



## 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:

### Sales and Use Taxes

Compromise for inability to pay  
*Gegare Tile, Inc., vs. Wisconsin Department of Revenue* ..... 10

### SALES AND USE TAXES

**➔** **Compromise for inability to pay.** [Gegare Tile, Inc., vs. Wisconsin Department of Revenue](#) (Wisconsin Tax Appeals Commission, March 11, 2011).

The issue in the case is whether sales and use taxes owed can be reduced based on a taxpayer's inability to pay.

The Department of Revenue issued a "Notice of Proposed Audit Report" to Gegare Tile, Inc. ("Gegare"). A conference was held with the department's auditor and a portion of the proposed assessment was reversed for settlement purposes. Gegare then fully agreed with the adjustments and additional tax due on the report. The department issued its "Final Notice of Field Audit Action" to Gegare assessing the agreed-to sales and use taxes and interest.

Gegare subsequently sent a letter to the Department of Revenue requesting a redetermination of the agreed-to additional sales and use tax assessment alleging an inability to pay. Gegare also filed a pre-delinquent "Petition for Compromise" with the department while the appeal was pending in the department's Resolution Unit, which resulted in the department offering an additional reduction of the assessment as a compromise in order to resolve the assessed liability.

Gegare did not accept the department's compromise offer. A notice was issued by the department denying Gegare's petition for redetermination.

A timely Petition for Review was filed by Gegare with the Wisconsin Tax Appeals Commission, pleading only an inability to pay the assessed amount due. Section 73.01(5)(a), Wis. Stats.(2009-10), allows anyone who is "aggrieved by a redetermination or action of the Department of Revenue" to petition to the Commission for a review of the department's action.

The Commission granted the department's motion to dismiss Gegare's appeal on two grounds:

1. ***Gegare is not a person aggrieved by an action or determination of the department.*** Gegare signed a statement agreeing to the additional tax due and interest and did not object before the Commission to the assessment on any factual or legal grounds and only sought a reduction in the amount due. Therefore, the Commission ruled that Gegare was not a person aggrieved by an action or determination of the department.
2. ***Gegare does not state a claim upon which the Commission can give relief.*** It is clear that Gegare wishes to compromise the agreed-upon assessment with the Department of Revenue. In fact, Gegare and the department have entered into discussions on compromise; however, they have been unsuccessful. In this appeal, Gegare requests that the Commission be a part of these compromise efforts. The Commission does not have the power to review petitions for compromise or subsequent agreements. Those powers are reserved for the Department of Revenue, as provided by law. Consequently, Gegare has not stated a claim upon which the Commission can give relief.

The taxpayer has not appealed this decision.