

State of Wisconsin



1999 Assembly Bill 136

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1999 WISCONSIN ACT 145

AN ACT to *renumber* 85.013 (2) and 341.43; to *amend* 73.01 (4) (a), 73.01 (4) (e) 1., 73.01 (4) (e) 2., 73.01 (5) (a) and 341.43 (title); and to *create* 85.013 (2) (b) and 341.43 (2) of the statutes; **relating to**: transferring appeals of certain determinations of the department of transportation from the division of hearings and appeals to the tax appeals commission.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 73.01 (4) (a) of the statutes is amended to read:

73.01 (4) (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. 70.11 (21), 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), 76.91, 77.26 (3), 77.59 (6) (b), 78.01, 78.22, 78.40, 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76 and 139.78, 341.405 and 341.45, subch. XIV of ch. 71 and subch. VII of ch. 77. Whenever with respect to a pending appeal there is filed with the commission a stipulation signed by the department of revenue and the adverse party, under s. 73.03 (25), or the department of transportation and the adverse party agreeing to an affirmance, modification or reversal of the department's department of revenue's or department of transportation's position with respect to some or all of the issues raised in the appeal, the commission shall enter an order affirming or modifying in whole or in part, or canceling the assessment appealed from, or allowing in whole or in part or denying the petitioner's

refund claim, as the case may be, pursuant to and in accordance with the stipulation filed. No responsibility shall devolve upon the commission, respecting the signing of an order of dismissal as to any pending appeal settled by the department of revenue or the department of transportation without the approval of the commission.

SECTION 2. 73.01 (4) (e) 1. of the statutes is amended to read:

73.01 (4) (e) 1. Except for hearings on ss. 341.405 and 341.45 and except as provided in subd. 2., the department of revenue shall be deemed to acquiesce in the construction so adopted unless the department of revenue seeks review of the order or decision of the commission so construing the statute. For purposes of this subdivision, the department of revenue has sought review of the order or decision if it seeks review and later settles the case or withdraws its petition for review or if the merits of the case are for other reasons not determined by judicial review. The construction so acquiesced in shall thereafter be followed by the department of revenue.

SECTION 3. 73.01 (4) (e) 2. of the statutes is amended to read:

73.01 (4) (e) 2. ~~The~~ Except for hearings on ss. 341.405 and 341.45, the department of revenue may choose not to appeal and to nonacquiesce in the decision or order by sending a notice of nonacquiescence to the

* Section 991.11, WISCONSIN STATUTES 1997-98: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

clerk of the commission, to the revisor of statutes for publication in the Wisconsin administrative register and to the taxpayer or the taxpayer's representative before the time expires for seeking a review of the decision or order under s. 73.015. The effect of this action is that, although the decision or order is binding on the parties for the instant case, the commission's conclusions of law, the rationale and construction of statutes in the instant case are not binding upon or required to be followed by the department of revenue in other cases.

SECTION 4. 73.01 (5) (a) of the statutes is amended to read:

73.01 (5) (a) Any person who is aggrieved by a determination of the state board of assessors under s. 70.995 (8) or by the department of revenue under s. 70.11 (21) 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. Any person who is aggrieved by a determination of the department of transportation under s. 341.405 or 341.45 may, within 30 days after the determination of the department of transportation, file with the clerk of the commission a petition for review of the action of the department of transportation and the number of copies of the petition required by rule adopted by the commission. 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. The clerk of the commission shall transmit one copy to the department of revenue, or to the department of transportation, and to each party. In the case of appeals from manufacturing property assessments, the person assessed shall be a party to a proceeding initiated by a municipality. At the time of filing the petition, the petitioner shall pay to the commission a \$25 filing fee. The commission shall deposit the fee in the general fund. Within 30 days after such transmission the department of revenue, except for petitions objecting to manufacturing property assessments, or the department of transportation, shall file with the clerk of the commission an original and the number of copies of

an answer to the petition required by rule adopted by the commission and shall serve one copy on the petitioner or the petitioner's attorney or agent. Within 30 days after service of the answer, the petitioner may file and serve a reply in the same manner as the petition is filed. Any person entitled to be heard by the commission under s. 76.38 (12) (a), 1993 stats., or s. 76.39 (4) (c), 76.48 or 76.91 may file a petition with the commission within the time and in the manner provided for the filing of petitions in income or franchise tax cases. Such papers may be served as a circuit court summons is served or by certified mail. For the purposes of this subsection, a petition for review is considered timely filed if mailed by certified mail in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the last day for filing.

SECTION 5. 85.013 (2) of the statutes is renumbered 85.013 (2) (a).

SECTION 6. 85.013 (2) (b) of the statutes is created to read:

85.013 (2) (b) Any hearing under s. 227.42 shall be held before the tax appeals commission under s. 73.01 if the hearing concerns an additional assessment, refund or denial of refund under any of the following:

1. The international registration plan under s. 341.405.
2. A fuel tax agreement under s. 341.45.

SECTION 7. 341.43 (title) of the statutes is amended to read:

341.43 (title) Audits and appeals.

SECTION 8. 341.43 of the statutes is renumbered 341.43 (1).

SECTION 9. 341.43 (2) of the statutes is created to read:

341.43 (2) Any person feeling aggrieved by a notice under this section of additional assessment, refund or denial of refund may, within 30 days after the receipt of the notice, petition the department for a redetermination. A person feeling aggrieved by a redetermination may appeal to the tax appeals commission in the manner provided for appeals of tax determinations under s. 73.01 (5). If an appeal of a redetermination is not filed within the time period provided under s. 73.01 (5), the redetermination is final and conclusive.

SECTION 10. Initial applicability.

(1) This act first applies to appeals that are filed on the effective date of this subsection.