

FILED

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Wisconsin Tax Appeals Commission

STATE OF WISCONSIN

TAX APPEALS COMMISSION

Drew Fox - Clerk

ALEX PACKARD,

Petitioner,

DOCKET NO. 25-I-098

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

ELIZABETH KESSLER, CHAIR:

This matter appears before the Commission based on a motion to dismiss filed by the Wisconsin Department of Revenue (the "Department"), based on Petitioner's failure to state a claim upon which relief can be granted. The Department additionally asked the Commission to uphold the Department's assessment of Petitioner's income tax liability for the 2022 tax year. Petitioner asked the Commission to find that fundamental fairness requires us to find in his favor, because he did not know he had to report his gambling income, or know that Wisconsin uses the "gambling session" method for determining income tax gains and losses for gambling income unless the individual meets the legal definition of a professional gambler, which he does not, or know that gambling losses were not deductible. Petitioner did not argue that the Department made errors either of fact or of law in the assessment of his income tax liability for the 2022 tax

year.

Petitioner Alex Packard represented himself. Attorney Bridget Laurent represented the Wisconsin Department of Revenue. Both parties filed briefs and exhibits in support of their positions. The Commission has no equitable powers, and therefore no power to grant much of the relief sought by Petitioner; we are strictly limited by the statutory authority granted to us by the legislature. Having considered the entire record, the Commission determines that it must grant the Department's motion to dismiss.

PROCEDURAL FACTS

1. Mr. Alex Packard timely filed a 2022 Wisconsin individual income tax return. (Affidavit of Kristopher Margo, "Margo Aff.," ¶ 5.)
2. Mr. Packard did not report any gambling income on his 2022 Wisconsin individual income tax return. (Margo Aff. ¶ 5)
3. On October 26, 2023, the Wisconsin Department of Revenue issued a Notice of Audit Amount Due - Individual Income Tax to Mr. Packard, in the amount of \$99,565.83, for the 2022 tax year. This represented a total of \$91,948 in taxes plus \$7,617.83 in interest which had accrued up to the date of October 26, 2023. (Margo Aff. ¶ 10, Ex. B.¹)
4. Mr. Packard timely filed a petition for redetermination with the

¹ The Commission notes that interest continued to accrue after October 26, 2023. This Ruling was issued on June 23, 2026, meaning that interest continued to accrue for more than two and a half years after the Notice was sent to Mr. Packard. Wis. Stat. § 71.84(1) provides that, with limited exceptions, "there shall be added to the aggregate tax for the taxable year interest at the rate of 12 percent per year on the amount of the underpayment for the period of the underpayment." In other words, these numbers were accurate as of the listed dates, but Petitioner should be aware that the actual interest he will be charged is likely to be significantly higher than the amount listed here.

Department on December 12, 2023. (Ex. C.)

5. The Department issued a Notice of Action denying Mr. Packard's petition for redetermination on May 13, 2025. (Ex. D.)

6. Mr. Packard timely filed a Petition for Review with the Tax Appeals Commission on July 10, 2025. (Commission file.)

MATERIAL FACTS

7. In 2023, the Department received numerous W-2G forms from "Wisconsin casinos"² indicating specific instances of Mr. Packard having gambling winnings meeting the federal minimum threshold reporting requirement of \$1200. The presence of these W-2Gs combined with no reported gambling income led to the Department's initial audit of Mr. Packard's 2022 individual income tax return. (Margo Aff. ¶¶ 5-7.)

8. On October 18, 2023, the Department requested and received a Wage and Income Transcript from the Internal Revenue Service. This contained all of Mr. Packard's W-2G forms received by the IRS from casinos located across the United States. The total 2022 gambling winnings reflected in these forms is \$1,169,038.³ (Margo Aff. ¶¶ 8-9; Ex A.)

² The Commission notes that the Potawatomi Hotel and Casino, which is the source of many of the W-2G forms attached to the Margo Aff. as Ex. C, is located both within the borders of the State of Wisconsin and on land held in trust for the benefit of the Forest County Potawatomi Community, a federally recognized Tribal Nation, with sovereignty over such lands. The State of Wisconsin does not have jurisdiction over sovereign Forest County Potawatomi Community land.

³ Exhibit A is document without page numbers which is well over 100 pages in length. Each page contains 2-3 W-2G records of gambling winnings. The pages are not organized in such a way as to make determining the total an easy task. A casual perusal of this document reveals winnings ranging from \$1,205 - \$39,845 from casinos located in multiple states.

9. Mr. Packard did not provide any evidence indicating that his gambling winnings in 2022 were incorrectly calculated or were, in fact, a different amount.

10. The sole piece of documentary evidence which is implied to be related to Mr. Packard's gambling income in 2022, provided by Mr. Packard, is a single-page document from the Potawatomi Hotel & Casino, which is labeled in bold at the top of the page "THIS DOCUMENT IS NOT A TAX DOCUMENT." The document stated that Fire Keeper's Club Card #1279740 recorded a loss of \$171,317.79 over the course of the 2022 calendar year. (Packard Answer to Motion to Dismiss, Ex. C.)

11. Mr. Packard did not provide evidence connecting Fire Keeper's Club Card #1279740, or the 2022 recorded loss of \$171,317.79 associated with that card, to his own gambling activities, nor connecting this Fire Keeper's Club Card to any of his W-2G documents from Department's Ex. A.

12. Mr. Packard disputed the fairness of calculating gambling income based on the "session method" used by the Department but did not provide evidence documenting actual gambling losses, or business expenses related to a gambling related business, using any alternative accounting method.

13. Mr. Packard did not provide any evidence indicating that the Department made any errors of law or of fact in its assessment of his 2022 individual income tax.

APPLICABLE LAW

Federal Tax Code

26 CFR § 1.6041-10 Return of information as to payments of winnings from bingo, keno, and slot machine play.

(a) **In general.** Every person engaged in a trade or business (as defined in § 1.6041-1(b)) and who, in the course of such trade or business, makes a payment of reportable gambling winnings (defined in paragraph(b)(1) of this section) must make an information return with respect to such payment. Unless the provisions of paragraph (g) of this section (regarding aggregate reporting) apply, a separate information return is required with respect to each payment of reportable gambling winnings.

(b) **Definitions-(1) Reportable gambling winnings.** (i) For purposes of this section, the term reportable gambling winnings is defined as follows:

...

(C) **For slot machine play,** the term "reportable gambling winnings" means winnings of \$1200 or more from one slot machine play, without reduction for the amount wagered.

IRS Guidance

IRS Publication 525 (2022)

Gambling winnings. You must include your gambling winnings in your income on Schedule 1 (Form 1040), line 8b. Winnings from fantasy sports leagues are gambling winnings. If you itemize your deductions on Schedule A (Form 1040), you can deduct gambling losses you had during the year, but only up to the amount of your winnings. If you're in the trade or business of gambling, use Schedule C (Form 1040). For tax years 2018 through 2025, professional gambling losses and expenses are limited to the amount of your winnings. (Emphasis added.)

IRS Form W-2G "Instructions to Winner" (2022)

Generally, report all gambling winnings on the "Other income" line of Schedule 1 (Form 1040). You can deduct gambling losses as an itemized deduction, but you cannot deduct more than your winnings. Keep an accurate record of your winnings and losses, and be able to prove those amounts with receipts, tickets, statements, or similar items that you have saved. For additional information, see Pub. 529, Miscellaneous Deductions; and Pub. 525, Taxable and Nontaxable Income. (Emphasis added.)

Wisconsin Statutes

Wis. Stat. § 71.02(1): IMPOSITION OF TAX. (1) For the purpose of raising revenue . . . there shall be assessed, levied, collected and paid a tax on all net incomes of individuals and fiduciaries . . . by every natural person residing within the state

Wis. Stat. § 71.80(1): DEPARTMENT DUTIES AND POWERS. (a) The department shall assess incomes as provided in this chapter and in performance of such duty the department shall possess all powers now or hereafter granted by law to the department in the assessment of personal property and also the power to estimate incomes.

Wis. Stat. § 73.01(5)(b): The petition shall set forth specifically the facts upon which the petitioner relies, together with a statement of the propositions of law involved

Wisconsin Department of Revenue Guidance

Fact Sheet 1104: Gambling Winnings (2022)

What You Should Know About the Taxation of Gambling Winnings in Wisconsin

Can I Deduct My Gambling Losses in Wisconsin? (p.2)

For taxpayers who gamble as a hobby, Wisconsin has adopted the "gambling session" method of determining gains and losses for tax reporting purposes. A "gambling session" is a period of continual play with only a short break in play (restroom break, beverage break, table/machine change, game change etc.)

The taxpayer then reports the net gains from all winning sessions for the year in Wisconsin taxable income if the winning sessions have a situs in Wisconsin. If the taxpayer has losing sessions, the net losses from those sessions are not deductible for Wisconsin income tax purposes.

...

For taxpayers that are Wisconsin residents, gambling income has a situs in Wisconsin regardless of where the gambling activity takes place.

MOTION TO DISMISS AND SUMMARY JUDGMENT

The Department has filed a motion to dismiss this case for Petitioner's failure to state a claim upon which relief can be granted. Because the Department also filed an affidavit in support of the motion, the Commission treats the Department's motion to dismiss as a motion for summary judgment. *See* Wis. Stat. §§ 802.06(3) and 802.06(2)(b); *see also Mrotek, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-315 (WTAC 1997) (where the Department submitted matters outside of the pleadings, motion for judgment on the pleadings treated as motion for summary judgment) and *City of Milwaukee v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-405 (WTAC 1999) (where parties submitted affidavits and briefs, a motion to dismiss for failure to state a claim was treated as motion for summary judgment). Summary judgment is warranted where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Wis. Stat. § 802.08(2).

DISCUSSION

Assessments made by the Department are presumed to be correct, and the burden is upon the Petitioner to prove by clear and satisfactory evidence in what respects

the Department erred in its determination. *Edwin J. Puissant, Jr. v. Dep' t of Revenue, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984)*. In order to prove that an assessment is incorrect, a Petitioner must respond to the information presented by the Department with some form of concrete evidence supporting their own opinion of the correct assessment. In this case, that would be in the form of concrete documentation supporting the Petitioner's actual gambling losses that offset his documented gambling winnings provided by the Department. Petitioner did not provide clear and satisfactory evidence to that end, and thus did not meet his burden.

Petitioner's initial filing with the Commission simply stated that he appealed the assessment notice "for the period of December 31, 2022," and included a copy of the Department's Notice of Action dated May 13, 2025. While the Commission considers this sufficient to initiate a Petition for Review, it did not make the basis of his appeal immediately clear. On August 29, 2025, Petitioner filed a document titled "Statement of Facts." This was a two-page document which was extremely difficult to understand. In this document Petitioner seemed to be claiming to have a gambling recording business which he believed should make his gambling losses tax deductible. He also appeared to ask the Commission to order the Department to educate people about gambling income taxation law, citing the issuance of 1099 forms as evidence of the authority that this could be done. Finally, he stated that "all gambling winnings from casinos should not be allowed to be taxed until [the Department has] addressed these scenarios." The Commission does not find this document to be a clear written basis for Petitioner's objection under the requirements of Wis. Stat § 73.01(5)(b).

In a telephone status conference on September 29, 2025, the Department requested, and the Commission ordered, Petitioner to provide a clear, written basis for his objection to the Department before the next telephone status conference on December 2, 2025. He did not. During the December 2, 2025, telephone status conference, he explained that he did not provide it because the Department did not provide answers to his discovery requests. Petitioner also filed a motion to compel discovery. While the Commission denied Petitioner's motion on procedural grounds, we also explained that he would be unlikely to succeed on the merits because he was "asking the Department to answer questions about the policies and practices of casinos, and the Department is not a casino."

Petitioner was again ordered to provide the Department with a clear written basis for his objection, no later than close of business on Monday, February 9, 2026. He was also warned that continued failure to comply with orders from the Commission placed his petition at ever-increasing risk of dismissal.

On February 5, 2026, Petitioner filed a document titled "Objection to Facts of Wisconsin Department of Revenue Unreported Gambling Income," with the Commission which was intended to comply with that order. This document reiterated Petitioner's demand that the Department should educate taxpayers with postings, paperwork or brochures similar to speed limit signs. Petitioner also filed an unsigned document dated February 20, 2026, in which he stated:

I appeal the WI DOR denial of my gambling losses for my Social [sic] media business venture. They do not get to decide what constitutes as such when every question they asked I

provided proof to constitute the opposite of their claim. That is what this is all about.

For the purpose of the motion to dismiss, the Commission will assume that, in 2022, Petitioner did have such a business. We cannot, however, also assume that Petitioner has detailed business records for this social media business. If he had such records, he would surely have produced them during the course of this dispute. As a business owner, Petitioner had the responsibility to keep such business records in order to claim business expenses or to deduct any business losses; had there been income from the social media business, he would have been responsible for reporting such income to the IRS and the Department. The existence of a business related to gambling does not transform all gambling expenses into business expenses.

On February 20, 2026, the Department also filed its motion to dismiss for failure to state a claim upon which relief can be granted. While there was a telephone status conference on February 23, 2026, that motion was not addressed during that telephone status conference. During that conference, Petitioner explained that he did not dispute the tax laws of Wisconsin or the facts related to his income during the 2022 tax year as previously outlined by the Department. Petitioner reiterated his argument that he did not know that Wisconsin tax law related to gambling income is different from federal tax law related to gambling income and in his opinion, it is not fair for him to be subjected to those state income tax reporting laws. The Commission granted an adjournment until March 9, 2026, indicating that during the next telephone status conference the

Commissioner would speak with the parties in order to determine the most appropriate means by which to move the appeal toward resolution.

On March 9, 2026, the Commission held a telephone status conference to address that question as well as the Department's motion to dismiss the petition for failure to state a claim upon which relief can be granted. During that conference, Petitioner indicated that he would prefer to respond to the Department's motion in writing rather than verbally. Although he was offered more time, Petitioner indicated that 30 days was sufficient time to submit his response to the Commission and the Department. The Department indicated that it did not require the opportunity to file a reply to Petitioner's response.

In his written response, Petitioner reiterated his requests that the Commission provide a number of different kinds of relief, including: that the Department educate citizens about gambling tax procedures; that the Department no longer use the "gambling session" method of accounting for gambling income and losses; and that the Department require casinos to display tax reporting information for the State of Wisconsin.

These requests exceed the authority granted to the Commission by the State of Wisconsin. Some of the requests might be within the equitable power of the judicial branch, though likely not all. In the interest of efficiency, we will attempt to explain.

Regarding Petitioner's argument that the Department should better educate Wisconsin residents about gambling tax reporting requirements, similarly to the way speed limit signs are posted, we cannot agree. First, to the extent that a government

agency could reasonably be expected to inform an interested party of their gambling income tax reporting obligations, the IRS and the Department did. The IRS assisted the Department in ensuring that Wisconsin taxpayers like the Petitioner had the information they need to correctly report their gambling income by including reporting instructions on every single W-2G form. The 2022 W-2G forms included specific instructions to “report all gambling winnings on the ‘Other income’ line of Schedule 1 (Form 1040).” Petitioner received hundreds of these W-2G forms in 2022, every single one of which included those instructions.

The Department also published “Fact Sheet 1104: Gambling Winnings, What You Should Know About the Taxation of Gambling Winnings in Wisconsin” on the Department website. The document indicates that it was updated on January 4, 2022, alerting interested taxpayers as to how it intended to treat the taxation of gambling income. By Petitioner’s own submissions, the Department also appears to have a number of related videos on its website, though the videos themselves are not part of the record.

These are less obvious than road signs or advertising. It would be impossible for the State of Wisconsin to actively advertise the thousands of pages of different state laws to each and every resident of the state. Furthermore, most laws, including gambling income tax reporting laws, are not actively of interest to most individuals in the state. Should the state be required to advertise school vaccination regulations to people who do not have school-aged children? Should we all need to know what disciplinary actions are available against licensed professional land surveyors, or for those who violate the recordkeeping requirements for crematories? Of course not.

These things would be both absurd and impossible. Why, then, should the state have an obligation to actively alert everyone to the tax reporting requirements related to gambling income? We have made a collective decision that speed limit signs are important public safety tools that protect nearly everyone in the state. Very few laws have such broad social value.

The Petitioner's frustration over the Department's use of the "gambling session" method of calculating gambling income is different. We believe his concerns there have merit. Petitioner appears to have engaged in hundreds of gambling sessions in 2022, which resulted in sufficient gambling winnings to generate \$1,169,038 in W-2G income. It is statistically certain that Petitioner also had gambling losses in 2022. Because Petitioner did not keep daily or session diaries of his gambling losses (or his winnings), nor other corroborating documents, nor detailed records regarding the other individuals who were present during each gambling session, only the winnings are documented at the level of detail the Department requires when calculating gambling income from session winnings and losses. These winnings are only documented because of the third-party business records kept by unrelated businesses which reflect the Petitioner's individual session winnings exceeding \$1,200, not through any records, contemporaneous or otherwise, kept by Petitioner.

The Commission recognizes that keeping such detailed gambling winnings and loss records on a near-daily basis is uniquely burdensome for taxpayers who are frequent gamblers but not professional gamblers. Most activities that people engage in for fun do not also include the expectation that the participant will also routinely keep

detailed records when doing the activity. For a hobby activity such as gambling, which is also associated with addiction, it seems likely that the people most incapable of keeping the records required by the session method are the people most likely to suffer gambling losses equal to or greater than their gambling winnings. We hope that in the future the Department will consider accepting other credible forms of income and loss substantiation in the context of gambling income, such as third-party business records, as it does in other some other contexts, rather than adhering to this uniquely narrow and burdensome loss documentation requirement.

Finally, we address Petitioner's argument that the Department should require casinos to provide educational material about these tax reporting requirements to their customers.

To the extent that Petitioner gambled within the State of Wisconsin, he did much of that gambling in the Potawatomi Hotel and Casino, which is located within the borders of the City of Milwaukee and also on land held in trust for the benefit of the Forest County Potawatomi Community. The Forest County Potawatomi Community is a federally recognized Tribal Nation and has sovereignty over their trust land. The United States and the State of Wisconsin recognize them as a distinct, separate government. The Department has no authority to require another sovereign government to post signs explaining Wisconsin tax laws on its property. The Department is equally unable to compel any such behavior by casinos located in other states, regardless of who owns them.

CONCLUSIONS OF LAW

1. Assessments made by the Department are presumed to be correct and the burden is upon the petitioner to prove by clear and satisfactory evidence how the Department erred in its determination. Petitioner failed to meet his burden of proof to show that the Department assessment was incorrect. *Puissant v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶202-401 (WTAC 1984).

2. Petitioner's request that the Department educate residents of Wisconsin about gambling income tax reporting requirements is not a form of relief which this Commission has the authority to grant.

3. Petitioner's request that the Department require casinos located on trust land belonging to the Forest County Potawatomi Community, a federally recognized Native American Tribal Nation with sovereignty over their trust land, educate customers about Wisconsin gambling income tax reporting requirements is not a form of relief which this Commission has the authority to grant.

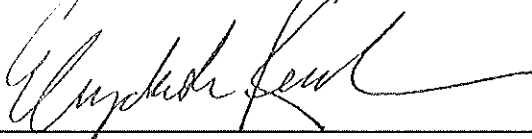
4. Petitioner's request that the Commission cancel a lawfully assessed and correctly calculated tax on income from W-2G gambling winnings because fundamental fairness requires it is not a form of relief which this Commission has the authority to grant.

ORDER

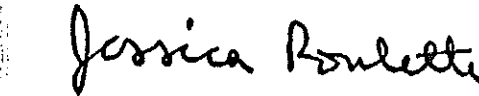
The Department's Motion to Dismiss is granted and the assessment is upheld.

Dated at Madison, Wisconsin, this 23rd day of June, 2026.

WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Chair



Jessica Roulette, Commissioner



Kenneth Adler, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION
101 E Wilson St, 5th Floor
Madison, Wisconsin 53703

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.