

STATE OF WISCONSIN
TAX APPEALS COMMISSION

WILLIAM BECKER,

Petitioner,

DOCKET NOS. 15-I-074
AND 15-S-075

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

ELIZABETH KESSLER, Commissioner:

This matter appears before the Commission based on Petitioner's Motion for Partial Summary Judgment and the Department's Motion for Summary Judgment, both regarding the applicability of the Wis. Stat. § 77.54(5)(a)(4) sales tax exemption.

The Petitioner, William Becker, appears by Attorney Matthew E. McLaughlin and Attorney Kathleen M. Quinn of Zetley Law Offices, S.C. The Respondent, the Wisconsin Department of Revenue (the "Department"), is represented by Attorney Jeffrey A. Evans and Chief Counsel Dana J. Erlandsen. The parties filed briefs and affidavits in support of their positions. Because we find the Petitioner has not met its burden to demonstrate that the Department erred in denying its sales tax exemption for the trailers at issue, we find the trailers do not qualify for exemption under Wis. Stat. § 77.54(a)(4).

FACTS

The following facts are found in the parties' Stipulation of Undisputed Facts ("Joint Stip."):

1. The Petitioner, William Becker, is the owner of Becker Trailers, LLC ("Becker"). Becker sells trailer-type vehicles.
2. During the dates at issue in this matter, from January 1, 2008, through December 31, 2011, Becker sold trailer-type vehicles to non-Wisconsin residents who did not use the trailer-type vehicles in Wisconsin other than in their removal from Wisconsin.
3. Exhibit 1 attached to the Affidavit of William R. Becker is a list prepared by the Department that includes the trailer-type vehicles sold to non-Wisconsin residents by Becker during the years at issue in this matter where Becker did not collect or remit sales tax.
4. The trailer-type vehicles sold by Becker include single axle, tandem axle, and gooseneck. Each trailer-type vehicle sold was designed to be used in conjunction with a pickup truck or an automobile.
5. On September 23, 2013, and October 1, 2013, the Department issued assessments to Becker in the amount of \$34,747.22 for Individual Income Tax and \$526,262.62 for Sales and Use Tax (plus interest).
6. On November 22, 2013, and December 2, 2013, Becker filed Petitions for Redetermination, which were denied by the Department on February 11, 2015.

7. Becker timely appealed the Department's denial to the Tax Appeals Commission on April 9, 2015.

APPLICABLE STATUTES

Wis. Stat. § 77.54. General Exemptions.

(5)(a)4. Motor vehicles or truck bodies sold to persons who are not residents of this state and who will not use such motor vehicles or trucks for which the truck bodies were made in this state otherwise than in the removal of such motor vehicles or trucks from this state.

Wis. Admin. Code § Tax 11.83(4). Purchases by nonresidents.

(a) The sales price from the sales of motor vehicles or truck bodies to nonresidents of Wisconsin, including members of the armed forces, who will not use the vehicles or trucks for which the truck bodies were made in Wisconsin other than in their removal from Wisconsin is exempt. Truck bodies include semi-trailers. However, the separate sale of a "slide-in" camper to a nonresident is taxable if the sale is sourced to Wisconsin as provided § 77.522.

DECISION

A motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2).

The effect of counter-motions for summary judgment is an assertion by the parties that the facts are undisputed, that in effect the facts are stipulated, and that only issues of law remain. *Eichenseer v. Madison-Dane County Tavern League, Inc.*, 2008 WI 38, ¶4, 308 Wis. 2d 684, 748 N.W.2d 154.

The cross filing of summary judgment motions citing undisputed facts leaves only questions of law to decide. *Healthcare Service's Group, Inc. v. Wisconsin Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-086 (WTAC 2016).

The fundamental question before the Commission is whether the trailers sold by Petitioner are "truck bodies" as contemplated by Wis. Stat. § 77.54(5)(a)(4). In arguing that the trailers in question should be exempt as truck bodies, Petitioner relies heavily on the Wisconsin Supreme Court decision in *Dep't of Revenue v. Trudell Trailer Sales, Inc.*, 104 Wis. 2d 39, 42, 310 N.W.2d 612 (1981), which held:

A semitrailer is built to and does carry the cargo. Without it or some other unit to carry the load, a tractor, which is the power unit, serves little or no purpose. When the two pieces of equipment are joined, the semitrailer is the "truck body," and it fits that definition and purpose when constructed and sold. No basis exists for distinguishing that type of truck body from one with a self-contained motor.

Petitioner focused on one sentence within the *Trudell* decision, "[w]hen the two pieces of equipment are joined, the semitrailer is the 'truck body,' and it fits that definition and purpose when constructed and sold." However, correctly understanding the court's decision requires the entire paragraph. The *Trudell* court found that a tractor-truck serves little or no purpose without a semitrailer to carry cargo. Therefore, when those two pieces of equipment are joined, the semitrailer is the truck body. Both of those two elements are required to make the other a functional whole, and "[n]o basis exists for distinguishing that type of truck body from one with a self-contained motor."

It does not logically follow that all trailers designed to haul cargo, regardless of power unit, must also be exempt truck bodies. Indeed, Petitioner stipulated to the fact that "each of the trailer types sold was designed to be used in conjunction with a pickup truck or an automobile." (Joint Stip. ¶ 4.) While it may be that trailers of the type sold by Becker serve little or no purpose without a "power unit," the same cannot be said of the intended power units. Automobiles plainly do not require "truck bodies" to serve a purpose, and pickup trucks include self-contained truck bodies as well as motors, and are also plainly quite often used without trailers. There is no necessary symbiotic relationship between trailers of the type sold by Becker and the motor vehicles that power their movement, as was found by the Court in *Trudell*.

Petitioner also asked the Commission to apply the definition of "semitrailer" found in Wis. Stat. § 340.01(57) to the relevant sales tax exemption statute, which contains no definition of "truck body" or "semitrailer." While this does not seem unreasonable on its face, the plain language of the statute does not support our using this definition.

The legislature expressly limited the application of the definitions in Wis. Stat. § 340.01 by noting "In s. 23.33 and chs. 340 to 349 and 351, the following words and phrases have the designated meanings unless a different meaning is expressly provided or the context clearly indicates a different meaning." Since 1969, Wis. Stat. § 340.01 has not incorporated Chapter 77 by reference. Had the legislature intended to continue or create such references, they could have, and they have had many opportunities to do so over the last 50+ years. That the legislature chose instead to limit the general application

of definitions in Wis. Stat. § 340.01 to Wis. Stat. § 23.33 and Chapters 340-349 and 351 should be respected by this Commission. Similarly, the *Trudell* decision made no reference to the § 340.01(57) definition of semitrailer, suggesting that it too considered that definition inapplicable. Accordingly, we do not find the § 340.01(57) definition of semitrailer binding in the context of this tax exemption.

CONCLUSIONS OF LAW

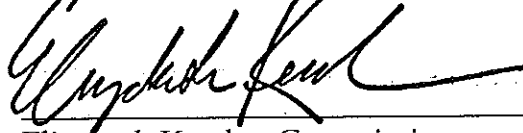
1. No material facts are in dispute and, therefore, this case is ripe for summary judgment.
2. The Wisconsin Supreme Court decision in *Dept. of Revenue v. Trudell Trailer Sales, Inc.* limits the “trucks and truck bodies” exemption to those combinations of power unit vehicles and trailers that, if not combined together, serve little to no purpose.
3. The trailer-type vehicles sold by Becker have no “trucks for which the truck bodies were made” and, therefore, fail to fall within the plain language of the Wis. Stat. § 77.54(5)(a)(4) exemption.

ORDER

Petitioner’s Motion for Partial Summary Judgment is denied, and the Department’s Motion for Summary Judgment is granted.

Dated at Madison, Wisconsin, this 29th day of December, 2020.

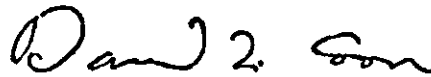
WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Commissioner



Lorna Hemp Boll, Commissioner



David L. Coon, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION
5005 University Avenue - Suite 110
Madison, Wisconsin 53705

NOTICE OF APPEAL INFORMATION

NOTICE OF RIGHTS FOR REHEARING, OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternately, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, within 30 days of this decision if there has been no petition for rehearing or, within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service, or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or, the Wisconsin Statutes. The website for the courts is <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.