



## 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:

### Sales and Use Taxes, and Withholding of Taxes

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### SALES AND USE TAXES, AND WITHHOLDING OF TAXES

 **Officer liability.** *Mark J. Kuzniewski vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, February 28, 2000). The issues in this case are:

- A. Whether the taxpayer is a responsible person who is liable for the unpaid withholding taxes of Grill, Inc. (“the company”) under sec. 71.83(1)(b)2, Wis. Stats., for 1995 and January through May 1996.
- B. Whether the taxpayer is a responsible person who is liable for the unpaid sales taxes of the company under sec. 77.60(9), Wis. Stats., for the period of March through June 1996.

From January 7, 1996 through June 1996, the taxpayer was the general manager and “the person on the premises” in charge of the day-to-day operations of the company. In late January 1996, the taxpayer personally paid sales taxes owed by the company for November and


December 1995. The taxpayer was listed as president of the company on a checking account signature card at the company’s bank, and he signed checks to pay other creditors and the company payroll but not to pay the department for withholding taxes or sales and use taxes owed. The taxpayer was made aware of the company’s financial problems by the company’s owner, and the company’s accountant informed the taxpayer to file sales and withholding tax returns without payment if there was not enough money to make the payment. The taxpayer forwarded a seller’s permit revocation notice he received April 17, 1996, to the company’s owner rather than opening the notice.

The Commission concluded:

- A. The taxpayer is a responsible person who is liable for the company’s unpaid withholding taxes under sec. 71.83(1)(b)2, Wis. Stats., for 1995 and January through May 1996.
- B. The taxpayer is a responsible person who is liable for the company’s unpaid sales and use taxes under sec. 77.60(9), Wis. Stats., for the period of March through June 1996.

The taxpayer was the company president and had signature **authority** to sign checks and signed installment agreements with the department. The taxpayer was aware of the company’s tax problems and had a **duty** to address them. The taxpayer was directly involved in the payment of creditors and company payroll, and **intentionally breached his duty** to pay the company’s delinquent taxes.

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

 **Officer liability.** *Danny R. Senf vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, February 23, 2000). This is a judicial review of a Wisconsin Tax Appeals Commission decision dated August 27, 1999. See *Wisconsin Tax Bulletin* 118 (January 2000), page 32, for a summary of the Commission’s decision. The issue in this case is whether the taxpayer is a responsible person who is liable for the delinquent withholding and sales and use taxes of Advanced Tem-

perature Technicians, Inc. (“the company”), during the period from February 1995 to May 1996, under sec. 71.83(1)(b)2, Wis. Stats. and sec. 77.60(9), Wis. Stats.

The Circuit Court affirmed the Commission’s decision and concluded that the taxpayer had the **authority** and the **duty** to pay the company’s withholding and sales and

use taxes, and the taxpayer **intentionally breached that duty**.

As a fifty percent shareholder, member of the Board of Directors, and president of the company, as one of two people with the ability to write checks drawn on two company accounts, and as the person who retained a CPA in December 1995 to attempt to resolve the financial woes of the company, the taxpayer clearly had the **authority** necessary to pay or direct payment of the unpaid taxes. Once the taxpayer became aware of the unpaid sales and use taxes and withholding taxes in December 1995, the taxpayer had a **duty** to see that the

taxes were paid as soon as possible. The taxpayer signed 192 checks during the period under review, and continued to write checks to numerous company creditors even after he became aware of the company's tax delinquency. Consequently, the taxpayer **intentionally breached his duty** to pay the delinquent withholding taxes and sales and use taxes when he paid other creditors while knowing the taxes were delinquent.

The taxpayer has appealed this decision. [↗](#)