



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 decision is included:

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SALES AND USE TAXES



Use tax – transfer of tangible personal property from related corporation.

Wisconsin Department of Revenue vs. River City Refuse Removal, Inc. (Court of Appeals, District IV, February 2, 2006). On August 2, 2004, the Circuit Court for Dane County reversed the Wisconsin Tax Appeals Commission's August 19, 2003 decision. See *Wisconsin Tax Bulletin* 136 (October 2003), page 19, and *Wisconsin Tax Bulletin* 140 (October 2004), page 23, respectively, for summaries of the Commission and Circuit Court decisions.

The issues in this case are:

- A. Whether tangible personal property the taxpayer received by intercompany transfer from separately organized affiliated entities is subject to Wisconsin use tax under sec. 77.53(1), Wis. Stats.
- B. Whether the taxpayer's failure to report use tax on its intercompany transfers and other purchases was subject to the negligence penalty under sec. 77.60(3), Wis. Stats.

During the period from October 1, 1993 through September 30, 1997, the taxpayer was a separately incorporated Wisconsin corporation and wholly-owned subsidiary of Browning-Ferris Industries, Inc. (BFI), with its headquarters and principal place of business in Eau Claire, Wisconsin.

The taxpayer was primarily engaged in the business of collecting refuse and recyclables from Wisconsin resi-

dences and businesses and hauling those materials to landfills or recycling centers.

Other subsidiaries of BFI (BFI subsidiaries) transferred to the taxpayer items of tangible personal property such as motor vehicles and related assets. The taxpayer did not provide BFI subsidiaries with exemption certificates claiming any exemption on these transfers. These "intercompany transfers" included all rights to, and ownership of, the transferred assets. The motor vehicles transferred were re-titled in the taxpayer's name with the Wisconsin Department of Transportation. The assets transferred were valued at net book value (original purchase price less accumulated depreciation), entered into the taxpayer's financial records at that value, and depreciated on the taxpayer's income or franchise tax returns. The taxpayer paid no sales or use tax on the intercompany transfers.

The BFI subsidiaries that transferred assets to the taxpayer were separate, legal, corporate entities from the taxpayer and were not divisions or units of the taxpayer. The taxpayer's bookkeeping entry for the receipt of the intercompany transfers was to debit the specific intercompany asset account and credit an intercompany payable account. No money was exchanged or expected between the BFI subsidiaries and the taxpayer for the intercompany transfers. The taxpayer received no invoice or other bill in connection with the receipt of intercompany assets.

The Commission decision held that (1) the intercompany transfers of tangible personal property to the taxpayer from BFI subsidiaries were not subject to Wisconsin use tax because there was no transfer for remuneration or consideration, and (2) the negligence penalty did not apply as the taxpayer's failure to report the use tax was "due to good cause and not due to neglect." The Circuit Court, in a de novo review (giving the Commission decision no weight), reversed the Commission on both issues.

The Court of Appeals reviewed the Commission's decision de novo (giving the Circuit Court's conclusions no weight). Upon review, the Court of Appeals agreed with the Commission's conclusions that the transferring companies were not "retailers" within the meaning of sec. 77.51(13), Wis. Stats., and the transfers lacked consideration.

Therefore, the Court of Appeals reversed the Circuit Court's order and reinstated the Commission's ruling and order.

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