

STATE OF WISCONSIN
TAX APPEALS COMMISSION

TESSA M. AND CHRISTOPHER MYERS,

DOCKET NO. 20-I-012

Petitioners,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DAVID L. COON, COMMISSIONER:

This case comes before the Commission for decision on Respondent's Motion to Dismiss Petitioners' Petition for Review for failure to file a timely Petition for Redetermination. The Petitioners, Tessa M. and Christopher Myers, appear by Olga Lavrenova, PricewaterhouseCoopers, LLC, Chicago, Illinois. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Jenine E. Graves. Respondent has filed a brief and affidavit in support of its Motion. Petitioners failed to file a response to the Motion. For the reasons stated below, we find for the Respondent.

FINDINGS OF FACT

1. On March 5, 2019, the Department issued a Notice of Refund - Individual Income Tax ("Notice") to the Petitioners regarding their Wisconsin income tax and refund claim for the 2017 tax year. (Affidavit of Mary Nelson, Resolution Office Audit Supervisor, Wisconsin Department of Revenue ("Nelson Aff.") ¶¶ 2 and 3, Ex. A.)

2. The Notice contains information regarding the 60-day time-period in which to file an appeal with the Department. (Nelson Aff. ¶ 3, Ex. A.)

3. On March 29, 2019, Petitioners' representative called the Department to ask questions about the Notice. The Department reminded their representative of the sixty-day appeal period. (Nelson Aff. ¶ 6, Ex. B.)

4. On May 16, 2019, the Department received a letter dated May 13, 2019 with attachments from Petitioners' representative appealing the March 5, 2019 Notice. (Nelson Aff. ¶ 7, Ex. C.)

5. By a letter dated July 31, 2019, the Department advised Petitioners that it had received Petitioners' appeal beyond the sixty-day appeal period as calculated by the Department.¹ However, the Department asked Petitioners to provide more information within twenty days if Petitioners disagreed. (Nelson Aff. ¶ 8, Ex. D.)

6. On October 3, 2019, more than 20 days after its July 31, 2019 letter, the Department received a letter dated September 30, 2019 with attachments from Petitioners' representative. Petitioners did not address in the letter nor any of the attachments the untimeliness of Petitioners' request for redetermination. (Nelson Aff. ¶ 9, Ex. E.)

7. On October 23, 2019, the Department sent a letter to the Petitioners stating that their appeal was untimely. The Department again asked Petitioners to provide additional information, by November 8, 2019, if they disagreed. (Nelson Aff. ¶ 10, Ex. F.)

¹ The Department's letter also addressed the merits of the issue, confirming the Department's position as to the Department's actions in the Notice.

8. After Petitioners failed to respond to this request, the Department sent Petitioners a Notice of Action dated November 13, 2019, denying the late appeal. (Nelson Aff., ¶11, Ex. G.)

9. On January 9, 2020, Petitioners filed their Petition for Review with the Commission. (Nelson Aff. ¶ 11 and Commission file.)

10. In the Petition for Review, Petitioners' representative states, "We understand that there was a deadline set by the Wisconsin Department of Revenue to address the questions raised; however, it took additional time to gather the additional information required to submit our response" and the "timeliness of our response was limited by the time required to obtain the required documents to include in our response."

11. On June 19, 2020, the Department filed a Motion to Dismiss along with an affidavit and exhibits. Petitioners failed to respond to the Motion. (Commission file.)

APPLICABLE LAW

State statutes outline the requirements for filing a valid and timely petition for redetermination:

Wis. Stat. § 71.88(1)(a): . . . any person feeling aggrieved by a notice of additional assessment, refund, or notice of denial of refund may, within 60 days after receipt of the notice, petition the department of revenue for redetermination.

Wis. Stat. § 71.88(2)(a): [I]f no timely petition for redetermination is made within the time provided, the assessment, refund, or denial of refund shall be final and conclusive.

ANALYSIS

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).

In order to contest a notice of refund from the Department, a person must petition the Department for redetermination of the notice within 60 days after receipt of the notice. Wis. Stat. § 71.88(1)(b). Except for certain claims for refund² not at issue in this case, "if no petition for redetermination is made within the time provided the assessment, refund, or denial of refund shall be final and conclusive." Wis. Stat. § 71.88(2)(a).

The Commission has long held that it does not have jurisdiction under Wis. Stats. § 71.88(2)(a) to review actions of the Department where a petitioner fails to file a timely petition for redetermination with the Department. *See Lyman v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-917 (WTAC 2006). A petitioner must be "aggrieved" by the Department's redetermination to bring the issue to the Commission. Wis. Stat. § 71.88(2)(a). A petitioner cannot be aggrieved by the Department's redetermination, when there has been no redetermination and, as a result, the Department's initial determination has become final.

In this case, the Department mailed a Notice of Refund to Petitioners dated March 5, 2019. Petitioners' Petition for Redetermination dated May 13, 2019, and received by the Department on May 16, 2019, was filed about 72 days after the date of the Notice

² *See* Wis. Stat. § 71.75(5).

of Refund. While the Department fails to establish the actual date of receipt of the Notice, Petitioners admit in the Petition for Review that their filing was late.

Further, the Department on multiple occasions requested Petitioners address the late filing issue. Petitioners did not do so. Petitioners also did not respond to the Motion to Dismiss. Thus, Petitioners have failed to refute the Department's assertion that their Petition for Redetermination was untimely.

Therefore, having admitted in the Petition for Review that their response to the Department was not timely, having failed to provide any information in response to the Department's requests regarding the late filing, and having failed to respond to the Motion to Dismiss, we determine that the Petition for Redetermination was not timely and, therefore, we dismiss because the Notice is final and conclusive. 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).

The Petitioners' Petition for Review appears to include a request for equitable relief based upon additional time needed to obtain documents. While we often sympathize with petitioners who miss a deadline for a variety of reasons, the Commission does not have equitable powers to grant such relief. "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." *Peterson v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 203-026 (WTAC 1989).

CONCLUSIONS OF LAW

1. Because Petitioners failed to file a timely Petition for Redetermination, the underlying determination is final.
2. The Commission lacks jurisdiction to hear this appeal.
3. The Department is entitled to dismissal as a matter of law.

ORDER

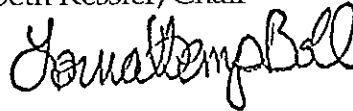
Based on the foregoing, it is the order of this Commission that the Department's Motion to Dismiss is granted and the Petitioners' Petition is dismissed.

Dated in Madison, Wisconsin, this 3rd day of February, 2021.

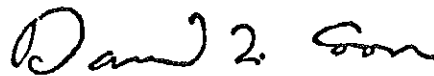
WISCONSIN TAX APPEALS COMMISSION



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.