

STATE OF WISCONSIN
TAX APPEALS COMMISSION

WILLIAM P. AND KRISTINE SCHEFFLER,

DOCKET NO. 19-I-038

Petitioners,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

ELIZABETH D. KESSLER, CHAIR:

This case comes before the Commission for decision on Respondent's Motion to Dismiss Petitioners' Petition for Review as untimely. The Petitioners, William P. and Kristine Scheffler of Waunakee, Wisconsin, appear *pro se*. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Chief Counsel Dana J. Erlandsen. The Department filed a brief and affidavit with exhibits in support of its Motion. Petitioners have provided a response with exhibits.

The Commission finds that the Petitioners' 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

1. On May 1, 2018, the Department issued the Petitioners a Notice of Office Audit Amount Due - Individual Income Tax. This Notice related to lack of verification of Schedule C expenses. (Affidavit of Mary E. Nelson ("Nelson Aff.") ¶ 2, Ex. A.)

2. On or about July 2, 2018, the Petitioners submitted a checking account record from Associated Bank, which the Department considered a petition for redetermination. (Nelson Aff. ¶ 3, Ex. B.)

3. On October 23, 2018, the Department denied the Petition for Redetermination by Notice of Action, indicating that the Petitioners did not provide a response to a request for more information. (Nelson Aff. ¶ 4, Ex. C.)

4. The Notice of Action was received by Petitioner Kristine Scheffler on October 26, 2018. (Nelson Aff. ¶ 4, Ex. C.)

5. The Notice of Action included language alerting the Petitioners to their right to appeal within 60 days of their receipt of the Notice and that, if the appeal was not filed "within the 60-day period, the additional tax and interest will become final..." (Nelson Aff. ¶ 6, Ex. C.)

6. The 60-day time period from the date of receipt of the Notice of Action denying the Petition for Redetermination ended on December 26, 2018.

7. On February 14, 2019, the Commission received the taxpayers' Petition and filing fee. It was sent by Certified Mail date stamped February 12, 2019. (Commission file.)

8. On March 5, 2019, the Department filed a Motion to Dismiss, along with an affidavit, including exhibits and brief in support of the Motion. (Commission file.)

9. On May 20, 2019, Petitioners submitted a letter in which they admitted missing the deadline, reiterating their claim to have sent the Department the originally requested items in a timely manner and requesting again to have the items they submitted reconsidered. (Commission file.)

10. The Department filed a letter Reply Brief on May 31, 2019. (Commission file.)

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)(a): *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 *Mischler v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-159 (WTAC 1983). The one exception is for petitions properly sent by U.S.P.S. Certified Mail, which is deemed received and, therefore, filed at the Commission on the date of certified mailing.

Petitioners received the Notice of Action on October 26, 2018. The 60-day deadline to file expired on December 26, 2018. They sent their Petition by Certified Mail on February 12, 2019, so it is deemed received and therefore considered filed on that date. The Petition was filed more than seven weeks after its due date, and Petitioners admit the Petition was untimely.

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).

From the Petitioners' submissions to the Commission, it appears that they sincerely believe that the documents they provided to the Department were sufficient to verify their claims. Unfortunately, the Department did not agree, and, while we may sympathize, we lack jurisdiction to consider the underlying facts due to the late filing. Should similar issues arise in the future, the Petitioners would likely be better served by speaking to the Department early in the process, finding out exactly what information they need, and providing that information along with detailed explanations of whatever documentation they provide.

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 receipt of the Notice.

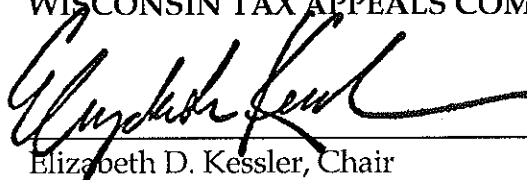
2. The Commission lacks jurisdiction over the Petition for Review under Wis. Stat. § 73.01(5) because it was untimely. Therefore, the Department is entitled to dismissal as a matter of law.

ORDER

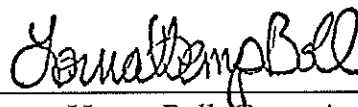
The Department's Motion to Dismiss is granted, and the Petition for Review is dismissed.

Dated at Madison, Wisconsin, this 27th day of November, 2019.

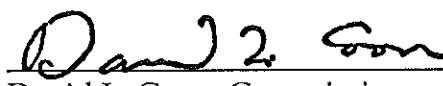
WISCONSIN TAX APPEALS COMMISSION



Elizabeth D. Kessler, Chair



Lorna Hemp Boll, Commissioner



David L. Coon, 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. Alternately, 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 Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, 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 <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.