




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, separate maintenance.** *Mary L. Sahs and Richard C. Sahs vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, February 28, 2003). The issue in this case is whether payments that Richard Sahs made to Mary Sahs in 1998 were alimony or separate maintenance, reportable as income by her and deductible by him.

Mary L. Sahs (“Mary”) and Richard C. Sahs (“Richard”) were married in November 1973 and divorced in June 1997. The Marital Settlement Agreement as amended was incorporated into and made part of the Judgment of Divorce. The agreement provided for maintenance payments by Richard to Mary, at the rate of \$500 per month for five years beginning July 1, 1997.

Beginning with July 1997, Richard paid \$500 per month to Mary, and in 1998 he paid \$6,000 to her. He deducted the payments as alimony or separate maintenance on his 1998 Wisconsin income tax return. Mary did not report the payments as income on her 1998 Wisconsin income tax return.

The department issued income tax assessments in the alternative against each taxpayer. Mary’s income for 1998 was adjusted to include the \$6,000 in payments from Richard, and Richard’s \$6,000 deduction was denied. Each taxpayer filed a petition for redetermination with the department, the department denied both of the petitions, and both Mary and Richard filed petitions for review with the Commission.


On appeal, Mary contends that the payments are not alimony or separate maintenance as defined by sec. 71(b) of the Internal Revenue Code (“IRC”), because the Marital Settlement Agreement does not provide that Richard’s maintenance obligation terminates upon her death. She indicated that her attorney intentionally omitted that provision from the agreement.

The Commission concluded that the payments at issue were alimony or separate maintenance under IRC sec. 71, and as such the payments were properly deducted by Richard and should have been included in Mary’s income. Despite the absence of a provision in the Marital Property Agreement regarding the termination of payments upon the death of either spouse, that element of the definition in IRC sec. 71 is met by operation of Wisconsin law in the Wisconsin Supreme Court decision *Kuether v. State*, 174 Wis. 538, 540-41 (1921).

Based on the Commission’s conclusion, the assessment against Mary L. Sahs was affirmed, and the assessment against Richard C. Sahs was reversed.

Neither the department nor either of the taxpayers 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. [☞](#)

 **Business expenses - installment payments.** *Dean F. Blackwell vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 19, 2003). The issue in this case is whether Dean F. Blackwell (“the taxpayer”) was entitled to deduct principal payments made under a Retail Installment Contract.

In October 1995, the taxpayer attended an investment training course in Las Vegas, Nevada. The cost of the course was \$6,950. The taxpayer paid \$2,500 in cash, and in order to pay the remaining \$4,450, he entered into a Retail Installment Contract (“the Contract”) with the course provider, Capital Investment System (“Capital Investment”). Under the terms of the Contract, the taxpayer agreed to pay Capital Investment 24 monthly payments, which included interest at 18%.

Within a matter of days, Capital Investment sold its interest in the Contract to Travelers Acceptance Corp. (“Travelers Acceptance”). Travelers Acceptance notified the taxpayer that he should make payments to that company.

On his 1997 and 1998 Wisconsin income tax returns, the taxpayer claimed deductions for the interest and principal paid under the Contract.


The department issued an income tax assessment against the taxpayer in January 2001. Among the adjustments in the assessment was the denial of principal payments

made under the Contract. The taxpayer filed a timely petition for redetermination, which was granted in part and denied in part. The taxpayer then filed a timely petition for review with the Commission, with respect to the denial of the principal payments made under the Contract.

On appeal, the department contended that the principal payments were not deductible in 1997 and 1998, because the payment for the course was made entirely in 1995 from the loan proceeds under the Contract. It argued that the payments made under the Contract were merely repayments of the loan proceeds.

The Commission concluded that the taxpayer was entitled to deduct the principal payments made under the Contract, because the payments amounted to nothing more than installment payments of an otherwise deductible expense. Since the installment payments were made under a contract with the course provider, and it was the course provider who sold the Contract to Travelers Acceptance, the payments are deductible in the year paid.

The department has not appealed this decision.

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Farm loss - limitation. *James F. Stace vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, February 28, 2003). The issue in this case is whether the department correctly limited the taxpayer’s farm losses for 1996, 1997, and 1998 (“the period under review”), pursuant to sec. 71.05(6)(a)10, Wis. Stats.

During the period under review, the taxpayer was single and a resident of Wisconsin.


For each year under review, the taxpayer had non-farm Wisconsin adjusted gross income, as well as net losses from the operation of a farming business. On his Wisconsin income tax return for each year under review, the taxpayer claimed the full amount of his farm losses,

without any reduction for farm loss limitations under sec. 71.05(6)(a)10, Wis. Stats.

In March 2001, the department issued an assessment to the taxpayer, in which it disallowed portions of the farm losses incurred by the taxpayer for each year of the period under review. The taxpayer timely filed a petition for redetermination with the department, which the department denied. The taxpayer then timely filed a petition for review with the Commission.

The Commission concluded that the department did correctly limit the taxpayer’s farm losses for each year of the period under review, pursuant to sec. 71.05(6)(a)10, Wis. Stats.

The taxpayer has not appealed this decision. 


 **Retirement funds exempt.** *John Q. Kamps and Ruth R. Kamps, and Edward C. Wilkinson and Jean F. Wilkinson vs. Wisconsin Department of Revenue* (Court of Appeals, District II, April 24, 2003). This is an appeal from a July 23, 2002, order of the Circuit Court for Waukesha County. (**Note:** The Kamps' did not appeal the Circuit Court's decision; only the Wilkinsons appealed. The Kamps' are listed as petitioners because their appeal of a Wisconsin Tax Appeals Commission ("Commission") decision was consolidated by the Waukesha County Circuit Court with the appeal of the Wilkinsons.) The issue in this case is whether certain of Edward Wilkinson's ("the taxpayer's") retirement payments are exempt from Wisconsin taxation under sec. 71.05(1)(a), Wis. Stats. (2001-02).

The Commission held that the retirement payments were not exempt, and the Circuit Court affirmed the Commission's ruling. The taxpayer contends that: (1) the Commission erred in its construction of the statute,

(2) the department is equitably estopped from taxing the benefits, (3) taxation of these benefits denies his right to equal protection, and (4) the Commission's decision is contrary to the department's policy and practice.

The Court of Appeals concluded that the Commission's construction of sec. 71.05(1)(a), Wis. Stats. (2001-02), is not contrary to the clear language of the statute, and that the Circuit Court thus correctly upheld the Commission's decision that the retirement payments at issue are not exempt from Wisconsin taxation. It also concluded that the department is not equitably estopped from taxing the retirement payments, and that doing so does not violate the taxpayer's right to equal protection. Finally, it concluded that the taxpayer is not entitled to reversal of the Commission's decision on the ground that it is contrary to the department's prior policy and practice.

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

 **Termination payments - ordinary income vs. capital gain.** *William and Kathleen Jakel vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, February 24, 2003). This is a review of a June 3, 2002, oral decision of the Wisconsin Tax Appeals Commission (the Commission's decision was not summarized in the *Wisconsin Tax Bulletin*). The issue in this case is whether termination payments received by William Jakel ("the taxpayer") from State Farm Insurance Company ("State Farm") should have been taxed as ordinary income or as a capital gain from the sale of a capital asset (goodwill).

The taxpayer worked for State Farm as a claims adjuster from 1958 until 1966, when he started his own agency for State Farm. He worked as a State Farm insurance agent until retiring at the end of 1995. The taxpayer's compensation was through commissions based on premiums from the policies he sold.

In January 1996, State Farm began paying the taxpayer "extended termination pay," which he will receive for life. If Kathleen Jakel survives him, she will continue receiving the payments. The termination pay is based on a formula taking into account the premiums the taxpayer's customers paid to him during the twelve months preceding his retirement, his years of service, and his age.


In December 2000, the department sent a "Notice of Amount Due" to the taxpayers for \$968.14, for the 1997, 1998, and 1999 tax years, on the basis that the termination payments did not qualify as capital gain income. The taxpayers filed a timely petition for redetermination with the department, and the department denied the petition. The taxpayers then filed a petition for review with the Commission. The Commission conducted a hearing and rendered an oral decision on June 3, 2002, affirming the department's determination that the payments do not qualify as capital gain income.

On appeal, the taxpayers contend that the department incorrectly assessed taxes on the termination payments. They asserted that the payments were from the sale of goodwill, which is a capital asset, and therefore should be taxed as a capital gain.

The Circuit Court concluded that the Commission's decision was reasonable, and that the termination payments received by the taxpayer from State Farm in 1997 through 1999 were properly taxed as ordinary income because they do not qualify as capital gain income.

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

SALES AND USE TAXES


 **Officer liability.** *Eugene C. Rondon vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, May 8, 2003). On January 29, 2002, the Circuit Court for Dane County affirmed the Wisconsin Tax Appeals Commission's decision dated June 5, 2001. See *Wisconsin Tax Bulletin* 129 (April 2002), page 24, and *Wisconsin Tax Bulletin* 127 (October 2001), page 25, for summaries of the Circuit Court and Commission decisions. The issue in this case is whether the taxpayer is a responsible person who is liable for the unpaid sales taxes of National Vehicle Management, Inc. ("the corporation"), under sec. 77.60(9), Wis. Stats., for the periods of February, May through August, November, and December 1995, and January through July 1996, and for a dealer plate project assessment for January 1992 to December 1995 ("the period under review").


The taxpayer was president and sole shareholder of the corporation and was in charge of the corporation's day-to-day operations.

The taxpayer paid creditors other than the Department during the period under review, even though he knew there were unpaid sales taxes due to the Department.

The Circuit Court held that the Commission properly granted summary judgment to the Department of Revenue in the absence of any disputed issue regarding any material fact.

Affirming the Circuit Court's decision, and giving great weight to the Commission's interpretation, the Court of Appeals concluded that the taxpayer's behavior was willful under sec. 77.60(9), Wis. Stats., because he had the authority and the duty to pay the taxes, but paid other creditors instead. The taxpayer's claim that the Commission had discretion under the statute in assessing the taxes is rejected because he willfully failed to pay the taxes, and the statute provides that he "shall be personally liable." The taxpayer's argument that the assessment is excessive is rejected because the purpose of the assessment is to recover the revenue lost to the state rather than to punish the taxpayer.

The taxpayer appealed this decision to the Wisconsin Supreme Court. On July 9, 2003, the Supreme Court denied the petition for review. Therefore, the Court of Appeals decision is final. 

 **Transportation charges.** *Paul Bugar Trucking, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, April 10, 2003). The issue in this case is whether amounts charged by the taxpayer to transport breaker run, base course, and sand ("products") that it sold to its customer ("the customer") are subject to sales tax.

During the period from April 1, 1996, through March 31, 2000 ("the period under review"), the taxpayer was a corporation located in Wisconsin, engaged in the business of selling and supplying aggregates, gravel, and other stone products to contractors. The taxpayer had operations at four parcels of land in central Wisconsin, each of which were owned by unrelated property owners with whom the taxpayer had royalty agreements to extract aggregate from the parcels.

In May or June of 1998, the taxpayer entered into an oral contract with the customer, under which the taxpayer was to provide products for a road project in central Wisconsin. Because of uncertainties with the project, the customer wanted a supply of products available at all times. Therefore, the taxpayer agreed to

maintain separate piles of different products at its quarry. The customer agreed to purchase each product as it was placed in the respective piles, although the taxpayer did not charge the customer for the products until the products were actually removed from the quarry, in either the taxpayer's trucks or trucks owned by or contracted to the customer. The taxpayer's employees loaded all trucks with products at the quarry, after which the trucks were weighed and the customer was billed for the difference between the truck's loaded weight and its tare weight.

Initially, the agreement between the taxpayer and the customer provided that the customer would arrange for the transportation of products from the taxpayer's quarry to the project site, either in the customer's own trucks or in trucks contracted to the customer. However, as the need for more products became apparent, the customer entered into an agreement with the taxpayer to have the taxpayer transport the products to the project site in the taxpayer's trucks.

At the end of the 1998 construction season, approximately 7,000 to 8,000 tons of products remained at the

taxpayer's quarry in the customer's segregated stockpiles, for which the taxpayer had not billed the customer. In 1999, the customer needed the remaining 7,000 to 8,000 tons of products for the project, and the taxpayer billed the customer for the remaining products after the products were delivered to the customer. The taxpayer charged sales tax on the gross receipts for the products sold to the customer for the project, but not on the gross receipts charged to the customer for delivering the products to the project site.

The Commission concluded that the amounts charged by the taxpayer to the customer for delivering the products to the project site were subject to sales or use tax, because physical possession of the products did not transfer to the purchaser or the purchaser's agent until the products were delivered to the project site.

Section 77.51(14r), Wis. Stats., provides that a sale or purchase is deemed to be completed at the time and place when and where possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent. Although the products were stockpiled for use by the customer, the products remained in the taxpayer's possession until the products were delivered in the taxpayer's trucks to the customer at the project site. Gross receipts and sales price include the cost of transportation of property prior to its sale or purchase. The transportation occurred prior to the completion of the sale of the products and is subject to sales or use tax.

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

DRUG TAX

Drug tax, appeals - jurisdiction. *Forest J. Morkin*  *vs. Wisconsin Department of Revenue* (Circuit Court for Walworth County, January 10, 2003).

This is a review of a July 10, 2002, decision of the Wisconsin Tax Appeals Commission. See *Wisconsin Tax Bulletin* 132 (October 2002), page 26, for a summary of the Commission's decision. The issue in this case is whether the Commission had 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 January 1997, the Wisconsin Supreme Court held that the controlled substances tax violates the constitutionally guaranteed privilege against self-incrimination. *State v. Hall*, 207 Wis. 2d 54, 557 N.W. 2d 778 (1997).

In a letter dated September 13, 2000, 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 timely filed a petition for review with the Commission. The Commission held 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 Circuit Court concluded that the administrative remedies provided in sec. 71.75(5), Wis. Stats., must be timely pursued in connection with all claims, including claims that a state taxing statute is unconstitutional. Since the taxpayer did not make the refund claim within the statutorily required two-year period, the Circuit Court dismissed the taxpayer's petition for review.

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