STATE OF WISCONSIN

FILED

AUG 2 8 2026

TAX APPEALS COMMISSION

Wisconsin Tax Appeals Commission
Drew Fox - Clerk

THERMO FISHER SCIENTIFIC (MILWAUKEE) LLC,

DOCKET NOS.
20-M-129, 20-M-130, 21-MR-152, 21-MR-153,
22-MR-075, 22-MR-076,
24-MR-075, AND
24-MR-076

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER ON THE CITY OF MILWAUKEE'S MOTION TO INTERVENE AS A PARTY WITH FULL PARTICIPATION REGARDING PETITIONS FILED BY THERMO FISHER SCIENTIFIC (MILWAUKEE) LLC

ELIZABETH KESSLER, CHAIR:

This issue has come before the Commission for a pretrial Ruling and Order on the City of Milwaukee's Motion to Intervene as a party with full participation in the proceedings of each of the above-listed matters. This Motion, Brief in Support of the Motion, supporting documents, and subsequent Brief in Reply were filed for City Attorney Evan C. Goyke by Assistant City Attorney Hannah R. Jahn, on behalf of the City of Milwaukee ("Milwaukee"). The property owner, Thermo Fisher Scientific (Milwaukee) LLC ("Thermo Fisher"), represented by Attorney Thomas R. Wilhelmy, opposed Milwaukee's Motion, and filed a Brief in Opposition as well as a Statement of

Clarification in response to the Commission's request that any interested party file such a brief document between August 4-14, 2026. The Wisconsin Department of Revenue ("Department") is represented in this matter by Attorney Jeremy Lange; although the Department did not actively participate in the dispute over Milwaukee's status.[1]

SUMMARY OF PROCEDURAL HISTORY

The difficulty in resolving this issue is in no small part related to the complexity of the procedural history. This Ruling and Order addresses appeals with eight separate docket numbers, covering matters filed by Thermo Fisher over four years; it does not address four remaining appeals with separate docket numbers filed in 2026. The matters at issue, filed by Thermo Fisher are: 20-M-129, 20-M-130, 21-MR-152,[2] 21-MR-153, 22-MR-075, 22-MR-076, 24-MR-075, and 24-MR-076. Milwaukee filed appeals covering the same property in two of the tax years at issue: 20-M-144, 20-M-145, 22-MR-089, and 22-MR-090. The issues in those appeals are addressed in a separate, companion, Ruling and Order.

At various points during the years these disputes have been live, the Commission has issued Memoranda and Orders referring to Milwaukee as a Petitioner and as an Intervenor. Milwaukee has referred to itself as a Petitioner, a Respondent,[3] a

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[1] After June 24, 2025, which will be discussed in detail subsequently.

[2] Effective January 1, 2021, the Commission revised its docketing practices. Prior to that time all manufacturing petitions were assigned a docket number beginning with the last two digits of the year, then the letter M, and finally, a three-digit number indicating that a specific petition was the XXNth to be filed that year. Beginning January 1, 2021, the use of the letter M alone was replaced using "MR" when docketing petitions for review of manufacturing real property and "MP" when docketing petitions for review of manufacturing personal property.

[3] e.g. Notice of Cross Appeal, March 4, 2022.

Cross-Appellant, an Intervenor, and without specific designation. Very early in the proceedings Thermo Fisher did not appear to object to Milwaukee being characterized as a Petitioner, however, as soon as trial dates began to be seriously discussed, that changed and Thermo Fisher began to object to Milwaukee participating as a party. The Commission has, on two previous occasions, declined to formally rule on Milwaukee's status in these matters.

None of the confusion was helped by the fact that responsibility for these disputes has been before at least four Commissioners[4] since 2020; that the Commission has inconsistently captioned these matters; or that on at least one occasion the Commission has erroneously identified the municipality in this dispute as Green Bay instead of Milwaukee.

Those errors pale by comparison to the Commission's failure to notify Milwaukee in April 2024 when we removed these cases from abeyance. From April 12, 2024, through June 24, 2025, the Commission held numerous status conferences, set pretrial practice deadlines, and had gotten as far as scheduling these matters for a four-day evidentiary hearing planned for September 16-19, 2025.

The only communication with Milwaukee during that time that appears in the Commission's records is a single memorandum to the file from the Commission Clerk reflecting a call on March 14, 2025, from an unnamed "attorney with the City of Milwaukee" asking for an update on cases regarding Thermo Fisher. When the Clerk told

[4] In addition to four Commissioners, there have also been three different Department attorneys and two different Assistant City Attorneys responsible for these matters since 2020, further limiting any practical institutional memory. Even Thermo Fisher is now represented by only one of its original two attorneys.

her that they were scheduled for trial, she "wanted to know which cases had the City of Milwaukee listed as an intervenor." It does not appear that the Clerk answered the question on the phone, as the memorandum to file also indicates that "She stated she would send an email to Tax Appeals requesting an update[] on the docket numbers they have on file to see if the City of Milwaukee should be listed as a party on the cases currently open at TAC." The Commission does not appear to have independently followed up on that inquiry; standard practice in the Commission would have been for the Clerk to alert the presiding Commissioner to the call and seek instructions for any follow-up beyond the memorandum to file. There is also no record of the Commission receiving a follow-up email from Milwaukee.

Three months after that call, on June 24, 2025, the Department wrote a letter to the Commission in which it identified the problem both by "captioning" the twelve docket numbers listed at the top of the letter as either "Thermo Fisher v. Wisconsin Department of Revenue" or "City of Milwaukee v. Wisconsin Department of Revenue" and then descriptively explaining the procedural history.

This letter formally alerted the Commission to the fact that beginning when the Thermo Fisher matters were removed from abeyance in April 2024, no notice of any proceeding in these matters was sent to counsel for Milwaukee.

The Department's letter summarized Milwaukee's involvement in these matters as well as Thermo Fisher's appeals of the 2016,[5] 2017,[6] and 2018[7] tax years. It also pointed out that Thermo Fisher had a motion, filed in 2022, objecting to allowing Milwaukee to formally become a cross-appellant; the Commission had originally declined to rule on that because it applied only to the docket numbers that were already in abeyance at the time. The Department indicated that, having been in communication with Milwaukee, the City was very much interested in participating in these matters before the Commission.

Finally, the Department asked for the then-current trial schedule to be lifted and for a status conference to be scheduled within the next few weeks, to include counsel for Milwaukee.

On July 7, 2025, the Commission issued a "Notice of Prehearing Conference" to the Department, Thermo Fisher, and Milwaukee, which was ultimately held on August 8, 2025. The purpose of the conference was described as to discuss and potentially set a briefing schedule for questions regarding Milwaukee's status as a cross-appellant, intervenor, or some other formal party to docket numbers 20-M-144, 20-M-145, 22-MR-089, and 22-MR-090, the petitions filed with the Commission by Milwaukee.

[5] Commission docket number 17-M-138: filed May 12, 2017, and dismissed by Stipulation and Order September 1, 2023.
[6] Commission docket numbers 18-M-057 and 18-M-058: filed February 26, 2018, and dismissed by Stipulation and Order September 1, 2023.
[7] Commission docket numbers 19-M-170 and 19-M-171: filed May 20, 2019, and dismissed by Stipulation and Order September 1, 2023.

On August 22, 2025, the Commission issued a Briefing Scheduling Order, which notes that during the August 7, 2025, prehearing conference Thermo Fisher suggested that Milwaukee file a Motion clarifying the level and nature of the participation in these matters that the City is requesting for each of the years, and implicitly the docket numbers, which are outstanding. This eight-page document, with 17 attachments, also reviewed the procedural history of these disputes before the Commission. Ultimately, the Commission indicated that the parties agreed to its orders that Milwaukee would:

(1) confirm in which appeals it is requesting participation and
(2) explain in what capacity it is requesting to participate and
(3) provide the legal foundations for those requests.

The final deadline in the accompanying briefing schedule was Friday, November 21, 2025. No action appears to have been taken in that matter between November 21, 2025, and Commissioner Adler's resignation, which was effective June 28, 2026, with the possible exception of the scheduling and rescheduling of telephone status conferences in April and May 2026.

The pleadings ordered filed in the August 22, 2025, Briefing Scheduling Order were never recorded on the Commission's Decision List, the internal document used to keep track of all anticipated written material deadlines from parties, as well as the Commissioners' own writing calendars, internal deadlines, and statutory deadlines. The fact that there was an outstanding Motion in these matters first came to the attention of the Commission Chair Kessler on July 28, 2026, when she held a telephone status conference with all of the interested parties to explain that Commissioner Adler had resigned, address the challenge inherent in the reassignment of these matters,[8] and generally seek a status update from the parties.

In addition to explaining that they were stuck and unable to effectively move forward with discovery until Milwaukee's status as a party or an intervenor was made clear, the parties also informed Chair Kessler that Commissioner Adler had indicated to the parties he had outstanding questions related to the Motions, and that there was an outstanding request from Milwaukee for oral argument on the Motions.

Chair Kessler consulted the Decision List and her calendar. Although the Commission's writing schedule during the second half of 2026 includes an exceptional number of summary judgment rulings, with statutory deadlines for the issuance of final rulings and decisions, and Chair Kessler was scheduled to be out of the office for part of August, she believed that this matter should be prioritized in order to permit these parties to resume making progress towards resolution of these disputes. As such, she committed to the parties that she would review the record and identify outstanding questions related to the Motions by August 4; if she had questions she would issue a briefing schedule on that date. If she did not have any additional questions, she would attempt to issue a ruling on the Motions by August 7, 2026; otherwise she would issue a ruling by August 28, 2026. Ultimately, Chair Kessler sought clarification of one point in the record, whether Thermo

[8] These matters, and all manufacturing real property disputes located in the City of Milwaukee were assigned to Commissioner Adler during his tenure with the Commission, in an effort to avoid the appearance of impropriety. While Chair Kessler and Commissioner Roulette believe they can make neutral and objective decisions in such matters, Chair Kessler is both a resident of the City of Milwaukee and a former employee of the City of Milwaukee Assessor's Office, and Commissioner Roulette is married to a current employee of the City of Milwaukee Assessor's Office.

Fisher had accepted Milwaukee as a cross-appellant for any of the years[9] at issue, and offered all parties the opportunity to address that, very narrowly and in writing, while she was out of the office. Only Thermo Fisher responded.

STATUTORY AND CASE LAW

There are specific statutes describing the process by which municipalities and property owners can challenge the Department's assessments. In addition to the specific process described in our statutes, the parties, and our previous case law, have addressed several other statutes by which administrative agencies and courts may include municipalities in matters similar to this.

> Wis. Stat. § 70.995(8)(a)
> The secretary of revenue shall establish a state board of assessors, which shall be comprised of the members of the department of revenue whom the secretary designates. The state board of assessors shall investigate any timely objection filed under par. (c) or (d) if the fee under that paragraph is paid. The state board of assessors, after having made the investigation, shall notify the person assessed or the person's agent and the appropriate municipality of its determination by 1st class mail or electronic mail. Beginning with objections filed in 1989, the state board of assessors shall make its determination on or before April 1 of the year after the filing. If the determination results in a refund of property taxes paid, the state board of assessors shall include in the determination a finding of whether the refund is due to false or incomplete information supplied by the person assessed. The person assessed or the municipality having been notified of the determination of the state board of assessors shall be deemed to have accepted the determination unless the person or municipality files a petition for review with the clerk of the tax appeals commission as provided in s. 73.01 (5) and the

[9] The question came from a footnote in Milwaukee's November 21, 2025, Reply brief, which identified the years at issue as 2019 and 2020. From context, we presume Milwaukee meant the two tax years for which it filed appeals, 2019 and 2021. Milwaukee did not file a response to the Commission's August 4, 2026, Request for Clarification.

rules of practice promulgated by the commission. If an assessment is reduced by the state board of assessors, the municipality affected may file an appeal seeking review of the reduction, or may, within 30 days after the person assessed files a petition for review, file a cross-appeal, before the tax appeals commission even though the municipality did not file an objection to the assessment with the board. If the board does not overrule a change from assessment under this section to assessment under s. 70.32 (1), the affected municipality may file an appeal before the tax appeals commission. If an assessment is increased by the board, the person assessed may file an appeal seeking review of the increase, or may, within 30 days after the municipality files a petition for review, file a cross-appeal, before the commission even though the person did not file an objection to the assessment with the board.

...

If a municipality appeals, its appeal shall set forth that the appeal has been authorized by an order or resolution of its governing body and the appeal shall be verified by a member of that governing body as pleadings in courts of record are verified.

...

In the case of appeals from manufacturing property assessments, the person assessed shall be a party to a proceeding initiated by a municipality.

Wis. Stat. § 73.01(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. § 803.09 INTERVENTION.

(1) Upon timely motion anyone shall be permitted to intervene in an action when the movant claims an interest

relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest, unless the movant's interest is adequately represented by existing parties.
(2) Upon timely motion anyone may be permitted to intervene in an action when a movant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order or rule administered by a federal or state governmental officer or agency or upon any regulation, order, rule, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely motion may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.
(2m) When a party to an action challenges in state or federal court the constitutionality of a statute, facially or as applied, challenges a statute as violating or preempted by federal law, or otherwise challenges the construction or validity of a statute, as part of a claim or affirmative defense, the assembly, the senate, and the legislature may intervene as set forth under s. 13.365 at any time in the action as a matter of right by serving a motion upon the parties as provided in s. 801.14.
(3) A person desiring to intervene shall serve a motion to intervene upon the parties as provided in s. 801.14. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

Milwaukee also raises:

Wis. Stat. § 227.44 CONTESTED CASES; NOTICE; PARTIES; HEARING; RECORDS.
(1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Except in the case of an emergency, reasonable notice shall consist of mailing notice to known interested parties at least 10 days prior to the hearing.
(2) The notice shall include:

(a) A statement of the time, place, and nature of the hearing, including whether the case is a class 1, 2 or 3 proceeding.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held, and, in the case of a class 2 proceeding, a reference to the particular statutes and rules involved.

(c) A short and plain statement of the matters asserted. If the matters cannot be stated with specificity at the time the notice is served, the notice may be limited to a statement of the issues involved.

(d) If the subject of the hearing is a decision of the department of natural resources or the department of transportation, the name and title of the person who will conduct the hearing.

(2m) Any person whose substantial interest may be affected by the decision following the hearing shall, upon the person's request, be admitted as a party.

(3) Opportunity shall be afforded all parties to present evidence and to rebut or offer countervailing evidence. (emphasis added)

Wis. Stat. § 803.03 JOINDER OF PERSONS NEEDED FOR JUST AND COMPLETE ADJUDICATION.

(1) Persons to be joined if feasible. A person who is subject to service of process shall be joined as a party in the action if:

(a) In the person's absence complete relief cannot be accorded among those already parties; or

(b) The person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may:

1. As a practical matter impair or impede the person's ability to protect that interest; or

2. Leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of his or her claimed interest.

(2) Claims arising by subrogation, derivation and assignment.

(a) Joinder of related claims. A party asserting a claim for affirmative relief shall join as parties to the action all persons who at the commencement of the action have claims based upon subrogation to the rights of the party asserting the principal claim, derivation from the

> principal claim, or assignment of part of the principal claim. For purposes of this section, a person's right to recover for loss of consortium shall be deemed a derivative right. Any public assistance recipient or any estate of such a recipient asserting a claim against a 3rd party for which the public assistance provider has a right of subrogation or assignment under s. 49.89 (2) or (3) shall join the provider as a party to the claim. Any party asserting a claim based upon subrogation to part of the claim of another, derivation from the rights or claim of another, or assignment of part of the rights or claim of another shall join as a party to the action the person to whose rights the party is subrogated, from whose claim the party derives his or her rights or claim, or by whose assignment the party acquired his or her rights or claim.

Wis. Stat. § 74.41 CHARGING BACK REFUNDED OR RESCINDED TAXES; SHARING CERTAIN COLLECTED TAXES
(2)(bm)
The tax under sub. (1) was refunded or rescinded for any of the 5 assessment years immediately preceding the year in which the form under sub. (1) is submitted or refunded or rescinded because of a court determination and submitted under sub. (1) no later than one year after the date of the court's determination.

City of Niagara v. Wisc. Dep't of Revenue and Niagara of Wisconsin Paper Corp., CCH ¶400-329 (Wisconsin Tax Appeals Commission, Nos. 97-M-22 and 97-M-23, November 25, 1997).

Xerox Corp v Wisc. Dep't of Revenue, CCH ¶400-653 (Wisconsin Tax Appeals Commission, Nos. 02-M-66 and 02-M-67, December 23, 2002).

ANALYSIS

I. CAN MILWAUKEE BE A FULL PARTY CROSS APPELLANT?

Municipalities rarely appear before this Commission. When they do, it is most frequently as non-party intervenors, but there is clear statutory authority for municipalities to appear as parties before the Commission as well. The source of that statutory authority is the combination of Wis. Stat. § 70.995(8)(a) and Wis. Stat. § 73.01(5).

Wis. Stat. § 70.995(8)(a) authorizes municipalities to appeal assessments before they reach the Commission, at the State Board of Assessors. First, the State Board of Assessors notifies both the person assessed and the appropriate municipality of the outcome following the investigation of an initial objection to an assessment. It continues, explaining the options available to either party if they want to appeal that outcome:

> If an assessment is reduced by the state board of assessors, the municipality affected may file an appeal seeking review of the reduction, or may, within 30 days after the person assessed files a petition for review, file a cross-appeal, before the tax appeals commission even though the municipality did not file an objection to the assessment with the board.

This is a complex sentence, so the Commission turned to *The Redbook* for guidance. Rule 11.49 explains, "A dependent clause cannot stand alone as a sentence…but depends on the main clause to complete its meaning.[10]" In this case, "if an assessment is reduced" is the condition required to complete the meaning of both main clauses. Garner further explains that conjunctions are used to show the time, place or manner of the relationship between a subordinate clause and the main clause. *Ibid.* In other words, the clause, "if the assessment is reduced," is required in order for either manner of action to be taken, "may file an appeal," or, in the alternative, "or may, within 30 days...file a cross-appeal...."

In *Niagara,* the Commission further explained the limited circumstances under which a municipality is permitted to cross-appeal. We held, "the statutes and cases

[10] *The Redbook: A Manual on Legal Style,* Garner, Bryan A., ed., pp. 236-237 (4th ed. 2018).

on cross-appeals in Wisconsin courts do not control cross-appeals before the Commission. Cross-appeals before the Commission are governed by the particular statutes affecting the Commission." Our commentary in that decision, on ways in which the burden which the presumption of correctness might equitably or logically be balanced, is mere dicta.

Niagara includes an exhaustive legislative history of municipal standing to object to Department of Revenue assessments between 1974, when the Department took over the responsibility from local assessors, and *Niagara's* publication in 1997. As we explained in *Niagara*, municipalities have had unequal assessment appeals rights in the Wisconsin statutes since the Department of Revenue has been responsible for the assessment of manufacturing property. Although there have been a handful of additional legislative changes since 1997, such as the repeal of the taxation of personal property as of January 1, 2024, none have altered the pathways to municipal standing before the Tax Appeals Commission. Neither have any appeals to Wisconsin courts, which have both general jurisdiction and much broader equitable powers than this Commission. We recognize that these decisions are typically interlocutory in nature and may be difficult for a municipality to get before a court.

We continue to hold, as we held in *Niagara*, that the more general statutes and cases on cross-appeals in Wisconsin courts, such as Chapters 227 and 803, do not control cross-appeals before the Commission. Cross-appeals before the Commission are governed by the particular statutes affecting the Commission.

Milwaukee admitted in its pleadings that it does not meet the definition of "aggrieved" under Wis. Stat. § 73.01(5), because the Board of Assessors sustained the assessment of Thermo Fisher's property for the 2019 and 2021 tax years, which are the years addressed by Milwaukee's appeals 20-M-144, 20-M-145, 22-MR-089, and 22-MR-090. When a person is not aggrieved by a decision of the Board of Assessors, the Commission lacks jurisdiction to hear their appeal.

II. WHAT LIMITATIONS ARE THERE, IF ANY, TO MILWAUKEE'S STATUS AS AN INTERVENOR?

Since *Xerox*, the Commission has generally allowed municipalities to intervene in both real property and personal property appeals, subject to limitations similar to those ordered in *Xerox*. Those were:

> 1. Neither intervenor will be entitled to any relief with respect to any item of personal property that is more favorable to the intervenor than that provided by the State Board of Assessors;
>
> 2. Neither intervenor will have the power to object to any stipulation or settlement entered into by petitioner and respondent;
>
> 3. Each intervenor will be able to participate in all hearings, conferences, and trial; offer evidence (both documents and witness testimony); make arguments; and file briefs, except that an intervenor may not offer evidence that contradicts a fact established by a stipulation between petitioner and respondent or that has been rendered moot or irrelevant by such a stipulation.
>
> 4. Subject to the limitations of this paragraph, each intervenor may engage in discovery of petitioner and respondent as provided in Chapter 804, and petitioner and respondent may engage in discovery of each intervenor as provided in Chapter 804. Petitioner and respondent shall not serve requests for admission upon either intervenor, because an admission by either intervenor is meaningless and not binding on respondent and petitioner. Intervenors may serve requests for admissions upon both petitioner and respondent;

> however, any admission established by such service and response/non-response shall be disregarded to the extent it is contradicted by a stipulation between petitioner and respondent. In addition, the Commission is very concerned about the potential for overly burdensome discovery, given that each party and intervenor may engage in discovery. Therefore, the parties and intervenors are cautioned to use common sense and courtesy in formulating and serving discovery requests and in considering requests for extensions. Moreover, the parties are alerted to the provisions of TA 1.35(2).

Aside from the irrelevant first item, these principles are reasonable limitations on Milwaukee's participation and are not *inherently* unduly burdensome on Thermo Fisher. Milwaukee will be able to engage in discovery, participate fully in conferences, hearings and at any trial that may be scheduled. There are some narrow limitations around Milwaukee's ability to offer evidence in conflict with stipulated facts, should Thermo Fisher and the Department be able to develop stipulated facts. If discovery issues become unduly burdensome, or any participant in this dispute does not engage in the discovery process in good faith, that will be addressed by the Commission as needed.

Milwaukee's concern that its interests may diverge from the Department's in the event of a settlement remains a potential issue, but such issues are only likely to take place following considerable discovery and discussion. Such an outcome is possible, but not certain. Furthermore, Milwaukee will have ample opportunity to voice its opinions of value and reasons supporting them to the Department. There is no actual reason to believe that the Department will fail to zealously defend its assessments, and with the presumption of correctness weighing in its favor, the burden of proof already falls heavily on Thermo Fisher.

III. WIS. STAT. § 74.41: THE STATUTE OF LIMITATIONS REGARDING CHARGING BACK REFUNDED TAXES

The final point Milwaukee raised that the Commission will address at this time is Wis. Stat. § 74.41(2)(bm), the statute of limitations related to charging back of refunded or rescinded taxes.

First, this is a hypothetical point. In order for Milwaukee to owe a tax refund to Thermo Fisher, this matter will have to be resolved in Thermo Fisher's favor, or settled to some significant degree in Thermo Fisher's favor. Either of those outcomes is possible, but neither is certain.

Second, it is already too late for Milwaukee to charge back these hypothetical refunds in several of the disputed tax years. The oldest tax year at issue in these disputes is 2019, which is already outside of the scope of 74.41(2)(bm), as is 2020. The next tax year at issue is 2021. Given that the next telephone status conference in this matter is scheduled for December 8, 2026, it will also be outside of the scope of the charge back statute before this matter is fully resolved at the Commission.

Much of the delay is outside of Milwaukee's control, and it is, also hypothetically, possible that had Milwaukee been properly notified when these disputes were removed from abeyance in April 2024 that some of these tax years would have been resolved within the scope of the charge back statute.[11]

Milwaukee is understandably frustrated by these circumstances and concerned about potential financial liability. This frustration and the financial burden are real, legitimate concerns, but they are not within the power of the Commission to resolve. The hypothetical outcome in favor of Thermo Fisher is not among the reasons the Commission can grant Milwaukee full party status as a cross-appellant. Neither is the potentially increased tax burden on Milwaukee residents because of litigation delays. The Commission has not been granted any statutory power to protect Milwaukee against these possible inequitable outcomes.

CONCLUSIONS OF LAW

1. Municipal appeals and cross-appeals before the Tax Appeals Commission are governed by particular statutes affecting the Commission, Wis. Stat. § 70.995(8)(a) and Wis. Stat. § 73.01(5).

2. Chapters 227 and 803 of the Wisconsin Statutes do not control municipal cross-appeals before the Tax Appeals Commission.

3. Milwaukee does not have the right to participate in this matter as a full party cross-appellant, because it was not aggrieved under Wis. Stat. § 73.01(5).

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[11] Assuming that the trial schedule set by Thermo Fisher and the Department would have been the same if Milwaukee had been involved from the beginning, it would have been held from September 16-19, 2025. Commission precedent indicates that a final decision would not have been issued until 2026, excluding the 2019 and 2020 tax years from the statute of limitations of the charge back statute.

4. Milwaukee has the right to participate in these matters as an Intervenor, subject to certain limitations similar to those ordered in *Xerox Corp v Wisc. Dep't of Revenue* CCH ¶400-653 (2002).

5. Wis. Stat. § 74.41(2)(bm) does not create a right for a municipality to participate in this matter as a full party cross-appellant.

ORDERS

1. Milwaukee, as an intervenor, will be able to participate in all hearings, conferences, and trial; offer evidence (both documents and witness testimony); make arguments; and file briefs, except that an intervenor may not offer evidence that contradicts a fact established by a stipulation between petitioner and respondent or that has been rendered moot or irrelevant by such a stipulation.

2. Milwaukee, as an intervenor, will not have the power to object to any stipulation or settlement entered into by petitioner and respondent;

3. Subject to the limitations of this paragraph, Milwaukee, as an intervenor, may engage in discovery of petitioner and respondent as provided in Chapter 804, and petitioner and respondent may engage in discovery of Milwaukee as provided in Chapter 804. Petitioner and Respondent shall not serve requests for admission upon Milwaukee, because an admission by an intervenor is meaningless and not binding on Respondent and Petitioner. Milwaukee may serve requests for admissions upon both Petitioner and Respondent; however, any admission established by such service and response/non-response shall be disregarded to the extent it is contradicted by a stipulation between Petitioner and Respondent. In addition, the Commission is very

concerned about the potential for overly burdensome discovery, given that each party and the intervenor may engage in discovery. Therefore, the parties and the intervenor are cautioned to use common sense and courtesy in formulating and serving discovery requests and in considering requests for extensions. Moreover, the parties are alerted to the provisions of TA 1.35(2).

4. Future materials filed in these disputes shall be captioned: THERMO FISHER SCIENTIFIC (MILWAUKEE) LLC, Petitioner, v. WISCONSIN DEPARTMENT OF REVENUE, Respondent, and CITY OF MILWAUKEE, Intervenor.

Dated in Madison, Wisconsin, this 28th day of August, 2026.

WISCONSIN TAX APPEALS COMMISSION

Elizabeth Kessler, Chair