



## 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:

<b>Sales and Use Tax</b>	
Successor liability	
<i>Villager Food Mart/Beer &amp; Liquor vs. Wisconsin Department of Revenue.</i>	12
<b>Sales and Use Tax and Withholding Tax</b>	
Officer liability	
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### SALES AND USE TAX

**Successor liability.** [\*Villager Food Mart/Beer & Liquor vs. Wisconsin Department of Revenue\*](#) (Wisconsin Tax Appeals Commission, April 4, 2012).

The issue in this case is whether the taxpayer, as purchaser of K&D Villager, is liable for K&D Villager's unpaid sales tax as a successor business.

In July 2008, the taxpayer acquired K&D Villager, by purchasing the lease, personal property, assets, goods, and inventory. The taxpayer renamed the business Villager Food Mart/Beer & Liquor. The business remained at the original location and carried on essentially the same type of convenience store business.

Before the purchase price was fully paid, the purchaser learned that delinquent sales and use taxes were due. The purchaser requested a clearance certificate from the State of Wisconsin. The purchaser then held back the remaining unpaid balance of the purchase price from the seller, pending the issuance of a clearance certificate.

A clearance certificate was never issued. Instead, the Department of Revenue sent the purchaser a notice of amount due for unpaid sales tax incurred by the prior owner. The amount held back by the purchaser was less than the amount of tax due. Although the department had made numerous attempts to collect from the prior owner, K&D Villager, the collection attempts were unsuccessful.

The taxpayer argued that he did not purchase the business but simply its assets. However, the Commission concluded that as a purchaser of the stock of goods sold by the preceding owner of the business, which is now operated in a substantially similar manner under a similar name, the taxpayer becomes the successor. It was also noted the purchaser's partial compliance, withholding an insufficient amount, does not exonerate the purchaser.

The Commission agreed with the taxpayer's assertion that the department had an obligation to collect from the predecessor. However, the department documented numerous efforts to collect these taxes from K&D Villager. While the purchaser also questioned the amounts due, no documentation was produced to support calculations other than those assessed.

The Commission concluded the taxpayer was responsible for the unpaid sales tax incurred by its predecessor. The taxpayer was a successor and did not withhold an amount sufficient to cover the unpaid taxes. Attempts were made by the department to collect these taxes from the prior owner and no information was provided to show the assessment to be incorrect.

At the time of publication it is not known whether the taxpayer will appeal this decision.

## SALES AND USE TAX AND WITHHOLDING TAX

 **Officer liability.** [\*Susan W. Jones vs. Wisconsin Department of Revenue\*](#) (Wisconsin Tax Appeals Commission, March 16, 2012).

The issue in this case is whether the taxpayer is a responsible person who is personally liable for unpaid sales and withholding taxes for American Auto Beauty Carstar, Inc., for sales tax period March 1, 2006 through July 31, 2007, and withholding period August 1, 2007 through August 31, 2007.

The taxpayer, Susan W. Jones, was an owner and officer of American Auto Beauty Carstar, Inc. The taxpayer was one of four individuals authorized to sign checks. Each check had to be signed by two authorized individuals. The taxpayer voluntarily signed checks with one of the three authorized individuals at all times during the period under review on a regular basis.

The taxpayer was instrumental in determining rent was paid for the business premises and initiated loans to herself and another employee. The taxpayer knew sales tax was due and not being paid.

The taxpayer denied she was liable for the unpaid taxes, because her family limited her control and participation in company affairs.

For a person to be personally liable, it must be established the person had the **authority** to pay the company's taxes, the **duty** to pay, and **willfully breached that duty**.

The Commission found that the taxpayer was an owner of the business at all times. The taxpayer paid the bills, knew the sales and withholding bills were unpaid, and paid other vendors and accounts ahead of the sales and withholding liabilities. Therefore, the Commission ruled the taxpayer is personally liable for the unpaid sales and withholding taxes.

At the time of publication it is not known whether the taxpayer will appeal this decision.