisconsin Department of Revenue's Firm Mailing Book for Accountable Mail, shows that the USPS Certified Mail assigned tracking number 7010 1870 0003 5368 3480, with a copy of the cover of the Firm Mailing Book for Accountable Mail. (Robertson Affidavit, Ex. 2.)

3. Per the USPS Track & Confirm verification, Petitioners received the additional assessment on November 2, 2011. Also, the USPS informed the Wisconsin Department of Revenue in a letter dated August 16, 2012, that Petitioners received the Certified Mail item number 7010 1870 0003 5368 3480 on November 2, 2011. (Robertson Affidavit, Ex. 3 and Ex. 4.)

4. On January 9, 2012, the Wisconsin Department of Revenue received Petitioners' Petition for Redetermination, which was filed on their behalf by Bodilly CPAs and Consultants, LLP. (Robertson Affidavit, Ex. 5.)

5. On October 18, 2012, the Department's Attorney Sheree Robertson sent an email to Stephanie A. Barganz, who represents Petitioners within Bodilly CPAs and Consultants, and asked for the date that Petitioners' Petition for Redetermination was mailed to the Wisconsin Department of Revenue via USPS Priority Mail. On

October 18, 2012, Ms. Barganz responded to her email, indicating January 6th. (Robertson Affidavit, Ex. 6.)

6. The 60-day period provided for in Wis. Stat. § 71.88(1)(a), for Petitioners timely filing a Petition for Redetermination of the additional assessment expired on January 1, 2012. Since January 1, 2012, was a legal holiday and because the State of Wisconsin government offices were closed on January 2, 2012, under Wis. Stat. § 990.001(4), the last day for Petitioners to file a timely Petition for Redetermination was January 3, 2012.

7. By Notice of Action dated May 25, 2012, mailed to Petitioners by USPS Certified Mail, the Wisconsin Department of Revenue denied Petitioners' Petition for Redetermination for the reason that they did not timely file their Petition for Redetermination objecting to the additional assessment. (Robertson Affidavit, Ex. 7.)

8. Petitioners' Petition for Review of the action on the Petition for Redetermination was received in the office of the Wisconsin Tax Appeals Commission on July 24, 2012, which was sent by USPS Certified Mail on July 23, 2012. (Robertson Affidavit, Ex. 8.)

RULING

After reviewing the file and all submissions of the parties, the Commission grants the Motion to Dismiss filed by the Department and dismisses the case.

Under Wis. Stat. § 71.88(1)(a), a person feeling aggrieved by a determination of the Department may file a Petition for Redetermination with the

Department within 60 days. If a Petition for Redetermination is not filed within 60 days, the assessment becomes final and conclusive.

The Commission has repeatedly ruled that it does not have jurisdiction to hear appeals of cases in which a petitioner has not filed a timely Petition for Redetermination. *Williams v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-880, (WTAC 2006); *Kaminske v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-638 (WTAC 2012). The reasoning behind these decisions is that if a person does not file a Petition for Redetermination, he or she cannot be "aggrieved by the redetermination of the Department of Revenue." Under Wis. Stat. § 73.01(5)(a), the Tax Appeals Commission only has jurisdiction over cases in which a person has filed a Petition for Redetermination and is aggrieved by the redetermination of the Department of Revenue.

In this case, Petitioners received the Notice of Assessment on November 2, 2011, which is the date that delivery of the Certified Mail was accepted. See Robertson Affidavit, ¶ 2, Ex. 3 and Ex. 4. Petitioners had 60 days from that date to file a timely Petition for Redetermination with the Department of Revenue. That date would be January 1, 2012. Since January 1, 2012, was a legal holiday and since Wisconsin State government offices were closed on January 2, 2012, under Wis. Stat. § 990.001(4), the last day to timely file a Petition for Redetermination was January 3, 2012. See Robertson Affidavit.

No Petition for Redetermination was filed as of January 3, 2012, and under Wis. Stat. § 71.88(2)(a), the assessment became final and conclusive.

The record shows that Petitioners did file a Petition for Redetermination which was received by the Department on January 9, 2012, and had been mailed by Petitioners on January 6, 2012. *See* Robertson Affidavit, Par. 3, and Ex. 5 and Ex. 6. Clearly, the filing of the Petition for Redetermination was not timely. By then, the assessment had become final and conclusive, and the Tax Appeals Commission had no jurisdiction to hear Petitioners' appeal.

Petitioners claim that on November 15, 2012, the Department of Revenue received two amended returns which they asked the Department to process. In their appeal to the Tax Appeals Commission, Petitioners asked the Commission to order the Department to process the tax returns. It should be noted that the amended returns were received by the Department of Revenue after the Motion to Dismiss had been filed. Moreover, they pertain to a different taxpayer, M. Jones Company. The amended tax returns have no relevance over whether the Tax Appeals Commission has jurisdiction in this case. And, even if the Tax Appeals Commission had jurisdiction, it has no statutory authority to mandate the Department of Revenue to process amended tax returns.

The only issue in this case is whether the Tax Appeals Commission has jurisdiction to hear this case. The Commission concludes that it has no jurisdiction because the Petitioners failed to file a Petition for Redetermination within 60 days. Because of this failure, the assessment became final and conclusive. The Motion to Dismiss is granted.

Dated at Madison, Wisconsin, this 16th day of July, 2013.

WISCONSIN TAX APPEALS COMMISSION



Lorna Hemp Boll, Chair



Roger W. LeGrand, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION
5005 University Avenue - Suite 110
Madison, Wisconsin - 53705

NOTICE OF APPEAL INFORMATION

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES ALLOWED
FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS
RESPONDENT**

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternatively, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeals Commission either in-person, by certified mail, or by courier, and served upon the other party (which usually is the Department of Revenue) within 30 days of this decision if there has been no petition for rehearing, or within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or the Wisconsin Statutes. The website for the courts is <http://wicourts.gov>.

This notice is part of the decision and incorporated therein.