

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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ROBERT C. ANDERSON,

DOCKET NO. 20-I-084

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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RULING & ORDER

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DAVID L. COON, COMMISSIONER:

This case comes before the Commission for decision on the Respondent's Motion to Dismiss the Petitioner's Petition for Review. The Respondent asserts that the Petition for Review should be dismissed because the Petitioner's refund claim, which is the basis of his appeal, was filed late. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Sheree Robertson. The Petitioner, Robert C. Anderson of North Fond du Lac, Wisconsin, is *pro se*. For the reasons stated below, the Commission finds that the Petitioner's refund claim was filed late and that the Commission lacks jurisdiction.

FACTS

1. The Department issued to Petitioner a Notice of Estimated Tax Amount Due dated September 12, 2012, for an estimated assessment for tax year ending

December 31, 2009 ("Estimated Assessment"), which included appeal rights. The Department estimated Petitioner's income for the tax year ending December 31, 2009, because he had not filed a 2009 Wisconsin income tax return. (Affidavit of Carrie Kloss, Resolution Officer, Wisconsin Department of Revenue ("Kloss Aff.") ¶ 5, Ex. 4.)

2. Petitioner did not file a Petition for Redetermination objecting to the Estimated Assessment. (Kloss Aff. ¶ 6.)

3. As Petitioner did not file a Petition for Redetermination objecting to the Estimated Assessment, under Wis. Stat. § 71.88(2)(a), the assessment subsequently became final and conclusive. (Kloss Aff. ¶ 7.)

4. The Department acted to collect the delinquent amount owed under the Estimated Assessment by garnishing Petitioner's wages. (Kloss Aff. ¶ 8.)

5. The Department collected \$37,377.86 from Petitioner, which was applied to the delinquent amount owed for the tax year ending December 31, 2009. (Kloss Aff. ¶ 8.)

6. Petitioner filed his 2009 Wisconsin income tax return on or about January 7, 2019. He did not claim a refund or report a tax due. (Kloss Aff. ¶ 9.)

7. The Department issued to Petitioner a Notice of Amount Due - Individual Income Tax dated February 1, 2019, for the tax period ending December 31, 2009 ("Notice of Amount Due"). The details of changes attached to the Notice of Amount Due shows \$0.00 due and payments/credits of \$37,377.86 applied to his delinquent tax liability for the tax year ending December 31, 2009. (Kloss Aff. ¶ 2, Ex. 1.)

8. On March 12, 2019, Petitioner submitted a web appeal, which the Department considered to be his Petition for Redetermination, objecting to the Notice of Amount Due. Petitioner also faxed a Petition for Redetermination to the Department on March 28, 2019, requesting a refund of the \$37,377.86 collected by the Department. (Kloss Aff. ¶ 3, Ex. 2.)

9. The Department, by a letter dated November 5, 2019, advised Petitioner that any claim for refund must be made within four years after the assessment of tax, without regard to when the payments were made. (Kloss Aff. ¶ 10, Ex. 5.)

10. By a Notice of Action dated January 23, 2020, the Department notified Petitioner of the denial of the refund claimed in his Petition for Redetermination.<sup>1</sup> (Kloss Aff. ¶ 4, Ex. 3.)

11. On March 26, 2020, the Commission received Petitioner's Petition for Review which was sent by certified mail on March 24, 2020. (Commission file.)

12. On September 1, 2020, the Department filed a Motion to Dismiss. Both parties subsequently provided briefs and other documents regarding their respective positions. (Commission file.)

#### APPLICABLE LAW

Wis. Stat. § 71.75(5): A claim for refund may be made within 4 years after the assessment of a tax or an assessment to recover all or part of any tax credit, including penalties and interest, under this chapter, assessed by office audit or field audit and paid if the assessment was not protested by the filing of a petition for redetermination. No claim may be allowed under

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<sup>1</sup> The Department notes that the Notice of Action contains a clerical error, as a reference is made to an "Income Tax Refund Claim Denial Notice dated February 1, 2019," when the reference should have been to the "Notice of Amount Due dated February 1, 2019."

this subsection for any tax, interest or penalty paid with respect to any item of income, credit or deduction self-assessed or determined by the taxpayer or assessed as the result of any assessment made by the department with respect to which all the conditions specified in this subsection are not met.

### ANALYSIS

Wisconsin law requires a claim for refund to be filed within four years after the assessment of a tax, including penalties and interest, if the assessment was paid by the taxpayer and not protested by the filing of a petition for redetermination with the Department. Wis. Stat. § 71.75(5).

The Department issued a Notice of Estimated Tax Amount Due, dated September 12, 2012, to the Petitioner, assessing additional income tax, interest, penalties, and fees for the 2009 tax year. The amount assessed was estimated, as Petitioner had failed to file a 2009 tax return. Petitioner did not protest the assessment by filing a petition for redetermination, and the Petitioner paid the assessment, albeit by garnishment over many years.

On or about January 7, 2019, Petitioner filed his 2009 Wisconsin tax return. The Department sent a February 11, 2019 Notice of Amount Due to Petitioner, noting that amounts collected by the Department had been applied to the 2009 tax year and indicating nothing remained due. Petitioner subsequently claimed a refund with the filing of a petition for redetermination related to the February 11, 2019 Notice of Amount Due. The Department denied Petitioner's refund claim as untimely.

Under Wis. Stat. § 71.75(5), the four-year period for filing a claim for refund of all or any part of the assessment made in the Department's September 12, 2012 Notice of

Estimated Tax Amount Due expired four years from the date of that assessment, on or about September 12, 2016. Therefore, Petitioner's claim for refund on March 12, 2019 was untimely as the four-year period allowed under the statute expired about two and a half years earlier.

Petitioner's argument appears to be that payments made after the four-year period in Wis. Stat. 71.75(5) should be eligible for refund. However, the statute clearly states that the critical date from which the four-year period to claim a refund begins and runs is the date that the assessment was issued, not the date that payments were made.

Here, the four-year period began running with the issuance of the assessment on September 12, 2012 and expired on September 12, 2016. Petitioner's claim for refund was made on March 12, 2019, and, therefore, was untimely. Where there are "late filed claims for refund, the Commission has no jurisdiction over the matters." *Smith v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-595, (WTAC 2002).

#### CONCLUSIONS OF LAW

1. The Petitioner failed to file his refund claim within four years of the Department's assessment, as required by Wis. Stat. § 71.75(5). Consequently, the refund claim was untimely.

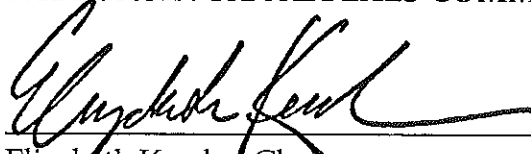
2. Because the Commission lacks jurisdiction over untimely refund claims, the Commission must dismiss this matter.

#### ORDER

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

Dated at Madison, Wisconsin, this 27<sup>th</sup> day of January, 2021.

WISCONSIN TAX APPEALS COMMISSION



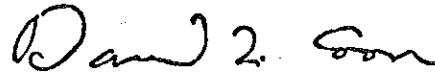
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Elizabeth Kessler, Chair



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Lorna Hemp Boll, Commissioner



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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.