COURT OF APPEALS
DECISION
DATED AND FILED

December 23, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-1116

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

NATIONAL PRESTO INDUSTRIES, INC.,

PETITIONER-RESPONDENT,

v.

WISCONSIN DEPARTMENT OF REVENUE,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Eau Claire County: ERIC J. WAHL, Judge. *Reversed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. The Wisconsin Department of Revenue appeals an order reversing a Wisconsin Tax Appeals Commission ruling dismissing for lack of jurisdiction National Presto Industries, Inc.'s, petition for review. The department raises two issues: whether (1) National Presto's petition for redetermination was timely under § 71.88, STATS.; and (2) a taxpayer can file a

refund claim under § 71.75(5), STATS., within two years of a field audit that resulted in a refund. Because we conclude that National Presto's petition for redetermination was not timely under § 71.88, we do not reach the second issue.

National Presto contends that the time limits under § 71.88(1), STATS., were not triggered because the department failed to include in its denial of National Presto's claim the notice of appellate rights, as required by § 227.48, STATS. National Presto also argues that equitable estoppel prevents the department from applying the § 71.88(1), STATS., time limits because its failure to include notice of appellate rights is inconsistent with its publications and practices. We conclude that § 227.48 does not apply; no specific statute or regulation requires that the department notify the claimant of appellate rights under the circumstances presented here; and a rational basis exists to deny National Presto equitable relief. Therefore, we reverse the circuit court order without reaching the broader second issue.[1]

National Presto was the subject of an income/franchise tax audit by the department, culminating in a document referred to as a notice of field action, dated November 4, 1992, and covering the years 1985, 1986 and 1987. National Presto did not file a petition for redetermination with respect to the notice, but accepted a refund check reflecting a 1987 overpayment minus a 1985 and 1986 underpayment. Approximately twenty-two months later, on or about September 13, 1994, National Presto filed with the department a letter and attached 1985 tax form 4-X, claiming a refund for 1985.

[1] The court of appeals should decide cases on the narrowest possible grounds. *See* ***State v. Blalock,*** 150 Wis.2d 688, 703, 442 N.W.2d 514, 520 (Ct. App. 1989). It is not required to address every issue raised and each of the forms of relief requested.

By letter dated November 10, 1994, a staff specialist in the department's audit technical services unit notified National Presto that its refund claim was barred by § 71.75(4), STATS., and was rejected. The letter was sent by ordinary mail and included no explanation of the taxpayer's appeal rights. National Presto did not understand the letter to constitute a statutory denial of its claim and that prompt action was required to appeal it. Seven months later, on June 13, 1995, National Presto wrote the department objecting to the conclusions reached in the department's November 10, 1994, letter.

On June 29, 1995, the director of the department's appellate bureau wrote National Presto, stating among other things, to the extent that National Presto's June 13 letter is considered a petition for redetermination, it was rejected as untimely because it was not received within sixty days of the November 10, 1994, letter. It stated that if National Presto disagreed, it could appeal to the Tax Appeals Commission. National Presto responded in another letter dated July 6, 1995, disagreeing with the department's conclusions. It stated that its June 13, 1995, letter was not intended to constitute a petition for redetermination because it had not understood that its refund claim had been officially denied. After the department responded by letter dated July 17 National Presto filed a petition with the tax appeals commission.

The commission granted the department's motion to dismiss, concluding that National Presto failed to file its petition for redetermination within sixty days from the rejection of its refund claim and that its original claim for refund was not timely filed. The circuit court reversed the commission and remanded to the commission for a decision on the merits. The department appeals the circuit court's order.

Here, the dispositive issue is whether National Presto's petition for redetermination was timely filed under § 71.88(1)(a), STATS. That section states: "[A]ny 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." We conclude that because National Presto did not petition the department for redetermination until seven months after it was notified that its claim for refund was rejected, its petition was untimely and the department's determination is conclusive.

National Presto argues that the department's November 10 letter did not meet the requirements under ch. 227, STATS., to trigger the statutory appeals period. It contends that because the commission did not expressly address this issue, our review would necessarily be de novo. For purposes of this appeal, we accept National Presto's characterization of our standard of review. *Cf.* ***DOR v. Hogan,*** 198 Wis.2d 792, 802, 543 N.W.2d 825, 829 (Ct. App. 1995) (decision whether petition was timely filed involved the application of legal principles to the facts of the case presenting a question of law we review de novo).

National Presto argues that in order to constitute a denial, the November 10 letter must have met the requirements found in § 227.48(2), STATS., providing: "Each decision [of an administrative agency] shall include notice of any right of the parties to petition for rehearing and administrative or judicial review of adverse decisions, the time allowed for filing each petition and identification of the party to be named as respondent." We disagree.

The department correctly responds that § 227.52, STATS., exempts it from requirements of § 227.48, STATS. Section 227.52, entitled "Judicial review; decisions reviewable" states:

> Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue, other than decisions relating to alcohol beverage permits issued under ch. 125 ….

The department contends that § 71.88(1), STATS., governs petitions for redetermination of its decisions and that they are not reviewable under ch. 227. We agree.

The department's decisions are not appealed under ch. 227, STATS., because the commission is the final authority for the hearing and determination of all questions of law and fact arising under subch. XIV of ch. 71, STATS. Section 73.01(4), STATS. The department's decisions are governed by ch. 73 and various statutes listed in § 73.01(4). This is consistent with the plain language of § 227.52, STATS., which exempts department decisions from ch. 227 review procedures, with exceptions not applicable here. Because the department's decisions are not subject to review under ch. 227, the department need not include within its notice an explanation of appeal rights required by § 227.48.

National Presto argues that the proceeding in this case is an appeal to an administrative body, explicitly covered by § 227.48(2), STATS. This section states: "Each decision shall include a notice of any right of the parties to petition for rehearing and *administrative* or judicial review of adverse decisions, the time allowed for filing each petition and identification of the party to be named as respondent." (Emphasis added.) We conclude that the § 227.48(2) reference to administrative decisions is a general reference, while the § 227.52, STATS., reference is the more specific. *See* ***State v. Elliott***, 203 Wis.2d 95, 105, 551 N.W.2d 850, 854 (Ct. App. 1996) (the more specific statutory language prevails

over the less specific). Treating the department's notifications as "decisions" under ch. 227 would lead to conflicts between ch. 227 and the revenue statutes. For example, under subch. XIV of ch. 71, STATS., a taxpayer has sixty days to petition the department for redetermination. Under § 227.53(1)(a)2, STATS., an aggrieved party has thirty days to petition for rehearing or appeal an agency decision.

We further observe that § 73.015(2), STATS., provides that "[a]ny adverse determination of the *tax appeals commission* is subject to review in the manner provided in ch. 227." (Emphasis added.) National Presto cites no similar provision with respect to notices from the department. It argues, however, that "regardless of the fact that the Department's action in denying a refund claim is undoubtedly not subject to immediate judicial review, that action is subject to those procedural requirements of Chapter 227 which would play a 'useful purpose' in the Department's orderly administrative procedures." (Emphasis in original.) It cites ***Sunnyview Village. v. DOA,*** 104 Wis.2d 396, 412, 311 N.W.2d 632, 640 (1981), for recommending that "governmental entities adopt the practice of providing with their administrative decisions information on how to process proceedings for review …."

This argument misperceives the scope of our review. In interpreting statutes, we must first rely on the plain statutory language to discern legislative intent. *See* ***Kwiatkowski v. Capitol Indem. Corp.,*** 157 Wis.2d 768, 774-75, 461 N.W.2d 150, 153 (Ct. App. 1990). The plain language of § 227.52, STATS., exempts the department from ch. 227, STATS., requirements with certain exceptions not applicable here. Thus, the statutes referred to above establish a specific procedure for review of administrative action and court review of an administrative decision. As noted earlier, the first step in seeking administrative

relief of a denial of a claim for a refund is a petition to the department for redetermination within sixty days under § 71.88, STATS. National Presto failed to meet the prerequisite timely pursuit of administrative review and therefore the department's determination is conclusive.

National Presto also contends that failure to attach the appellate rights notice required by § 227.48(2), STATS., is a significant factor in concluding that the action was not even intended by the agency to constitute a final appealable decision, citing ***DOR v. Hogan,*** 198 Wis.2d 792, 543 N.W.2d 825 (Ct. App. 1995). National Presto further argues that the letter failed to include the statutory term "denial." We are unpersuaded.

The reference to ***Hogan*** is of no assistance. That case concerned an appeal arising out of a commission decision and order. This case concerns an appeal to the department under § 71.88, STATS. We also conclude that the department's use of the word "rejected" instead of "denied" is not a basis for claiming a lack of proper notice.

We are equally unpersuaded by National Presto's contention that the department is estopped by three prior publications: (1) Tax Bulletin #79 (October 1992) stating that following an office audit, the department will send a notice "with an explanation of how you may appeal if you disagree with the adjustments;" (2) Department Publication #501, entitled "Field Audit of Wisconsin Tax Returns," stating that the results of a field audit will be sent to the taxpayer along with an explanation of the taxpayer's appeal rights; and (3) Department Publication #505, "Taxpayer's Appeal Rights of Office Audit Adjustments," stating that the results of an office audit will be sent in a notice that "will explain" the taxpayer's appeal rights. The department responds that the notice of rejection

of the refund claim was not the result of an office or field audit or of any department adjustment.

A taxpayer may assert estoppel against the department when the department induces reasonable reliance by the taxpayer to its detriment. *See* ***DOR v. Family Hosp.,*** 105 Wis.2d 250, 254, 313 N.W.2d 828, 830 (1982). "The defense of equitable estoppel consists of action or non-action which, on the part of one against whom estoppel is asserted, induces reliance thereon by the other, either in action or non-action, which is to his detriment." ***Id.*** We review decisions in equity for an erroneous exercise of discretion. *See* ***Lueck's Home Improv., Inc. v. Seal Tite Nat'l, Inc.*** 142 Wis.2d 843, 847, 419 N.W.2d 340, 342 (Ct. App. 1987).

Section 227.57(8), STATS., provides our scope of review of discretionary determinations:

> The court shall reverse or remand the case to the agency if it finds that the agency's exercise of discretion is outside the range of discretion delegated to the agency by law; is inconsistent with an agency rule, and officially stated agency policy or a prior agency practice, if deviation is not explained to the satisfaction of the court by the agency; or is otherwise in violation of a constitutional or statutory provision; but the court shall not substitute its judgment for that of the agency on an issue of discretion.

We conclude that the tax commission's determination is supported by the record and within the range of its authority. National Presto does not identify any statute, official policy or practice that the department violated. The tax commission found that the "petitioner's attempt to invoke either § 227.48(2), STATS., or the doctrine of estoppel is obviated by respondent's having notified the petitioner of its appeal rights pursuant to § 71.88(1), STATS., in the notice of Field

Audit Action following the audit under review, which included the year 1985." National Presto claims it relied on publications concerning office and field audits. The publications in question, however, do not deal with *refund claims* under § 71.75(5), STATS. National Presto notes that although the rejection notice was not the result of an audit or adjustment, it must be treated as an office audit or field audit under § 71.75(6). Section 71.75(6) provides that, after a claim is filed, it shall be considered and acted upon in the same manner as are additional assessments made under § 71.74(1) and (2), STATS., referring to office and field audits.

Regardless of the publications' applicability to refund claims, we are unconvinced that National Presto acted reasonably under the circumstances. It is not disputed that National Presto was previously notified of the procedure under § 71.88, STATS., to petition the department for a redetermination. After the notice of field action, National Presto chose not to file a petition for redetermination but instead, twenty-two months later, chose to claim a refund. There is no dispute that the department's November 10, 1994, letter unequivocally "rejected" National Presto's refund claim. It was not until seven months later that National Presto wrote to the department making its objections. Under the circumstances presented, a reasonable course of action required a recognition that the rejection contained in the November 10 letter equaled a denial of the claim, triggering the appeal procedures outlined in § 71.88(1), STATS.

By the Court.—Order reversed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.