

FILED

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Wisconsin Tax Appeals Commission  
Nicole Allee - Legal Assistant

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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TOWN OF LA POINTE,

DOCKET NO. 23-J-183

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent,

COUNTY OF ASHLAND,

Intervenor.

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**RULING & ORDER**

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This case comes before the Commission for ruling on Cross-Motions for Summary Judgment. It is an appeal of a Declaratory Ruling issued by a Department of Revenue Hearing Examiner on July 19, 2023. Petitioner, the Town of LaPointe (“the Town”), is represented by Attorneys Tamara B. Packard of Pines Bach LLC and Bryce Schoenborn of Slaby, Deda, Marshall, Reinhard & Writz LLP; Respondent, the Department of Revenue (“the Department”), was represented by Attorney Kelly Altschul<sup>1</sup>; and the Intervenor, Ashland County (“the County”), is represented by Attorneys Matthew J. Thome and Jacob J. Curtis of Attolles Law, s.c.

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<sup>1</sup> Attorney Altschul left the Department of Revenue following the final briefing deadlines in this matter, but before the Commission issued this ruling.

All parties have stipulated to the facts and documents admitted into evidence in the Department hearing, along with use of the hearing transcript. There being no genuine issue of material fact, if the Commission had jurisdiction over this dispute, it would be ripe for Summary Judgment. However, we conclude that we lack subject matter jurisdiction and, therefore, we must dismiss the Petition for Review.

### FACTS

Because all parties have stipulated to the facts and documents admitted into evidence in the Department hearing, along with use of the hearing transcript, and because such stipulated facts and documents include hundreds of pages of material and more than sixty exhibits, they are collectively incorporated herein by reference. As the Commission concludes that we lack subject matter jurisdiction, we will limit our enumeration of the facts to those material to the jurisdictional issue.

1. The Town of La Pointe (“the Town”) is one of the 16 municipalities located within Ashland County, Wisconsin.
2. Ashland County (“the County”) is one of the 72 Counties located within the State of Wisconsin.
3. On January 25, 2023, the Town of La Pointe filed a Petition for a Declaratory Ruling before the Department of Revenue (“the Department”), seeking a determination that Wis. Stat. §§ 59.605(3)(c) and/or 66.0602(3) require that the County’s levy limit be decreased, and the Town’s levy limit be increased by \$190,668.56 because

the County transferred responsibility for providing law enforcement patrol and dispatch response services in the Town beginning January 1, 2023.

4. On April 14, 2023, the Department held an evidentiary hearing on these matters.

5. On July 19, 2023, the Department issued a Declaratory Ruling determining that there had been no transfer of responsibility for providing law enforcement patrol and dispatch response services between the County and the Town, and therefore shifting the levy limits was unwarranted.

6. On September 12, 2023, the Town timely filed a petition before the Commission.

7. On October 12, 2023, the County timely filed a Motion to Intervene, which was unopposed by Petitioner or the Department, and which was formally granted by the Commission at the first telephone status conference held in this matter, on November 7, 2023.

8. Both the Town and the Department filed Cross-Motions for Summary Judgment, arguing that the Commission has jurisdiction over this dispute based on Wis. Stat. § 227.41(5)(a). The Town sought to have the Declaratory Ruling reversed, while the Department sought to have it affirmed.

9. The County filed a Motion to Dismiss the Town's Appeal based on lack of jurisdiction under Wis. Stat. § 227.41(5)(a), or in the alternative, to grant Summary Judgment affirming the Department's Declaratory Ruling.

## APPLICABLE LAW

### Wis. Stat. § 73.01

(4) Powers and duties defined.

(a) Subject to the provisions for judicial review contained in s. 73.015, the commission shall be the final authority for the hearing and determination of all questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss. 70.38 (4) (a), 70.397, 70.64, and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss. 76.39 (4) (c), 76.48 (6), 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40, 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 341.405, and 341.45, subch. XIV of ch. 71, and subch. VII of ch. 77.

(5) Appeals to commission.

(a) Any person who is aggrieved by a determination of the state board of assessors under s. 70.995 (8) or who has filed a petition for redetermination with the department of revenue and who is aggrieved by the redetermination of the department of revenue may, within 60 days of the determination of the state board of assessors or of the department of revenue or, in all other cases, within 60 days after the redetermination but not thereafter, file with the clerk of the commission a petition for review of the action of the department of revenue and the number of copies of the petition required by rule adopted by the commission.

### Wis. Stat. § 227.41

#### Declaratory rulings.

(1) Except as provided in sub. (5), any agency may, on petition by any interested person, issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforced by it. Full opportunity for hearing shall be afforded to interested parties. A declaratory ruling shall bind the agency and all parties to the proceedings on the statement of facts alleged, unless it is altered or set aside by a court. A ruling shall be subject to review in the circuit court in the manner provided for the review of administrative decisions.

(5)(a) The department of revenue shall, on petition by any interested person, or any group or association of interested persons, issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule

or statute enforced by it. The department of revenue may issue a declaratory ruling on the facts contained in the petition. If the department of revenue does not deny the petition or issue a declaratory ruling on the facts contained in the petition, the department of revenue shall hold a hearing, as provided under s. 227.44, and shall afford all interested parties an opportunity to participate in the hearing. A declaratory ruling shall bind the department and all parties to the proceedings on the statement of facts contained in the ruling, unless it is altered or set aside by the tax appeals commission or a court or the applicable rule or statute is repealed or materially amended. A ruling, including the denial of the petition, shall be subject to review by the tax appeals commission as provided in ch. 73.

**Wis. Stat. § 66.0602**

**Local levy limits.**

**(2) Levy Limit.**

(a) Except as provided in subs. (3), (4) and (5), no political subdivision may increase its levy in any year by a percentage that exceeds the political subdivision's valuation factor. ...

**(3) Exceptions.**

(a) If a political subdivision transfers to another governmental unit responsibility for providing any service that the political subdivision provided in the preceding year, the levy increase limit otherwise applicable under this section to the political subdivision in the current year is decreased to reflect the cost that the political subdivision would have incurred to provide that service, as determined by the department of revenue. The levy increase limit adjustment under this paragraph applies only if the transferor and transferee file a notice of service transfer with the department of revenue.

(b) If a political subdivision increases the services that it provides by adding responsibility for providing a service transferred to it from another governmental unit that provided the service in the preceding year, the levy increase limit otherwise applicable under this section to the political subdivision in the current year is increased to reflect the cost of that service, as determined by the department of revenue. The levy increase limit adjustment under this paragraph applies only if the transferor and transferee file a notice of service transfer with the department of revenue.

Wis. Stat. § 59.605

Tax Levy Rate Limit.

**(3) Referendum, Responsibility Transfers**

(c)(1) If a county transfers to another governmental unit responsibility for providing any service that the county provided in the preceding year, the levy rate limit otherwise applicable under this section to the county in the current year is decreased to reflect the cost that the county would have incurred to provide that service, as determined by the department of revenue. The levy rate limit adjustment under this subdivision applies only if the county and transferee governmental unit file a notice of service transfer with the department of revenue.

(2) If a county increases the services that it provides by adding responsibility for providing a service transferred to it from another governmental unit in any year, the levy rate limit otherwise applicable under this section to the county in the current year is increased to reflect the cost of that service, as determined by the department of revenue. The levy rate limit adjustment under this subdivision applies only if the county and transferor governmental unit file a notice of service transfer with the department of revenue.

**ANALYSIS**

The Petitioner and the Department claim the Commission has jurisdiction to review the Department's declaratory ruling because Wis. Stat. § 227.41(5), in their view, grants the Commission the power to review all declaratory rulings issued by the Department under the statute, regardless of whether the Commission would otherwise have jurisdiction over the subject matter of the ruling.

Section 227.41(5) of the Wisconsin Statutes governs the issuance of declaratory rulings by the Department. It was enacted as part of 2011 Wis. Act 68, which

made a number of changes related to “various duties of the department of revenue,” and became effective on March 1, 2012<sup>2</sup>.

Prior to the enactment of Wis. Stat. § 227.41(5), the statute generally provided for the issuance of declaratory rulings by administrative agencies. Section 227.41(1) stated that “Any agency may, on petition by any interested person, issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforced by it. ... A ruling shall be subject to review in the circuit court in the manner provided for the review of administrative decisions.” Section 227.41(1) now starts with the words “Except as provided in sub. (5)...” Section 227.41(5)(a) provides, in part, “The department of revenue shall, on petition by any interested person, or any group or association of interested persons, issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforced by it. ... A ruling, including the denial of the petition, shall be subject to review by the tax appeals commission as provided in ch. 73.”

We believe that the phrasing “as provided in ch. 73” is of critical importance to the interpretation of 227.41(1) and 227.41(5)(a). The most reasonable interpretation of these amendments is that they were intended to preserve the Tax Appeals Commission’s jurisdiction over the types of disputes specifically delineated in ch. 73, while providing

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<sup>2</sup> We have looked through the online legislative history for 2011 Wis. Act 68, but we did not find anything helpful concerning the declaratory ruling provisions.

for judicial review of declaratory rulings for topics that would otherwise be outside of the Commission's jurisdiction.

For example, should the Commission be deciding whether the Department properly ruled on whether an expunged felony conviction in another state should preclude someone from being allowed to sell lottery tickets in Wisconsin? Or, for unclaimed property purposes, whether a convicted felon can reclaim his own firearm? These are questions upon which the Department could issue declaratory rulings. By providing in Wis. Stat. § 227.41(5) that declaratory rulings of the Department would be reviewed by the Commission "as provided in ch. 73," did the legislature really intend that the Commission would, or should, review a ruling on an issue that would never come before it absent a declaratory ruling and, in many instances, over which it has no particular expertise or experience? We think not.

The Commission is an administrative agency whose powers and jurisdiction are defined and limited by Chapter 73 of the Wisconsin Statutes. Wis. Stat § 73.01(4), titled "Powers and Duties Defined," states, "Subject to the provisions for judicial review contained in s. 73.015, the commission shall be the final authority for the hearing and determination of all questions of law and fact arising under..." then includes a list of specifically enumerated provisions of the Wisconsin statutes. The list of specifically enumerated provisions over which the Commission is authorized to hear and determine questions of law and fact is enumerated below.



First, the Commission has authority to hear appeals under Wis. Stat. § 73.01(5): “Any person who is aggrieved by a determination of the state board of assessors under Wis. Stat. § 70.995(5n),” which includes property that has been classified as manufacturing property, or under Wis. Stat. § 70.995(8), which defines how municipalities can participate in an appeal of the assessment of a manufacturing property. Additionally, a person “who has filed a petition for redetermination with the department of revenue and who is aggrieved by the redetermination of the department of revenue may [subject to deadlines and procedures, file an appeal with the Commission].” These redeterminations typically involve income tax, sales tax, tax withholding, tax credits, or disputes over the applicability of tax exemptions. Wis. Stat. § 73.01(5) also describes the procedures for appeals of determinations of the department of transportation under Wis. Stat. §§ 341.405 and 341.45, which have to do with vehicle registration and fuel taxes. Finally, Wis. Stat. § 73.01(5) includes a reference to a repealed utility property tax provision and notes that appeals of income and franchise taxes by utilities and railroads should follow the same processes as appeals of other income and franchise taxes in Wisconsin, unless otherwise specified.

Wis. Stat. § 73.01(4) goes on to provide the Commission with authority over appeals of income assessments under a repealed section of Wisconsin’s gift tax (Wis. Stat. § 72.86(4) 1985); appeals of the tax assessment of the mining of metalliferous minerals (Wis. Stat. § 70.38(4)); appeals of oil and gas severance tax assessments (Wis. Stat. § 70.397); counties or taxation districts may appeal state determinations of equalized value

to the Commission (Wis. Stat. § 70.64); the statute repeats the Commission's authority to hear from municipalities under Wis. Stat. § 70.995(8); authorizes the Commission to hear appeals of telephone licensing fees which were repealed in 1995 (Wis. Stat. § 76.38(12)(a)); reiterates that railroads and utilities with income and franchise tax appeals are subject to the same procedures as other entities with income or franchise tax appeals (Wis. Stat. §§ 76.39(4)(c) and 76.48(6)); authorizes the Commission to hear appeals of title transfer tax assessments under the same procedures as income or franchise tax appeals (Wis. Stat. § 77.26(3)); authorizes the Commission to hear certain appeals between sellers and customers if sales taxes are erroneously collected or refunded, under the same procedures as income or franchise tax appeals (Wis. Stat. § 77.59(5m) and (6)(b)); authorizes the Commission to hear certain excise, floor tax, alternative fuel and aviation fuel tax appeals related to the sale of transportation fuels (Wis. Stat. §§ 78.01, 78.22, 78.40, and 78.555); appeals of taxes or credits to sellers and producers of certain malt beverages and intoxicating liquor ((Wis. Stat. §§ 139.02, 139.03, and 139.06); appeals of taxes or exceptions to the taxation of cigarettes ((Wis. Stat. §§ 139.31, 139.315, 139.33, 139.76, and 139.78); appeal provisions apply to a person or holder or administrator as well as to a taxpayer or to the department of revenue (Wis. Stat. §§ 177.1103 and 177.1206(3)); and reiterates the authority to hear appeals of determinations by the department of transportation of certain registration fee and fuel taxes (Wis. Stat. §§ 341.405 and 341.45).

Finally, Wis. Stat. § 73.01(4) notes the Commission's authority under Subchapter XIV of Chapter 71, "Appeals," which clarifies several procedural issues both

within the Commission and within the department of revenue, such as the inclusion of a spouse within an appeal, and the interest rate to be paid by the state if an appellant pays the assessed tax before the decision is finalized and the appellant is subsequently found to be correct and thus owed a refund; and Subchapter VII of Chapter 77, “Economic Development Surcharge,” which levies an additional charge on certain businesses with more than \$4,000,000.00 in gross receipts in the state of Wisconsin.

Our jurisdiction is considerably more narrow than that of the Department of Revenue. In addition to administering (or, in the case of many property tax matters, participating with municipalities in administering) nearly every Wisconsin tax,<sup>3</sup> the Department is also tasked with the administration of the Wisconsin Lottery<sup>4</sup> and the Wisconsin Unclaimed Property Act.<sup>5</sup>

Although a single circuit court, Trempealeau County, rejected this jurisdictional concern in the case of *Wisconsin Association of Campground Owners, Incorporated (WACO) v. Dep’t of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-421 (WTAC 2020) it has not been reviewed by other circuit or appellate courts. Unlike the circuit courts, the Commission lacks general jurisdiction or any type of equitable powers. Our authority is only granted by statute, and we believe that jurisdictional authority is limited to that which is specifically granted to the Commission by Chapter 73.

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<sup>3</sup> Generally, Wisconsin Statutes Chapters 70 through 79.

<sup>4</sup> Wis. Stat. § 565.01(1) and (2)

<sup>5</sup> Wis. Stat. § 177.01(1)

Courts have primarily acted to limit any expansion of the Commission's authority. In *Dep't of Revenue v. Hogan*, 198 Wis. 2d 792, 543 N.W.2d 825 (Ct. App. 1995), the Wisconsin court of appeals held that the Commission did not have the authority to entertain a class action proceeding seeking refunds of state income taxes collected on federal pensions. The *Hogan* court stated:

Few principles of law are as well established as the proposition that administrative agencies, ... have only such powers as are expressly granted to them by the legislature, or as may be necessarily implied from the applicable statutes.... In determining the nature and scope of an agency's powers, its **enabling statutes are to be "strictly construed to preclude the exercise of a power not expressly granted,"** and **"any reasonable doubt as to the existence of an implied power should be resolved against the agency."** (emphasis added) *Id.*, at 816.

We do not believe that in drafting Wis. Stat. § 227.41(5) the Wisconsin legislature intended to grant the Commission power and authority over matters not otherwise within the power and authority granted under Chapter 73. There were no amendments made by 2011 Wis. Act 68 to Wis. Stat. § 73.01(4) describing the powers and duties of the Commission, for example, adding language like "review declaratory rulings of the department of revenue." Further, Wis. Stat. § 73.01(5)(a) provides, "Any person who is aggrieved by a determination of the state board of assessors under s. 70.995 (8) or who has filed a petition for redetermination with the department of revenue and who is aggrieved by the redetermination of the department of revenue may, within 60 days of the determination of the state board of assessors or of the department of revenue or, in

all other cases, within 60 days after the redetermination but not thereafter, file with the clerk of the commission a petition for review of the action of the department of revenue....” There is no mention of declaratory rulings, especially on issues outside of the Commission’s jurisdiction under Section 73.01(4)(a). There were no amendments made by 2011 Wis. Act 68 to 73.01(5) describing who can appeal to the Commission, for example, adding language like “any person, organization, or taxation authority aggrieved by a declaratory ruling of the department of revenue.”

The question ultimately is, given the broad authority of the Department and the relatively limited jurisdiction of the Commission, is the Commission truly tasked by the legislature with reviewing declaratory rulings issued by the Department on topics outside the Commission’s statutory jurisdiction, such as the lottery, residential property tax, unclaimed property issues, or as in this case, whether or not Wis. Stat. §§ 59.605(3)(c) and/or 66.0602(3) require a County’s levy limit be decreased and a municipality’s levy limit be increased because of changes to the provision of law enforcement services? We do not believe that our authority is so expansive.

#### CONCLUSIONS OF LAW

1. The Commission’s power to review declaratory rulings issued by the Department under Wis. Stat. § 227.41(5) is limited to matters within the Commission’s jurisdiction under Chapter 73.
2. The subject of the declaratory ruling issued by the Department in this case involves the construction and application of Wis. Stat. § 59.605, which is outside

of the Commission's jurisdiction under Chapter 73.

3. The Commission lacks subject matter jurisdiction over the Petitioner's appeal.

**ORDER**

The Petitioner's Petition for Review is hereby dismissed.

Dated at Madison, Wisconsin, this 14th day of August, 2024

**WISCONSIN TAX APPEALS COMMISSION**

  
\_\_\_\_\_  
Elizabeth Kessler, Chair

  
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Jessica Roulette, Commissioner

  
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Kenneth P. Adler, Commissioner

**ATTACHMENT: NOTICE OF APPEAL INFORMATION**