



## 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.

The following decisions are included:

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### INDIVIDUAL INCOME TAXES

**Alimony.** *Joseph Bronson and Jessica F. Studey Bronson vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 7, 2002). The issue in this case is whether Joseph Bronson (“Mr. Bronson”) is entitled to a deduction as “alimony” for his share of the profit on Jessica F. Studey Bronson’s (“Ms. Bronson’s”) sale of the residence that was awarded to her in their divorce settlement. If so, the amount deducted by Mr. Bronson would be taxable to Ms. Bronson.

The taxpayers were divorced on March 27, 1995, and on May 25, 1995, the Dodge County Circuit Court rendered a decision with respect to child support, property division, and maintenance. Ms. Bronson was awarded the marital residence, and the Circuit Court did not award any maintenance but held the issue open for four years.

In early 1997, Ms. Bronson sold the residence. On both his 1996 and 1997 Wisconsin income tax returns, Mr. Bronson claimed \$8,533 as a deduction for alimony paid to Ms. Bronson. Those amounts were calculated based on his belief that Ms. Bronson sold the residence for \$68,275, netting a gross profit of \$34,275 over the \$34,000 paid for the residence in 1990. He believed he was entitled to an alimony deduction for his one-half share of the gain that Ms. Bronson apparently realized (\$17,137.50), and he claimed approximately one-half of “his profit” in each of the years 1996 and 1997, so he could enjoy the deduction over a longer period. Ms. Bronson did not include any alimony payments as income.

The department issued assessments in the alternative against each taxpayer, denying Mr. Bronson the claimed alimony deduction and adding to Ms. Bronson’s income the amounts claimed by Mr. Bronson as alimony in 1996 and 1997. Both taxpayers filed timely petitions for re-determination, which the department denied. Each taxpayer then filed a petition for review with the Commission.

The Commission concluded that there is no basis in state law or the Internal Revenue Code to justify Mr. Bronson’s claimed alimony deduction for “his” share of Ms. Bronson’s profit on the sale of the residence that was awarded to her. The Commission affirmed the de-

partment's action on Mr. Bronson's petition for redetermination and reversed its action on Ms. Bronson's petition for redetermination.

Neither the department nor either of the taxpayers has appealed this decision. [☞](#)

 **Appeals - premature; Appeals - failure to state a claim; Appeals - frivolous; Protective order - interrogatories; Protective order - department assertions.** *Gary James Simon Wisconsin Department of Revenue and Wisconsin Tax Appeals Commission* (Circuit Court for Dane County, June 13, 2002). This is an action on the taxpayer's request for review of the Ruling and Order of the Wisconsin Tax Appeals Commission dated October 17, 2001. See *Wisconsin Tax Bulletin* 128 (January 2002), page 25, for a summary of the Commission's decision.

In challenging the Commission's decision, the taxpayer raised a number of issues, and the Circuit Court's review springs from his refusal to comply with the state law which imposes an obligation to pay income tax to the state. The taxpayer asserts that the department has made a number of errors, and he offered extensive argument, including the argument that the laws of Wisconsin requiring the payment of income tax to the state cannot lawfully be applied to him. The taxpayer also contends that the Commission improperly granted the department's motion for a protective order.

The Circuit Court concluded that the taxpayer has shown no basis whatever to limit or modify the Ruling of the Commission, and it affirmed each of the five orders in the Commission's Ruling. They are as follows:

A. The petition for review relating to the September 11, 2000, letter is dismissed because it is premature. The statutes require that before appealing to the Commission, a person must contest an assessment

by filing a petition for redetermination with the department, and there was no such petition.

- 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 not appealed this decision. [☞](#)

 **Assessments - correctness; Appeals - frivolous.** *Susan B. Boon vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 3, 2002). The issue in this case is whether the department properly issued an assessment against the taxpayer.

On October 15, 1998, the taxpayer filed a 1997 Wisconsin income tax return with the department, requesting a refund of \$3,410.16 and showing no income. A Form W-2 was attached, which stated that \$60,763.38

was paid to her, and \$3,410.16 of Wisconsin income tax was withheld. The refund was not issued to the taxpayer.

In January 1999, the department issued an assessment to the taxpayer for \$921.73, consisting of income tax, interest, and a penalty. The taxpayer timely filed a letter which the department deemed a petition for redetermination. The letter stated that she disagreed with the auditor who, in her opinion, did not follow the law, did not answer her questions, and did not comply with tax regulations. The department denied the petition for re-

determination, and the taxpayer filed a timely petition for review with the Commission, stating that she was appealing but not specifying reasons. She subsequently filed an affidavit and exhibits to present her view of the pertinent facts in the appeal.

The department filed a motion for judgment on the pleadings or for summary judgment. One of the grounds was that the taxpayer has failed to state a claim under which relief can be granted, in failing to allege in her petition for review any justiciable error by the department's issuing an assessment to her.

The Commission concluded that the department properly issued an assessment under sec. 71.74(1), Wis.

Stats., since the taxpayer did not file a complete and proper Wisconsin income tax return for 1997. In addition, the Commission assessed the taxpayer an additional \$500, as it appears that her position in this proceeding was instituted and maintained primarily for delay, and that her position is frivolous and groundless.

The taxpayer has not 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. [☞](#)



### **Assessments – correctness; Appeals – frivolous.**

*Mark Knickel vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 1, 2002). The issue in this case is whether the department properly issued assessments against the taxpayer because he failed to file Wisconsin income tax returns for 1994 through 1999, and whether the taxpayer's position in these proceedings is frivolous and groundless.

The taxpayer has failed to file Wisconsin income tax returns for 1994 through 1999 with the department, and he has refused to do so. In March 2001, the department issued two default assessments to the taxpayer under sec. 71.74(3), Wis. Stats., one covering the years 1994 and 1995, and the other covering 1996 through 1999. The taxpayer filed timely petitions for redetermination, which the department denied, and he then filed timely petitions for review with the Commission.

The department filed a motion for judgment on the pleadings, or for summary judgment on the ground that there are no genuine issues as to material facts.

The Commission concluded that there are no genuine issues as to material facts and granted the department's motion for summary judgment. The department properly issued assessments to the taxpayer under sec. 71.74(3), Wis. Stats., since he did not file Wisconsin income tax returns for 1994 through 1999, as required under sec. 71.03(2), Wis. Stats. In addition, the Commission assessed the taxpayer an additional \$500, as it appears that he instituted and maintained these proceedings primarily for delay, and that his position in these proceedings is frivolous and groundless.

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



### **Family support deduction.**

*David E. Birren vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 1, 2002). The issue in this case is whether the taxpayer is entitled to a family support deduction on his 1996 and 1997 income tax returns if his then-wife's share of marital income, including family support, was less than one-half of the total marital property income.

The taxpayer, domiciled in and a resident of Wisconsin in 1996, 1997, and 1998, filed Wisconsin income tax returns for those years and claimed head of household as his filing status. On his 1996 and 1997 income tax re-

turns, he deducted family support payments that he made to Susan Birren.

The department audited the taxpayer's Wisconsin income tax returns for 1996 through 1998 and adjusted those returns in a Notice of Amount Due dated March 27, 2000. One of the adjustments, the only one at issue in this case, was to disallow the family support payments the taxpayer paid and deducted on his 1996 and 1997 income tax returns. The basis for the adjustment was that the amount of marital income, including the family support payments, received by Susan Birren, the taxpayer's estranged wife, was less than one-half of the total marital income for those years (the taxpayer

and Susan Birren were granted a divorce effective March 1, 1998).

The taxpayer filed a timely petition for redetermination, and both the taxpayer and the department conceded portions of the assessment. With respect to the remaining issue, the taxpayer filed a petition for review with the Commission.

The Commission concluded that the family support payments the taxpayer made to his spouse during 1996 and 1997 are not deductible by him, because the payments, when added to his spouse's marital income, did not exceed one-half of the marital income.

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

 **Retirement funds exempt.** *John Q. and Ruth M. Kamps, and Edward G. Wilkinson and Jean F. Wilkinson vs. Wisconsin Department of Revenue* (Circuit Court for Waukesha County, July 23, 2002). In a consolidation of two decisions by the Wisconsin Tax Appeals Commission ("Commission"), the taxpayers appeal to the Circuit Court to set aside and/or reverse the Commission's denial of an income tax exemption for their Wisconsin Retirement System annuity payments. See *Wisconsin Tax Bulletin* 128 (January 2002), page 27, for a summary of the Commission's October 31, 2001, decision relating to the Kamps'. See *Wisconsin Tax Bulletin* 129 (April 2002), page 22, for a summary of the Commission's January 2, 2002, decision relating to the Wilkinsons.

The taxpayers argue that the Commission's ruling 1) is based on past decisions that erroneously interpret the statutes; 2) is contrary to the Department of Revenue's

stated policy and prior practice; 3) is in violation of the equal protection clauses United States Constitution and the uniform taxation clause of the Wisconsin Constitution; and 4) renders sec. 71.05(1)(a), Wis. Stats., unconstitutional under the Wisconsin Constitution's prohibition against the impairment of contracts. The taxpayers also argue that the Commission is equitably estopped from denying the tax exemption.

The Circuit Court concluded that the taxpayers have failed to provide a valid basis on which to reverse the Commission. It therefore affirmed the Commission's ruling and order and ordered that the taxpayers' appeal be denied.

Edward G. Wilkinson and Jean F. Wilkinson have appealed this decision to the Court of Appeals. John Q. and Ruth M. Kamps have not appealed the decision. [☞](#)

 **Tax statutes - applicability to taxpayers; Appeals - frivolous.** *Brian K. Stewart, a/k/a Brian Keith Stewart, and Brian K. and Cindy Stewart vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 10, 2002). The primary issues in this case are whether Wisconsin's income tax statutes apply to the taxpayers, and whether the taxpayers' petition for review is frivolous and groundless.

Brian K. Stewart ("the taxpayer") timely filed a 2000 Wisconsin income tax return that included a Form W-2, reflecting "wages, tips, other comp." of \$43,711.58 and Wisconsin income tax withheld of \$2,667.29. On most lines of the tax return, he wrote "0.00," but on line 38 he wrote the withholding amount of "2,667.00," and he requested a refund of the amount on line 47.

The department issued an assessment for income tax and interest, the taxpayer filed a petition for redetermination,

and the department denied it. The taxpayer then filed a timely appeal to the Commission.

In March 2001, the taxpayers filed amended 1997, 1998, and 1999 Wisconsin income tax returns. Each of the amended forms reported no income and requested refunds of \$2,108 for 1997, \$2,044 for 1998, and \$2,051 for 1999. Form W-2s for both taxpayers were attached to the 1997, 1998, and 1999 amended returns, showing combined income of \$45,604.99, \$49,090.95, and \$50,879.60, respectively, and Wisconsin income tax withheld of \$2,455.69, \$2,767.03, and \$2,899.80, respectively.

The department denied the taxpayers' claims for refund, the taxpayer filed a petition for redetermination, and the department denied it. The taxpayers then filed a timely appeal to the Commission.

While not clear, the taxpayers' primary assertion appears to be that Wisconsin's income tax statutes are written in such a manner that they do not apply to them. They appear to assert that if the federal law upon which Wisconsin income tax statutes are based is not set forth in full in the Wisconsin law, it is not a valid Wisconsin law.

In their appeal, the taxpayers moved for summary judgment and requested that the Commission award them \$100 for "redress," because the department has failed to state a claim on which relief can be granted by not explaining why they must pay income tax.

The department also moved for a summary judgment and requested \$1,000 for costs, on the grounds that this matter "is a frivolous appeal and there is no genuine issue as to material fact." The affidavit requesting the costs does not specify what the components of the amount are.

The Commission concluded that the taxpayers are not entitled to a summary judgment and denied the motion, stating that their contentions are "nonsense" and "absurd." It also denied the motion for monetary "redress,"

on the basis that it has no authority under the statutes to award it, and on the basis that the record makes it clear that the taxpayers are owed no redress.

The Commission granted the department's motion for summary judgment and affirmed its action on the taxpayers' petitions for redetermination. The Commission denied the department's motion for costs of \$1,000 but assessed the taxpayers an additional \$500 on the basis that the filing of their petitions for review is frivolous and groundless. The motion for costs was denied because the department's request did not specify what the requested costs are for, nor the precise amount for each.

Neither the taxpayers nor the department has appealed this decision.

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## SALES AND USE TAXES

 **Aircraft - taxable use.** *G & G Trucking, Inc. vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, July 9, 2002). This is a judicial review of a Wisconsin Tax Appeals Commission decision dated October 3, 2001. See *Wisconsin Tax Bulletin* 129 (April 2002), page 23, for a summary of the Commission's decision. The issue in this case is whether the taxpayer made taxable use of aircraft purchased for the purpose of lease or rental.

The taxpayer is a Wisconsin corporation engaged in the business of interstate trucking. During the period under review, the taxpayer owned aircraft and paid for maintenance, hangar fees, registration, and insurance for the aircraft.

Because the taxpayer lacked facilities to store the aircraft and had no employees to fly them, the taxpayer entered into oral lease agreements to lease the aircraft to aircraft charter companies.

When a third party chartered one of the taxpayer's aircraft, a flight was scheduled and an initial charter fee was paid. The third party also paid a \$350 pilot fee and a per hour fee of \$850, which included fuel.

When the taxpayer chartered aircraft, it would reserve an aircraft, but it did not pay an initial charter fee. If one of the aircraft owned by the taxpayer was not available, it would either not go on the flight or arrange alternate transportation by "trading hours" with the owner of another aircraft leased to the charter company. The taxpayer had a special hourly rate, equal to the hourly rate the owner of the other aircraft paid to the taxpayer. The taxpayer traded hours approximately 28 times during the period under review. The charter company did not separately bill its charges to the taxpayer but offset them against the rental fee it paid for the lease of the aircraft. The taxpayer also paid for fuel and other amounts typically charged to third party charter customers, such as the pilot fee. The taxpayer chartered its own aircraft 10-20% of the total charter time each year.

Giving due weight to the Commission's decision, the Circuit Court concluded that the taxpayer made use of the aircraft as that term is defined in sec. 77.51(22)(a), Wis. Stats. (1999-00), because the taxpayer owned the aircraft and enjoyed them by chartering them for business purposes on more preferential terms than any other charter customer. The taxpayer exercised its right or power over the aircraft by using its ownership of the aircraft under these preferential terms to its economic advantage. The taxpayer's use of the aircraft was more

than "solely for lease or rental" as described in sec. Tax 11.29(2)(a), Wis. Adm. Code (June 1991 Register), because the taxpayer purchased the aircraft for the purpose of reducing its cost when it chartered the aircraft

for its own business transportation 10 - 20% of the total charter time.

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

 **Officer liability.** *John P. Dolan vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 10, 2002). The issue in this case is whether the taxpayer is a responsible person who is liable for the unpaid sales taxes of Aficionados, LLC ("the company"), under sec. 77.60(9), Wis. Stats., for the periods of December 1997 and April 1998.

The taxpayer became the on-premises store manager of the company's store in March 1997, and in the summer of 1997 was given authority to prepare the company's sales tax returns and write checks on the company's checking account to pay the sales tax.

Shortly after Christmas 1997, the company's owner directed the taxpayer not to make any payments on any of the company's obligations without the owner's authorization. The sales tax due on the company's December 1997 sales tax return, filed by the taxpayer in late January 1998, was only paid after the owner authorized the taxpayer to pay it. The owner advised the taxpayer that a notice had been received from the Department of Revenue regarding an unpaid balance for the December 1997 sales tax, but that the taxpayer should not be concerned about the notice as the owner would resolve the matter.

In early May 1998, the taxpayer received direction from the owner, that he was not to make any purchases or any kind of payments without discussing them first.

The Commission concluded the taxpayer is not personally liable under sec. 77.60(9), Wis. Stats., for unpaid sales tax of the company for the periods of December 1997 and April 1998. The Commission awarded summary judgment to the taxpayer as there was no genuine issue as to any material fact, and the taxpayer is entitled to summary judgment as a matter of law.

The taxpayer was not an officer or owner of the company and had no **authority** to pay the company's sales taxes during the periods of December 1997 and April 1998. Although the taxpayer signed all sales and use tax returns for the company and knew what taxes were owed to the department, he had no authority to pay the taxes due until the owner authorized him to do so.

The department has not 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. [↗](#)

## DRUG TAXES

 **Drug tax, appeals - jurisdiction** *Forest J. Morkin vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 10, 2002). The issue in this case is whether the Commission has subject matter jurisdiction over the taxpayer's petition for review appealing the department's denial of his claim for refund.

In February 1995, the department issued a controlled substance tax assessment to the taxpayer, pursuant to sec. 139.87 et seq., Wis. Stats. (1995-96). The taxpayer did not contest or appeal the assessment. The department has seized a portion of the assessment from the taxpayer and claims that the remainder is still owed.

In *State v. Hall*, 207 Wis. 2d 54, 557 N.W. 2d 778 (1997), secs. 139.87 to 139.96, Wis. Stats., were declared unconstitutional. In a letter that the department received on September 11, 2000, the taxpayer requested a refund of the taxes it had seized. The department denied the request because it was not filed within the statutory two-year time limit, per sec. 71.75(5), Wis. Stats. The taxpayer filed a petition for review with the Commission.

The Commission concluded that it lacks subject matter jurisdiction over the taxpayer's petition for review, because he filed his claim for refund more than two years after the date of assessment and failed to file a timely petition for redetermination with the department after its denial of his claim for refund.

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

**Drug tax, appeals - jurisdiction** *Austin J.*

*Schmitz vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 10, 2002). The issue in this case is whether the Commission has subject matter jurisdiction over the taxpayer's petition for review appealing the department's denial of his claim for refund.

In September 1993, the department issued a controlled substance tax assessment to the taxpayer, pursuant to secs. 139.87 to 139.96, Wis. Stats. (1995-96). The taxpayer did not contest or appeal the assessment. The department has seized a portion of the assessment from the taxpayer and claims that the remainder is still owed.

In *State v. Hall*, 207 Wis. 2d 54, 557 N.W. 2d 778 (1997), secs. 139.87 to 139.96, Wis. Stats., were de-

clared unconstitutional. In a September 2000 letter, the taxpayer requested a refund of the taxes seized by the department. The department denied the request, on the basis that the claim was not filed within the statutory two-year time limit pursuant to sec. 71.75(5), Wis. Stats. The taxpayer then filed a petition for review with the Commission.

The Commission concluded that it lacks subject matter jurisdiction over the taxpayer's petition for review, because he filed his claim for refund more than two years after the date of assessment. Furthermore, he failed to file a timely petition for redetermination with the department after its denial of his claim for refund.

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