

## How to Appeal to the Tax Appeals Commission

*Procedures In Appealing a Redetermination Decision of the Department of Revenue to the Tax Appeals Commission*

### I. GENERAL INFORMATION

The purpose of this publication is to inform taxpayers of their appeal rights after a decision by the Wisconsin Department of Revenue. The information is brief and general. Any taxpayer desiring additional information regarding an appeal may write or call either 1) the Resolution Unit, Mail Stop 6-173, Post Office Box 8907, Madison, Wisconsin 53708-8907, phone (608) 266-0185, or 2) the Wisconsin Tax Appeals Commission, 5005 University Avenue, Suite 110, Madison, Wisconsin 53705, phone (608) 266-1391.

### II. APPEALS TO WISCONSIN TAX APPEALS COMMISSION

The Wisconsin Tax Appeals Commission is an independent agency. It is entirely separate from the Department of Revenue.

If a taxpayer disagrees with the redetermination decision of the Department of Revenue and wishes to appeal it, the appeal must be taken to the Commission. The Commission considers appeals on taxes and credits administered under Chapters 71 and 77 of the Wisconsin Statutes. This includes, but is not limited to, income, franchise, gift, homestead credit, farmland preservation credit, withholding, sales and use, and excise tax matters. *The appeal must be filed within 60 days of the taxpayer's receipt of the Department of Revenue's decision.*

A free copy of the rules of the Commission, describing the required format of a petition and the procedures before the Commission, may be obtained by writing to the Wisconsin Tax Appeals Commission, 5005 University Avenue, Suite 110, Madison, WI 53705.

### 1. Filing an Appeal

The appeal is taken by filing a "petition for review" with the Commission, at the address above. Do not send your petition for review to the Department of Revenue or the Resolution Unit. A \$25 filing fee must be submitted with each petition, except that there is no filing fee for appeals of earned income credit, homestead credit and farmland preservation credit cases. If assessments were issued against husband and wife (one assessment against each) and each desires to appeal the Department of Revenue's decision, each spouse must file a separate petition with the Commission and submit a separate \$25 filing fee.

Late petitions are not permitted. A "petition for review" is timely "filed" with the Commission if it is:

- a) Actually received by the Commission within 60 days of the date the taxpayer received the Department of Revenue's decision; or
- b) Mailed to the Commission by certified mail in a properly addressed envelope with postage prepaid by the 60th day after the taxpayer received the Department of Revenue's decision.

The petition must summarize the facts involved in the appeal and must contain a statement of the tax laws involved. The Wisconsin Department of Revenue should be the party named as respondent in the petition. An original plus four copies of the petition must be filed with the Commission.

The petition should state any portion of the tax that is admitted to be correct, and the tax must be paid on this part of the assessment. In order to stop the accumulation of interest, the taxpayer may elect to deposit the tax and interest being appealed with the Department of Revenue. This election should be set forth in the petition for review or may be made later while the appeal is pending before the Commission or courts. If, however, the taxpayer previously made a full deposit with the Department of Revenue, no further action is necessary.

## 2. The Hearing or Other Proceeding

The Tax Appeals Commission will notify the taxpayer and the legal staff of the Department of Revenue of the time and place for the hearing or other proceeding on the petition.

If a hearing is scheduled, the taxpayer may appear on his or her own behalf or may be represented by an attorney. However, the taxpayer is required to attend the hearing (an officer may appear for a corporation) and testify under oath about the facts involved in the dispute. An unexcused failure to appear may result in dismissal of the petition.

A hearing is conducted in a manner similar to a trial in court. The taxpayer, besides giving sworn testimony, may present witnesses and written evidence in support of his or her position. The Department of Revenue will be represented by an attorney, who also may present witnesses and written evidence supporting the Department's position. If issues involving interpretations of the tax law are included in the appeal, the Commission may ask the taxpayer and the Department of Revenue

to file summaries of the law or briefs on the legal questions.

If the facts of the dispute are agreed upon by both the taxpayer and the Department of Revenue, such facts may be presented to the Commission through the filing of a stipulation or affidavits. Both sides would then file briefs on the legal questions. This procedure is called a "motion for summary judgement" and may dispose of some or all of the issues in dispute, depending on the facts and circumstances of a case. There would not be a hearing if all issues in dispute are disposed of in this manner.

A "small claims" case procedure is available in those cases where the total amount in controversy is less than \$2,500. Small claims cases are decided either orally or in writing by one Commissioner within two weeks after the hearing. They are not precedents for other cases. A case will not be heard as a small claims case if the Commission determines that it should not be treated as such or if the Department of Revenue determines the case has statewide significance.

Whenever it appears to the Commission, or to the Commissioner conducting a hearing, that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position is frivolous or groundless, the Commission or Commissioner may assess the taxpayer up to \$1,000 in damages.

## 3. The Decision

After reviewing the evidence and testimony, the Commission will issue a decision and order. The decision and order may be oral or in

writing. A decision and order of the Commission is binding upon both parties for that case unless an appeal is taken to Circuit Court.

Except in respect to small claims decisions, if the Commission construes a statute adversely to the contention of the Department of Revenue, the Department is deemed to have acquiesced in the construction of the statute unless it (1) appeals the decision to Circuit Court or (2) issues a notice of nonacquiescence.

### CAUTION

The information in this publication reflects the interpretations by the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature as of December 31, 2008. Laws enacted after this date, new administrative rules, and court decisions may change the interpretations in this publication. Additionally, this publication is not intended to be a listing of all the law or procedures involved in practice before the Wisconsin Tax Appeals Commission. See Wisconsin Statutes and "Practice and Procedures Before the Tax Appeals Commission" for additional information.