

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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CHRISTINE GAGNE,

DOCKET NO. 20-I-169

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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RULING AND ORDER

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DAVID L. COON, COMMISSIONER:

This case comes before the Commission for decision on Respondent's Motion to Dismiss. Petitioner, Christine Gagne, of Green Bay, Wisconsin, appears *pro se* in this matter. 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. Petitioner has submitted a response with exhibits. The Department filed a letter as a Reply Brief.

The Commission finds that Petitioner's Petition for Review was filed more than 60 days after she received the Notice of Action on her request for redetermination. Therefore, the Commission lacks jurisdiction and must dismiss this matter.

FACTS

1. On February 4, 2020, the Department issued Petitioner a Notice of

Office Audit Amount Due - Individual Income Tax (Affidavit of Mary E. Nelson, Resolution Office Audit Supervisor of the Wisconsin Department of Revenue ("Nelson Aff."), Ex. A.)

2. On or about February 24, 2020, the Petitioner submitted a Petition for Redetermination. (Nelson Aff., Ex. B.)

3. By Notice of Action ("Action") dated April 22, 2020, the Department denied the Petition for Redetermination. (Nelson Aff., Ex. C.)

4. On April 25, 2020, Petitioner received the Department's denial. (Nelson Aff., Ex. C.)

5. The 60-day period provided for the timely filing a Petition for Review with the Commission to appeal the Department's action on the Petitioner's Petition for Redetermination expired on June 24, 2020. (Wis. Stat. § 73.01(5)(a).)

6. On July 27, 2020, the Tax Appeals Commission received the Petition for Review by regular mail. (Nelson Aff., Ex. D.)

7. On August 24, 2020, the Department filed a Motion to Dismiss with a brief in support of the Motion, along with an affidavit with exhibits. (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. Stat. § 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 of refund shall be final and conclusive.

### ANALYSIS

Unless otherwise provided by statute, a document is filed on the date it is received by the Commission. *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's Petition was filed by ordinary mail, so this exception does not apply.

The 60-day period for the timely filing a Petition for Review in this case expired on June 24, 2020. The Petitioner mailed her Petition by regular, not certified, mail, and the Commission received it on July 27, 2020, over a month after the final date allowable

for filing. Further, in her Petition for Review, Petitioner acknowledges that her Petition for Review is late. Under the rules established in Wis. Stat. § 73.01(5)(a) regarding the filing of petitions for review with the Commission, this Petition was untimely.

Petitioner places blame on her accountant, stating in her Petition, "I assigned the task of my appeal to my tax accountant . . . and he missed the appeal deadline." Even assuming this was the situation, our cases have held that "reliance on another person does not excuse the late filing. The onus is on the Petitioners to ensure that their filing is timely." *Drephal v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-252 (WTAC 2018).

Petitioner also stresses the number of personal and medical issues from which she suffers. "However, 'the legislature has empowered this agency to determine and apply Wisconsin tax statutes, but not to preempt application of a statute under a doctrine of equity.'" *Harnage v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶402-390 (WTAC 2020) (citations omitted). While we may sympathize with the Petitioner and wish her the best in dealing with her struggles, we cannot extend the statutory time limits due to issues of fairness or hardship.

#### CONCLUSION OF LAW


The Petitioner's Petition for Review was not timely filed as required by Wis. Stat. § 73.01(5)(a) and, thus, the Commission lacks jurisdiction in this matter.

ORDER

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

Dated in Madison, Wisconsin, this 2<sup>nd</sup> day of December, 2020.

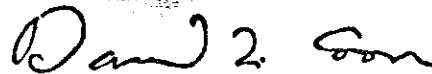
WISCONSIN TAX APPEALS COMMISSION



Elizabeth 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.