

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

---

KEYYANNA JONES,

DOCKET NO. 14-I-177

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

---

**RULING AND ORDER**

---

**LORNA HEMP BOLL, CHAIR:**

This case comes before the Commission for decision on Respondent's Motion to Dismiss Petitioner's Petition for Review as untimely. The Petitioner, Keyyanna Jones, of Milwaukee, Wisconsin, appears *pro se*. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Sheree Robertson. The Department filed a brief and affidavit with exhibits in support of its Motion. Petitioner has provided a response with exhibits.

The Commission finds that the Petitioner's Petition for Review was not filed within the required 60-day period. As such, it was not timely. The Commission lacks jurisdiction and therefore must dismiss this matter.

## FACTS

### Jurisdictional Facts

1. On July 29, 2013, the Department issued to the Petitioner a Notice of Amount Due for the calendar years 2009-2012 in the amount of \$8,547.79. (Dep't Ex. 1.)

2. On January 28, 2014, Petitioner filed a timely Petition for Redetermination with the Department. The Petition for Redetermination was considered by the Department and denied in Department's Notice of Action dated April 11, 2014. (Dep't Exs 2 and 3.)

3. Petitioner received the Notice of Action on April 16, 2014. The Notice included language alerting Petitioner to her right to appeal within 60 days of her receipt of the Notice. (Dep't Exs. 3 and 4.)

4. The 60-day time period from the date of receipt of the Notice of Action denying the Petition for Redetermination ended on June 15, 2014. Because June 15, 2014, was a Sunday, the time to appeal expired on Monday, June 16, 2014.

5. On June 23, 2014, the Commission received Petitioner's Petition for Review by ordinary mail. (Commission file.)

6. On July 22, 2014, the Department filed a Motion to Dismiss, along with an affidavit with exhibits and brief in support of the Motion. Petitioner has submitted a response with additional information concerning the merits of her appeal.

## APPLICABLE LAW

A motion to dismiss will be granted if the Commission finds it does not have proper jurisdiction. Without jurisdiction to hear the matter, the Commission has no alternative other than to dismiss the action. *See Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002). The specific statutes at issue here outline the requirements for filing a valid and timely petition for review with the Commission:

Wis. Stats. § 73.01(5)(a): Any person who is aggrieved . . . by the redetermination of the department of revenue may, within 60 days of the redetermination . . . but not thereafter, file with the clerk of the commission a petition for review of the action of the department of revenue. . . . For purposes of this subsection, a petition for review is considered timely filed if mailed by certified mail in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the last day for filing.

Wis. Stat. § 71.88(2): *Appeal of the department's redetermination of assessments and claims for refund.* A person feeling aggrieved by the department's redetermination may appeal to the tax appeals commission by filing a petition with the clerk of the commission as provided by law and the rules of practice promulgated by the commission. If a petition is not filed with the commission within the time provided in s. 73.01 . . . the assessment, refund, or denial or refund shall be final and conclusive.

## ANALYSIS

The Wisconsin Tax Appeals Commission lacks jurisdiction to hear an appeal in cases where a petitioner fails to file a timely petition for review with the Commission. *Barth v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-527 (WTAC 2012).

The date on which a petition for review is "filed" with the Commission under Wis. Stat. § 73.01(5)(a) has consistently been held to be the date on which the

petition has been physically received in the Commission office. *See Edward Mischler v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-159 (WTAC 1983).

Unless otherwise provided by statute, a document is filed on the date it is received by the Commission, not the date it is mailed. *See Laurence H. Grange v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-017 (Dane Co. Cir. Ct. 1993). The one exception in Wis. Stat. § 73.01(5)(a) states that a petition is timely if it is mailed (1) by certified mail (2) in a properly addressed envelope (3) with postage prepaid, and (4) postmarked before midnight of the last day for filing.

Petitioner received the notice on April 16, 2014. Her 60-day deadline to file expired on June 16, 2014. She mailed her Petition using ordinary mail rather than certified mail. A major advantage of using the certified mailing exception is that certified mailing provides documentary evidence of the mailing date. In this case, all we know is that the Petition was not received at the Commission until June 23, 2014, one week after the deadline allowed by statute.

Because the Petition was not timely filed, the Commission has no jurisdiction and must dismiss the Petition. This is not a matter for discretion; the Commission has no choice in the matter. *Alexander v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-650 (WTAC 2002).

#### CONCLUSIONS OF LAW

1. The Notice of Action denying Petitioners' Petition for Redetermination became "final and conclusive" pursuant to Wis. Stat. § 71.88(2)(a)

because the Petitioners failed to file the Petition for Review with the Commission within 60 days of the Notice.

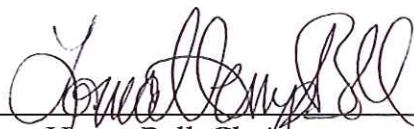
2. The Commission lacks jurisdiction over the Petition for Review under Wis. Stat. § 73.01(5) because it was untimely. Therefore, the Department is entitled to dismissal as a matter of law.

**ORDER**

The Department's Motion to Dismiss is granted, and the Petition for Review is dismissed.

Dated at Madison, Wisconsin, this 24<sup>th</sup> day of March, 2015.

**WISCONSIN TAX APPEALS COMMISSION**

  
\_\_\_\_\_  
Lorna Hemp Boll, Chair

  
\_\_\_\_\_  
David D. Wilmoth, 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.