



Report on Litigation


Summarized below are recent significant Wisconsin Tax Appeals Commission (WTAC) and Wisconsin Court decisions. The last paragraph of each decision indicates whether the case has been appealed to a higher Court.

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INDIVIDUAL INCOME TAXES

 **Alimony.** *Jeanie Lass and David J. Lass, Sr. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, September 12, 2001). The issue in this case is whether payments made by David J. Lass, Sr. to Jeanie Lass were alimony or separate maintenance under Internal Revenue Code section 71 and, therefore, taxable to Ms. Lass and deductible by Mr. Lass.


The taxpayers were divorced from each other in January 1989. One provision in the Judgment of Divorce was that, along with regular maintenance payments, “additional maintenance” in the form of a monthly wage assignment was imposed on Mr. Lass for continued health insurance coverage of Ms. Lass.


A December 1992 “Stipulated Addition to Amended Post Judgment Orders” continued Mr. Lass’ obligation to pay for Ms. Lass’ health insurance coverage. The obligation was again restated in a May 1993 “Findings of Fact and Order.” A July 1994 “Stipulation and Order” directed Mr. Lass’ counsel to establish a new trust fund for Ms. Lass’ medical insurance and expenses. The funds in the trust fund were applied to pay her medical insurance and expenses.

In March 2000, the department issued an assessment to each taxpayer for tax years 1995 through 1998. Each taxpayer filed a timely petition for redetermination, both of which the department denied. Both taxpayers then filed timely petitions for review with the Commission.

The Commission concluded that the payments made by David J. Lass, Sr. to Jeanie Lass were alimony or separate maintenance under Internal Revenue Code section 71 and, therefore, taxable to Ms. Lass and deductible by Mr. Lass. The department’s denial of Ms. Lass’ petition for redetermination was affirmed, and the denial of Mr. Lass’ petition for redetermination was reversed.

Neither the department nor either taxpayer has appealed this decision.

CAUTION: This is a small claims decision of the Wisconsin Tax Appeals Commission and may not be used as a precedent. The decision is provided for informational purposes only. 

 **Appeals - failure to prosecute; Appeals - frivolous.** *Gary and Joan Pansier vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 20, 2001). The issues in this case are whether the taxpayers' petition for review should be dismissed on the basis that they failed to prosecute their appeal, and whether the taxpayers have offered only groundless and frivolous arguments to disprove the department's assessment, thereby subjecting them to an additional assessment under sec. 73.01(4)(am), Wis. Stats.

In November 1999, the department issued an estimated assessment to the taxpayers for tax years 1995 through 1998, based on their failure to file Wisconsin income tax returns for those years. The taxpayers' former representative filed a document, which the department deemed a petition for redetermination. The department denied the petition for redetermination, and the taxpayers filed a timely petition for review with the Commission.

The taxpayers sent two sworn affidavits to the department's chief counsel, "which deny the existence of" the department. The taxpayers then sent a letter to the chief counsel, in which, among other things, they declared the tax warrants against their property void, declared the department nonexistent, asserted that the assessment against them was void, and stated that the department was "acting as [their] alien enemy."

The Commission scheduled a telephone conference and informed the representative to provide his telephone


number, which he did not do. The representative did participate in the telephone conference and indicated the taxpayers would file a motion for summary judgment. The Commission ordered the taxpayers to file the original and three copies of the motion for summary judgment, brief, and supporting papers by a specific date. The taxpayers did not comply with this order.

The Commission later notified the parties of another telephone conference, but the taxpayers could not be reached by telephone to participate. During the telephone conference, the department stated that it planned to file a dispositive motion. The department then filed a motion to dismiss the taxpayers' petition for review for their failure to prosecute their appeal.

The Commission concluded that taxpayers failed to prosecute the appeal they filed with the Commission. They merely responded with a series of statements that did not address the assessment. The Commission granted the department's motion and dismissed the petition for review.

The Commission further concluded that the taxpayers' arguments in the matter are frivolous and groundless, and the Commission thus assessed an additional \$500, pursuant to sec. 73.01(4)(am), Wis. Stats.

The taxpayers have not appealed this decision. [☞](#)

 **Appeals - failure to state a claim; Appeals - frivolous.** *Joseph D. Meyer vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, September 13, 2001). The issues in this case are whether the taxpayer's petition for review should be dismissed on the basis that it fails to state a claim upon which relief can be granted, and whether the taxpayer's documents contain only frivolous and irrelevant arguments to disprove the department's assessment, thereby subjecting him to an additional assessment under sec. 73.01(4)(am), Wis. Stats.

In January 2000, the taxpayer filed an incorrect and incomplete 1999 Wisconsin income tax return, with zeroes written on each line until the line titled "Wisconsin income tax withheld," on which "\$7,911.30" was written. That amount was also entered on the refund line. No Form W-2 was attached to the tax return, but a 1999 Form W-2 was issued to the taxpayer, reflecting wages

of \$122,557.04 and Wisconsin income tax withheld of \$7,911.30.

In March 2000, the department issued an assessment to the taxpayer, regarding his 1999 income tax return. The taxpayer wrote a letter objecting to the assessment, which the department deemed a petition for redetermination. On May 15, 2000, the department denied the petition for redetermination. It was personally served on the taxpayer on July 7, 2000. The taxpayer wrote a letter to the Commission on July 12, 2000, which requested it to "review my 1999 WI Tax return and subsequent Department of Revenue (DOR) redetermination . . ." The \$25 filing fee required under sec. 73.01(5)(a), Wis. Stats., for an appeal to the Commission was not included.

On October 5, 2000, the taxpayer filed with the Commission a letter, with exhibits, appealing the department's denial of his petition for redetermination.

No filing fee was included. The Commission requested the \$25 filing fee, and it was received on October 20, 2000.


The 60-day period from the July 7, 2000, date of the taxpayer's receipt of the department's denial of the petition for redetermination, within which he was required to file an appeal to the Commission, expired on September 5, 2000.

The department filed with the Commission a motion to dismiss for untimely filing, or alternatively to dismiss for the failure of the taxpayer to state a claim upon which relief can be granted. The department further moved for the imposition of an additional assessment against the taxpayer under sec. 73.01(4)(am), Wis. Stats. The taxpayer also filed a motion for summary judgment under sec. 802.08, Wis. Stats.

The Commission concluded that there is no genuine issue as to any material fact in the petition for review, and that it does not state a claim upon which relief can be granted. It granted the department's alternative motion and dismissed the petition for review.

The Commission further denied the taxpayer's motion for summary judgment and concluded that the taxpayer's documents contained only frivolous, irrelevant, and useless ramblings about the department's authority and the Wisconsin income tax statutes. The Commission assessed the taxpayer an additional \$500, pursuant to sec 73.01(4)(am), Wis. Stats.

The taxpayer has not appealed this decision. [🔗](#)


 **Appeals - jurisdiction.** *Jerome Redcay vs. Wisconsin Department of Revenue and Wisconsin Tax Appeals Commission* (Circuit Court for Wood County, June 21, 2001). This is an action for judicial review of a Wisconsin Tax Appeals Commission decision dated April 3, 2001. See *Wisconsin Tax Bulletin* 127 (October 2001), page 20, for a summary of the Commission's decision.

The taxpayer filed a petition for rehearing with the Commission, and the Commission denied the petition on April 30, 2001. The taxpayer then filed a petition for judicial review with the Circuit Court but did not serve a copy of it upon the department by personal delivery or certified mail, as required under sec. 227.53(1)(c), Wis.

Stats. The department has filed with the Circuit Court a motion to dismiss, for lack of personal and subject matter jurisdiction, since the taxpayer failed to comply with statute.

The Circuit Court concluded that since strict compliance with sec. 227.53(1)(c), Wis. Stats., is required and the taxpayer failed to comply with the statute, the Circuit Court lacks both subject matter jurisdiction to hear the case, and personal jurisdiction over the department. The Circuit Court therefore dismissed the action for judicial review.

The taxpayer has not appealed this decision. [🔗](#)

 **Appeals - premature; Appeals - failure to state a claim; Appeals - frivolous; Protective order - interrogatories; Protective order - department assertions.** *Gary J. Simon vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 17, 2001). The issues in this case are:

- A. Whether the taxpayer's petition for review regarding a September 11, 2000, letter from the department was premature.
- B. Whether two other petitions for review should be dismissed on the basis that they fail to state a claim upon which relief can be granted.

C. Whether the taxpayer is entitled to an order protecting him from the department's assertions that he owes Wisconsin income tax.

D. Whether the department is entitled to a protective order from the taxpayer's interrogatories.

E. Whether the taxpayer's documents contain only groundless and frivolous arguments, thereby subjecting him to an additional assessment under sec. 73.01(4)(am), Wis. Stats.

On September 11, 2000, a department auditor acknowledged receipt of the taxpayer's 1993 through 1996 Wisconsin income tax forms, which requested a refund of all income taxes withheld for those years. The auditor

stated that wages are taxable and requested the taxpayer to file and sign income tax returns reporting all income received. The auditor stated that if proper returns were not filed the department would issue an assessment based on an estimate of the taxpayer's income for those years.

The taxpayer appealed this letter to the Commission by filing a petition for review. On appeal, the department moved to dismiss the petition for review under secs. 71.88 and 73.01(5)(a), Wis. Stats., on the basis that it was filed prematurely.

In October 2000, the department issued an estimated assessment to the taxpayer for tax years 1996 through 1999. In January 2001, the department issued an estimated assessment to the taxpayer for tax years 1993 through 1995. In response to each assessment, the taxpayer filed a petition for redetermination, which the department denied. The taxpayer filed two petitions for review with the Commission, one relating to each assessment.

For tax years 1993 to 1995, the taxpayer reported income of \$120, \$76, and \$24, respectively. He reported no income on his 1996 to 1999 forms. Wage statements attached to the forms reflected wages of approximately \$35,000 to \$44,000 each year. Each form requested a refund of all Wisconsin taxes withheld for that year, ranging from \$2,250 to \$2,850. The department moved to dismiss both petitions for review under sec. 802.06(2)(a)6, Wis. Stats., on the basis that the taxpayer has failed to state a claim on which relief can be granted.

The taxpayer opposed the department's motions and moved for an order protecting him from the department's assertions that he owes Wisconsin income tax.

In May 2001, the department received a 5-page document from the taxpayer, entitled "Interrogatories." The questions had nothing to do with whether the taxpayer filed complete and correct Wisconsin income tax returns. Examples of the taxpayer's attempt to elicit blatantly irrelevant information include requests for personal information about the department's attorney handling the case and each person who generated the assessments, and the name of the person in charge of the department's computer system and how long the person

had held the position. The department moved for a protective order under sec. 804.01(3), Wis. Stats., on the grounds that the interrogatory was an annoyance, irrelevant, and an undue burden and expense without any material benefit to the taxpayer.

The Commission concluded as follows:

- A. The petition for review relating to the September 11, 2000, letter is premature and is therefore dismissed. The statutes require that before appealing to the Commission, a person must contest an assessment by filing a petition for redetermination with the department, which the department must deny in whole or in part. There was no such petition or action by the department.
- B. The two petitions for review relating to the two assessments covering the tax years 1993 through 1999 fail to state a claim upon which relief can be granted and are therefore dismissed. Rather than filing correct and complete Wisconsin income tax returns, the taxpayer responded to the department's assessments and its denial of his claims for refund with a series of statements that do not address the department's actions.
- C. The taxpayer's motion for an order protecting him from the department's assertions that he owes Wisconsin income tax is denied.
- D. The department's motion for a protective order from the taxpayer's interrogatories is granted, and the department is not required to answer them. The interrogatories constitute an annoyance and oppression, and they represent an undue burden and expense to the department without any material benefit to the taxpayer.
- E. The taxpayer is assessed an additional \$500, pursuant to sec. 73.01(4)(am), Wis. Stats. The taxpayer's documents contain only frivolous, irrelevant, groundless, and useless ramblings about the department's authority and practice about the Wisconsin income tax statutes.

The taxpayer has appealed this decision to the Circuit Court. [↗](#)

**Assessments - correctness; Appeals - frivolous.**

John Gutsch vs. Wisconsin Department of Revenue (Circuit Court for Dunn County, September 6, 2001). This is a review of a decision of the Wisconsin Tax Appeals Commission dated March 23, 2001. See Wisconsin Tax Bulletin 125 (July 2001), page 13, for a summary of the Commission's decision.

The Circuit Court reviewed the record and submissions submitted by the taxpayer on appeal. The Court found

the taxpayer's arguments frivolous, just as the Commission did.

The Circuit Court concluded that the Commission was correct in granting summary judgment in favor of the department, and it therefore affirmed the Commission's decision.

The taxpayer has not appealed this decision. [🔗](#)

**Hearing notice - failure to appear; Appeals - primarily for delay.**

Thomas J. and Christine Shewczyk vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, August 9, 2001). The issues in this case are whether the taxpayers' failure to appear at trial bars them from questioning the assessment at issue, and whether the taxpayers maintained this proceeding primarily for delay, thus subjecting them to an additional assessment of \$1,000, pursuant to sec 73.01(4)(am), Wis. Stats.

In March 1998, the department issued an income tax assessment to the taxpayers for the years 1993 through 1996. The taxpayers filed a petition for redetermination, which the department granted in part and denied in part. The taxpayers then filed a timely petition for review with the Commission.

During each of the first four scheduling/status conferences held in this matter, the taxpayers failed to provide the department with substantiation of their position on disputed items. The Commission then served a Scheduling Order Memorandum, which required the taxpayers to serve on the department, within 24 days, a description of each adjustment they were to raise at trial, copies of all exhibits to be introduced at trial, and names and ad-

resses of each witness they were to call at trial. The taxpayers did not comply with the Scheduling Order Memorandum.

After the deadline for the taxpayers to provide the information had passed, the department filed a Notice of Motions and Motion to Dismiss and, in the alternative, Motion in Limine. The taxpayers did not respond to the motions. In response to the Commission's inquiry whether the taxpayers intended to go ahead with the trial, neither the taxpayers nor their representative informed the Commission of their intent. The trial was held as scheduled, and the taxpayers and their representative failed to appear.

The Commission concluded that the taxpayers' failure to appear at trial bars them from questioning the assessment at issue. The Commission thus granted the department's motion and dismissed the petition for review. In addition, since it appears that the taxpayers maintained this proceeding primarily for delay, the assessment is increased by \$1,000, pursuant to sec 73.01(4)(am), Wis. Stats.

The taxpayers have appealed this decision to the Circuit Court. [🔗](#)

**Retirement funds exempt.**

John Q. and Ruth R. Kamps vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 31, 2001). The issue in this case is whether Wisconsin Retirement System payments received by Ruth R. Kamps are exempted from Wisconsin's income tax by sec. 71.05(1)(a), Wis. Stats.

Ruth R. Kamps ("the taxpayer") taught in the Milwaukee public schools from 1957 to 1961. As a result of this employment, she was a member of the Milwaukee Public School Teachers' Annuity and Retirement Fund ("MTRF") during these years.

In 1961, the taxpayer applied to withdraw her contributions from the MTRF. She agreed that withdrawal of her payments "shall constitute a full and complete discharge and release of all right, interest or claim on [her] part to state deposit accumulations which accrued while a member of said combined group." The application was approved and she was paid her full and complete refund, leaving in her account no contributions from either her or the state.

The taxpayer became a member of the State Teachers Retirement system ("STRS") in 1973. In 1996, she purchased 2.5 years of her previously forfeited service. She

retired in 1996, and these years of service were included in the calculation of her retirement benefits paid by the Wisconsin Retirement System (“WRS”).

On their 1996, 1997, and 1998 Wisconsin income tax returns, the taxpayers reported the WRS retirement payments of \$7,832, \$20,382, and \$20,254, respectively. In January 2000, the taxpayers filed amended returns for 1996, 1997, and 1998, seeking refunds based on their assertion that the taxpayer’s WRS retirement payments were not taxable by virtue of sec. 71.05(1)(a), Wis. Stats.

In Wisconsin Tax Bulletins 76 (April 1992) and 98 (July 1996), the department advised the public that retirement payments paid to a member of the STRS who withdrew STRS deposits prior to 1964 and then received credit for a portion of forfeited STRS service by virtue of sec. 42.245, Wis. Stats. (1965-66), were exempt from taxation pursuant to sec. 71.05(1)(a), Wis. Stats. The taxpayers learned of these Tax Bulletins and assumed that the reasoning in the bulletins applied to them. They relied on this reasoning in filing their January 2000 claims for refund. In *Wisconsin Tax Bulletin* 118 (January 2000), the department retracted the statements in Tax Bulletins 76 and 98, effective with tax years beginning after January 1, 2000.

In July 2000, the department denied the claims for refund and the taxpayers filed timely petitions for


redetermination. The department denied the petitions for redetermination, and the taxpayers filed timely petitions for review with the Commission.

The Commission concluded that the Wisconsin Retirement System payments received by Ruth R. Kamps are not exempted from Wisconsin’s income tax by sec. 71.05(1)(a), Wis. Stats. The Commission noted that it had consistently held that sec. 71.05(1)(a) does not exempt retirement benefits paid to annuitants who were members of a qualifying pension fund but forfeited their accumulations and later purchased forfeited years of service.

The taxpayers’ argument that the department should be precluded from denying their refunds under the doctrine of equitable estoppel (reliance on Wisconsin Tax Bulletins 76 and 98) also fails. Reliance on those bulletins was not reasonable because the taxpayer was not a member of the STRS, which was the fund discussed in those bulletins.

The taxpayers have appealed this decision to the Circuit Court.

CAUTION: This is a small claims decision of the Wisconsin Tax Appeals Commission and may not be used as a precedent. The decision is provided for informational purposes only. [☞](#)

 **Retirement funds exempt.** *William K. and Virginia K. Thomas vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 9, 2001). The issue in this case is whether, after William Thomas withdrew his employee contributions from the Milwaukee Teachers Retirement Fund (“MTRF”) in 1965, there remained anything in his MTRF account upon which his subsequent retirement benefit was based, thus making those benefits exempt from the Wisconsin income tax under sec. 71.05(1)(a), Wis. Stats.

The taxpayers filed amended income tax returns claiming refunds of Wisconsin income tax paid on retirement annuity payments received by William Thomas in 1995 through 1998 from the Wisconsin Retirement System (“WRS”). From 1955 to 1965, Mr. Thomas was a member of the Milwaukee Teachers Retirement Fund (“MTRF”). In October 1965, he withdrew his employee contributions and forfeited all employer contributions. He signed a waiver that released the MTRF from “all


right, interest or claim on [Mr. Thomas’s] part to state deposit accumulations which accrued while a member” of the MTRF. Years later, prior to his retirement, he bought back his withdrawn contributions for the years at issue.

The department argued that even if the Commission assumed that the facts alleged in the petition for review are true, they do not constitute a valid reason to reverse the department’s action on the taxpayer’s petition for redetermination. The Commission construed this as a motion to dismiss the petition for review for failure to state a claim on which relief can be granted.

The Commission concluded that the taxpayers have failed to state a claim upon which relief can be granted. The Commission therefore granted the department’s motion and dismissed the petition for review.

The taxpayers have not appealed this decision. [☞](#)

CORPORATION FRANCHISE AND INCOME TAXES

 **Delinquent interest on underpayment interest.** *General Casualty Company of Wisconsin ad Regent Insurance Company vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, September 4, 2001). This is a judicial review of a decision of the Wisconsin Tax Appeals Commission dated January 25, 2001. See *Wisconsin Tax Bulletin* 124 (April 2001), page 21, for a summary of the Commission's decision. The issue in this case is whether the 18% delinquent interest provision of sec. 71.84(2)(a), Wis. Stats., was properly applied under circumstances where an audit retroactively creates an underpayment of estimated tax.

In 1990, General Casualty and its subsidiary, Regent Insurance, were acquired by Winterhur U.S. Holdings. In 1997, Winterhur entered into a settlement agreement with the Internal Revenue Service ("IRS") with respect to the amortizable life of intangible assets attributed to each acquired company. The settlement agreement created additional federal taxable income for the taxpayers, thereby increasing their Wisconsin franchise tax liability for the audit tax years 1990 through 1995 ("the audit period").

During the audit period, each taxpayer's franchise tax returns were prepared on a calendar-year basis. On the due date (March 15 each year) for each year except 1993, the taxpayers had paid at least 90% of the estimated taxes on each return as filed, pursuant to sec. 71.29(10), Wis. Stats. After the returns for each year were adjusted by the audits in 1997, the income on each return was retroactively increased with the result

that the taxpayers had not paid at least 90% of the estimated tax due. From that 1997 perspective, the taxpayers had underpaid their estimated taxes for the audit years, thereby not satisfying the requirements of sec. 71.29(10).


After the audit, the department issued an assessment to each taxpayer. Each assessment was comprised of franchise tax, normal 12% interest, additional estimated tax payments for each quarter, 12% interest on the underpayment of estimated taxes, and 18% delinquent interest on the underpayment interest pursuant to sec. 71.84(2)(a), Wis. Stats. It is the 18% delinquent interest that both taxpayers challenge.

Both taxpayers filed timely petitions for redetermination, which the department denied. Both taxpayers filed timely appeals with the Commission, and the Commission affirmed the department. The Commission held that under sec. 71.84(2)(a), Wis. Stats., the department correctly imposed delinquent interest on the regular interest assessed on the additional estimated taxes due in the taxpayers' assessments.

The Circuit Court concluded that the Commission misapplied the law and that the department's imposition of the delinquent interest penalty contradicts the Wisconsin Supreme Court's decision in *Wrigley v. DOR*, 176 Wis. 2d 795 (1993), which controls the resolution in this matter. The Circuit Court set aside the Commission's decision and order and remanded the matter for further proceedings consistent with this opinion.

The department has appealed this decision to the Court of Appeals. [↗](#)

SALES AND USE TAXES

 **Amusement devices - leased or used by vendor?** *Amusement Devices, Inc. vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, November 1, 2001). On September 14, 2000, the Circuit Court for Dane County affirmed the Wisconsin Tax Appeals Commission decision dated December 15, 1999. See *Wisconsin Tax Bulletin* 123 (January 2001), page 24 and *Wisconsin Tax Bulletin* 119 (April 2000), page 18, for summaries of the Circuit Court and Commission decisions. The issues in this case are:

- A. Whether the taxpayer's purchases of amusement devices were subject to the Wisconsin sales or use tax.
- B. Whether the department properly imposed the negligence penalty for the taxpayer's filing of an incorrect return due to neglect.

The taxpayer paid sales tax on the majority of amusement devices and their related parts and accessories purchased from Wisconsin vendors, but did not pay sales or use tax on those purchased from out-of-state vendors. Although the taxpayer gave exemption certificates claiming resale to suppliers when it purchased items it intended to resell, it did not use exemption cer-

tificates claiming resale when purchasing the amusement devices from the out-of-state vendors.

The taxpayer placed the coin-operated amusement devices in business establishments such as hotels, motels, taverns, bowling alleys, restaurants, convenience stores, and schools. The devices provide amusement to the establishments' patrons, and the patrons are considered the taxpayer's customers.

The Circuit Court affirmed the Commission's decision that the taxpayer's purchases of the amusement devices were taxable because they were used or consumed in the taxpayer's business of furnishing and selling amusement services. The Circuit Court also affirmed the Commission's decision that the department properly imposed the negligence penalty because the taxpayer "knew or should have known that sales or use taxes were payable on all disputed purchases..."

The Court of Appeals concluded that the Commission's interpretation of the meaning of "sale" is a reasonable one, and the amusement devices were not sold to the taxpayer's device-playing customers. It cannot reasonably be said that the taxpayer "transferred" any property interest to the persons who used its machines. During

use of the machines by those persons, the taxpayer retained all of its rights to possession and enjoyment of the machines. When a person placed coins in the machine, a "sale" of the machine did not occur. The term "enjoyment" in the statute does not mean the pleasure that the person obtained from using the machine, but rather the more traditional legal meaning of "enjoy" – "to occupy or have the benefit of (property)." Black's Law Dictionary 550 (7th ed. 1999) (emphasis added). The taxpayer retained the economic benefit of the property as a revenue source at all times. Giving due weight to the Commission's interpretations, and finding that the taxpayer has not offered a more reasonable interpretation, the Court of Appeals affirmed the Circuit Court's decision that the taxpayer's purchases of amusement devices used by its customers are subject to Wisconsin use tax.

The Court of Appeals also agreed that the Commission's conclusion that the taxpayer should have known the use tax was due when it paid tax on similar purchases within Wisconsin is a reasonable one, and the negligence penalty was properly assessed.

The taxpayer has not appealed this decision. [↗](#)



Appeals - jurisdiction. *Ronald J. Hergert, d/b/a Aero Expo Corporate Services vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, July 11, 2001). This is a judicial review of a Wisconsin Tax Appeals Commission decision dated January 8, 2001. See *Wisconsin Tax Bulletin* 124 (April 2001), page 25, for a summary of the Commission's decision. The issue in this case is whether the Circuit Court has subject matter jurisdiction over the case.

The Commission held that the taxpayer's contracts with renters were subject to the sales tax under sec. 77.52(2)(a)1., Wis. Stats., because the taxpayer furnished accommodations to the public and made lodging available to transients. The taxpayer filed a petition for review with the Circuit Court and a copy with the department on February 7, 2001. However, the petition filed with the Clerk of Court was not accompanied by

the required filing fee, which was received by the Clerk of Court on February 9, 2001, two days after the 30-day deadline for filing the petition. The department argues that since the petition was not filed within the required 30 days, the Circuit Court lacks subject matter jurisdiction and must dismiss the petition for review.

The Circuit Court concluded that it did not have subject matter jurisdiction over this case, because strict compliance with the 30-day requirement is essential to confer subject matter jurisdiction upon the Circuit Court, and the Clerk of Court did not abuse her discretion in failing to file stamp the petition without the required fee. The Circuit Court granted the Department's motion to dismiss the petition for review.

The taxpayer has not appealed this decision. [↗](#)