

ROBIN J. URBAN

Petitioner,

vs.

Case No. 16 CV 87

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

11/17/17

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**DECISION AND ORDER**

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This is a Wis. Stat. Ch. 227 review of a September 28, 2016, Ruling and Order issued by the Wisconsin Tax Appeals Commission ("Commission") in Docket No. 15-S-200-SC. The Commission granted Respondent's Motion for Summary Judgment with respect to assessing use tax liability and statutory interest against petitioner, but not assessing penalties, and denying Petitioner's Motion for Summary Judgment. Respondent subsequently withdrew its claim for an assessment of a penalty. Petitioner requested that this matter be held open until Spring of 2017, because he is out of the country. Since this Court's decision is based only upon the record established before the Agency and is conducted without a hearing or jury, and this Court is not requesting briefs or other input from the parties, the Court can render its decision without delay.

**FACTS**

On June 17, 2010, Petitioner purchased a boat for \$18,000. The purchase took place in Wisconsin, but the Petitioner did not title, register the boat, or pay sales tax in Wisconsin at the time of purchase. Petitioner made repairs to the boat in Wisconsin and then moved the boat to Delaware. Petitioner registered the boat in Delaware, but did not pay sales or use tax because Delaware does not assess sales or use tax to the sale of boats. On June 11, 2013, Petitioner registered and titled the boat in

Wisconsin, indicating that its county of primary use was Door County, but did not pay Wisconsin sales or use tax upon registration of the boat in Wisconsin. On the Wisconsin registration form Petitioner indicated a Tax Exempt Code 4 (Paid to another state) and a Tax-Exempt Description of "Purchase in 2009, taxes and registration paid to Delaware." In a notice dated May 9, 2014, the Department of Revenue issued to Petitioner a Notice of Amount Due – Occasional Consumer Use seeking use tax based upon the 2010 purchase of the boat and its 2013 use in Wisconsin. Initial computations were based upon an estimated \$35,900 taxable value, which was later changed to a taxable value of \$18,000. The tax amount due was \$990.00, plus interest and penalty. The Agency moved for summary judgment, requesting a finding of liability for use tax, interest, and penalty as a matter of law. The Petitioner objected to the Agency's assessment of use tax as a consequence of registering his boat in Wisconsin and requested Summary Judgment for an order that no sales or use tax or interest and penalty was due.

#### STANDARD OF REVIEW

While an agency's interpretation and application of a statute is a question of law to be determined by a court, a reviewing court may nonetheless give deference to the agency's interpretation. *Milwaukee Symphony Orchestra, Inc., vs Wis Dep't of Revenue*, 2010 WI 33, ¶32.

A reviewing court accords three levels of deference to an agency's statutory interpretation: great weight, due weight, or no weight. Great weight deference is granted when all of the following requirements are met: (1) the agency is charged by the legislature with the duty of administering the statute; (2) the agency interpretation is one of long standing; (3) the agency employed its expertise or specialized knowledge in forming its interpretation; and (4) the agency's interpretation will provide uniformity and consistency in the application of the statute. *Racine Harley – Davidson, Inc.* at ¶16 (citing *Harnischfeger Corp. v. LIRC*, 196 Wis.2d 650, 660, 539 N.W.2d 98 (1995)). Due weight deference is granted when the agency has some experience in the area, but has not developed the expertise that necessarily places it in a better position than a court to make judgments regarding the interpretation of the statute. *Id.* at ¶ 18 (citing *UFE Inc. v. LIRC*, 201 Wis.2d 274, 286, 548 N.W.2d 57 (1996)). A reviewing

court affords no deference, or *de novo* review, to an agency's statutory interpretation when any of the following conditions are met: (1) the issue is one of first impression; (2) the agency has no experience or expertise in deciding the legal issue presented; or (3) the agency's position on the issue has been so inconsistent as to provide no real guidance. It is the petitioner's burden to show that the agency's interpretation should be overturned. See *Telemark Dev. Inc. v. Dep't of Revenue*, 218 Wis.2d 809, 821, 581 N.W. 2d 585 (1998).

The Commission has extensive experience in the administration of the sales and use tax statutes and has been charged by the legislature with interpreting those statutes. In addition, the Agency has employed its expertise and specialized knowledge in forming its interpretation under which conditions sales and use taxes are due. The Agency determination in this matter is one of long standing. Furthermore, the interpretation provides uniformity and consistency in the application of the sales and use tax statutes by clarifying on whom and under what circumstances the statutes seek to impose tax. Therefore, the great weight deference is appropriate in this matter.

#### APPLICABLE LAW

##### 77.53 Imposition of use tax.

(1) [A]n excise tax is levied and imposed on...the storage, use or other consumption in this state of tangible personal property and items or property under s.77.52 (1) (b) or (c) purchased from any retailer, at the rate of 5 percent of the purchase price of the property or items [.]

77.60(1)(a) Except as provided in par. (b), unpaid taxes shall bear interest at the rate of 12 percent per year from the due date of the return until paid or deposited with the department.

77.61(1)(a) No motor vehicle, boat, snowmobile, recreational vehicle, as defined in s. 340.01 (48r), trailer, semitrailer, all-terrain vehicle, utility terrain vehicle, off-highway motorcycle, or aircraft shall be

registered or titled in the state unless the registrant presents proof that the sales or use taxes imposed by this subchapter have been paid.

**Wis.Admin.Code §Tax 11.85(3) Payment of tax.**

(a) No boat may be registered in Wisconsin unless the registrant presents proof that the sales or use tax has been paid or that the transaction was exempt. If the registrant does not present proof that the tax has been paid, the registrant shall pay the tax at the time the boat is registered or titled in Wisconsin, even though the boat may also be used out-of-state.

**DISCUSSION**

Petitioner disputes that he owes sales or use tax based on the purchase of the boat in Wisconsin and the subsequent registration of that boat in Wisconsin. It is not disputed that sales tax was not paid when the boat was purchased in Wisconsin, that a sales or use tax was not paid when the boat was registered in Delaware, or that a use tax was not paid upon registration of the boat in Wisconsin.

In addition, the case came before the Commission on summary judgment motions filed by both parties. 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 are before the court. *Eischenseer v. Madison-Dane County Tavern League, Inc.*, 2008 WI 38, ¶ 4, 308 Wis. 2d 684, 748 N.W. 2d 154. This court will not set aside the Commission's findings of fact.

Petitioner requests that based on the actions of the Wisconsin Department of Revenue, including fraud, that the tax and interest should not be imposed. The Commission found that those allegations were without merit and denied Petitioner's Summary Judgment Motion. This Court has reviewed the submissions by Petitioner and agrees that his arguments are without merit and are not supported by any statutory interpretation. Petitioner failed to argue that the Agency failed to interpret the statutes correctly.

The Commission granted Respondent's Motion for Summary Judgment based upon a finding that there was no genuine issue of material fact and that the Agency correctly interpreted the statutes. The Commission found that pursuant to Wisconsin Statutes a sales tax is due upon the purchase of a boat in

Wisconsin, and a use tax is due upon the registration of a boat in Wisconsin, if a sales or use tax has not previously been paid. Petitioner did not pay a sales tax upon the purchase of the boat in Wisconsin, or upon its registration in Delaware or use tax upon its registration in Wisconsin. The Agency properly imposed a use tax regarding the Petitioner's boat since no sales tax or use tax was previously paid. Regarding interest on the use tax due, the Agency has no discretion on the assessment of interest pursuant to §77.60(1) Wis. Stats.

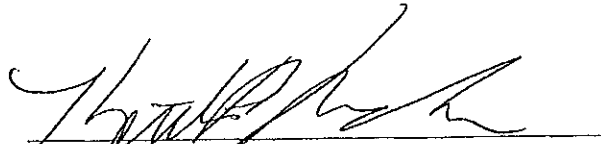
This Court is persuaded that the interpretation and application of Wis. Stats. §77.53, §77.61(1)(a) and §77.60 (1)(a) adopted by the Commission in this case is reasonable and supported by substantial evidence. The plain language of the statutes is clear that use tax is due from the petitioner and statutory interest must be assessed.

#### CONCLUSION AND ORDER

For the reasons stated above, the September 28, 2016, Ruling and Order issued by the Wisconsin Tax Appeals Commission denying Petitioner's summary judgment motion and granting Respondent's summary judgment motion is affirmed.

Dated this 23<sup>rd</sup> day of February, 2017.

BY THE COURT,



Hon. Keith A. Menn  
Circuit Court Judge