



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:


Individual Income Taxes

Native Americans – reservation of another tribe
Edward and Margaret Snow 14

Withholding Taxes

Nonresident entertainers – employer liability
Wisconsin Health Care Association, Inc. 14

INDIVIDUAL INCOME TAXES

 **Native Americans – reservation of another tribe.** *Edward and Margaret Snow vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 31, 2005). The issue in this case is whether a member of one tribe who is living and working on the reservation of another tribe is subject to the Wisconsin income tax.

The taxpayer, Edward Snow, is an enrolled member of the Lac du Flambeau Band of Lake Superior Chippewa Indians. The taxpayer's spouse, Margaret Snow, is an enrolled member of the Menominee Tribe of Indians of Wisconsin (the Menominee Tribe). The taxpayers reside together within the Menominee Indian Reservation Boundaries.

The taxpayers filed Wisconsin income tax returns for the years at issue, claiming a deduction for all earned income. The deduction for the taxpayer's income was based on his status as an enrolled member of a federally recognized Indian tribe who lived and worked on a federally recognized Indian reservation.

By notice dated June 19, 2000, the department disallowed that portion of the deductions claimed that represented the taxpayer's income for each of the years at issue. Under date of July 16, 2000, the taxpayers filed a petition for redetermination, which was denied by the department in a Notice of Action issued July 9, 2001.


On September 10, 2001, the taxpayers filed a timely petition for review with the Commission.

The Commission concluded that the issue in this case is identical to the issue decided in *Joan La Rock vs. Wisconsin Department of Revenue* (see *Wisconsin Tax Bulletin* 110 [July 1998], page 14, 111 [October 1998], page 12, 119 [April 2000], page 15, and 125 [July 2001], page 14 for summaries of the decisions in this case), and that Wisconsin may impose an income tax on the taxpayer, an Indian who is an enrolled member of the Lac du Flambeau Band of Lake Superior Chippewa Indians but who lives and works on the Menominee Indian Reservation, because he is not a member of the Menominee Tribe.

The taxpayers argued that the facts in their case were clearly distinguishable from those in *La Rock*, but failed to state in the brief that they filed or otherwise establish any distinguishable facts between the two cases.

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

WITHHOLDING TAXES

 **Nonresident entertainers – employer liability.** *Wisconsin Health Care Association, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 10, 2005). The issues in this case are:

- A. Whether the taxpayer was an “employer,” as that term is defined in sec. 71.80(15)(a), Wis. Stats., of certain nonresident entertainers during the years at issue.
- B. Whether the taxpayer engaged the services of an “entertainer,” as that term is defined in sec. 71.01(2), Wis. Stats.
- C. Whether the taxpayer is personally liable, under sec. 71.80(15)(e), for the surety bond that the nonresident entertainers failed to file with the department, as required by sec. 71.80(15)(b), Wis. Stats., or the cash deposit equal to the face value of the surety bond, as required by sec. 71.80(15)(c), Wis. Stats.

The taxpayer is a Wisconsin corporation that was organized in 1955. It is a trade association with about 225 members, at least during the years at issue, representing long-term care providers, such as nursing homes and assisted living facilities, within the state of Wisconsin. One of the taxpayer's functions is to provide educational information related to the long-term care profession to its members and their employees by conducting seminars, conferences, and two conventions per year. The taxpayer has a tax exempt status designation under §501(c)(6) of the Internal Revenue Code.

During the years at issue, the taxpayer held educational seminars, conferences, and conventions in the state of Wisconsin. The seminars, conferences, and conventions were not restricted to the taxpayer's members. Both members and nonmembers of the taxpayer's association attended the seminars. Between 200 and 250 people attended each convention during the years at issue, and between 50 and 150 people attended each seminar. Information provided by the taxpayer indicates that the majority of the attendees of the conventions and seminars were members of its association.

For four seminars and one convention held by the taxpayer between January 1999 and October 2001, the services of a speaker were contracted. In each instance, the firm that the taxpayer contracted with did not file the required surety bond or cash deposit equal to the face value of the surety bond with the department. The taxpayer did not require proof from the firms that the surety bond or cash deposit equal to the face value of the surety bond was filed with the department as required, even though they had direct knowledge of the total contract price to be paid to each firm.

In January 2003, the department assessed withholding tax personally against the taxpayer, as they did not withhold from the contract price to be paid to each firm the amount of the surety bond or cash deposit equal to the face value of the surety bond. In March 2003, the taxpayer filed a petition of redetermination in response to the assessment, which the department denied in December 2003. The taxpayer filed a timely petition for review with the Commission in February 2004.

The taxpayer argued that the firms that they contracted with were not entertainers as defined by sec. 71.01(2), Wis. Stats., because they provided educational presentations in a seminar forum and were therefore not for amusement or entertainment. They also argued that the presentations were not "public speaking services" as contemplated in the statutes, as that term is not defined and is ambiguous. They asserted that in order for a per-

son to engage in "public speaking services," that person must be speaking in a forum open to the "general public." Therefore, since the firms that they contracted with made speaking presentations before limited groups of its members and a small number of nonmembers at various conventions and seminars, the presentations were not open to the general public and were not "public speaking services."

The Commission concluded as follows:

- A. The taxpayer was the employer of, and engaged the services of, the firms contracted with.
- B. The firms contracted with were entertainers, as that term is defined in sec. 71.01(2), Wis. Stats.

The phrase "public speaking" is not ambiguous for purposes of statutory interpretation. When the language of the statute is unambiguous, the Court must apply the plain meaning. "[P]ublic speaking" is defined as "The art or process of making speeches before an audience." Websters II New College Dictionary at 895 (2001). This definition is not vague or ambiguous. There is simply no requirement that the speech must be open to the general public.

The taxpayer contracted with the firms to speak before audiences at conventions and seminars. At each convention or seminar, these speeches were given to audiences of between 50 and 250 people. These presentations of speaking in front of an audience clearly fit into the definition of "public speaking services." Therefore, the firms contracted with were entertainers.

- C. The taxpayer is personally liable under sec. 71.80(15)(e), Wis. Stats., for the surety bond that the firms contracted with failed to file with the department, as required by sec. 71.80(15)(b), Wis. Stats., or the cash deposit equal to the face value of the bond, as required by sec. 71.80(15)(c), Wis. Stats.

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