

**STATE OF WISCONSIN**  
**TAX APPEALS COMMISSION**

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**KENNETH H. AND VIOLET E. HACKBARTH**  
8304 18th Street  
Kenosha, WI 53144-7123,

**DOCKET NO. 04-I-254**

Petitioners,

vs.

**RULING AND ORDER**

**WISCONSIN DEPARTMENT OF REVENUE**  
P.O. Box 8907  
Madison, WI 53708-8907,

Respondent.

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This case comes before the Commission on the motion of the respondent, Wisconsin Department of Revenue ("Department"), to dismiss the petition for review on the basis that it was not timely filed under Wis. Stat. § 73.01(5)(a).

Petitioners represent themselves and have filed no objection to the motion. Attorney Michael J. Buchanan represents the Department and has filed an affidavit with exhibits in support of the motion.

Having considered the entire record, the Commission hereby finds, rules, and orders as follows:

**FACTS**

1. By notice dated July 7, 2003, the Department issued an assessment of income tax and interest to petitioners in the amount of \$279,339.85 for tax years 1999, 2000, and 2001 (Affidavit of Michael J. Buchanan, Ex. A).

2. Under date of August 28, 2003, petitioners filed with the Department a timely petition for redetermination of the assessment (Buchanan Affidavit, Ex. B).

3. By certified mail dated August 25, 2004, the Department issued a notice of action denying the petition for redetermination (Buchanan Affidavit, Ex. C). Petitioners received the notice of action on August 26, 2004 (Buchanan Affidavit, Ex. D).

4. On October 27, 2004, petitioners filed a petition for review with the Commission. The petition, dated October 20, 2004, was mailed by certified mail postmarked October 26, 2004.

5. The 60-day period under Wis. Stat. § 73.01(5)(a) for petitioners to file a timely petition for review with the Commission expired on October 25, 2004.

### **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. The requirement of timely filing has been strictly interpreted by the Commission and by the judiciary. *See, McDonald Lumber Co. v. Dep't of Revenue*, 117 Wis. 2d 446 (1984).

Petitioners dated their petition for review October 20, 2004, but did not mail it until October 26, 2004, as evidenced by the date stamp placed on the envelope by the United States Postal Service. Because petitioners sent their petition by certified mail, it was deemed filed on October 26, 2004. Section TA 1.13(2), Wis. Admin. Code.

Unfortunately for petitioners, this was one day after the October 25, 2004 expiration of the 60-day period set forth in § 73.01(5)(a).

The Wisconsin Supreme Court has stated: "To dismiss an appeal because it comes one day late may seem harsh. However, if statutory time limits to obtain appellate jurisdiction are to be meaningful they must be unbending." *Kohnke v. ILHR Dep't*, 52 Wis. 2d 687, 690 (1971).

Petitioners did not file their petition for review with the Commission within 60 days after receipt of the notice of action on their petition for redetermination. The Commission has no authority under the statutes to ignore or make exceptions to the 60-day provision. Even if the Commission wanted to, it could not act on an appeal filed with it after the due date other than to dismiss it for lack of timely filing. Therefore, the Commission must grant the motion.

### **ORDER**

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

Dated at Madison, Wisconsin, this 7th day of February, 2005.

WISCONSIN TAX APPEALS COMMISSION

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Jennifer E. Nashold, Chairperson

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Diane E. Norman, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"