

**2007-2009 BIENNIAL REPORT OF THE
WISCONSIN TAX APPEALS COMMISSION**

As required by Wis. Stat. § 15.04(1)(d), this is the report on the operation of the Wisconsin Tax Appeals Commission for the 2007-2009 biennium.

ORGANIZATION

The Tax Appeals Commission is an independent state agency. Its organization, powers, duties, and functions are governed by Chapter 73 of the Wisconsin Statutes. Pursuant to Wis. Stat. § 15.03, budgeting, program coordination, and related management functions are performed by the Commission, under the general direction and supervision of the Secretary of the Department of Administration.

The Commission consists of three full-time commissioners who are nominated by the Governor, with the advice and consent of the State Senate, for staggered six-year terms. Every two years, one of the commissioners is designated Chairperson by the Governor. The Commissioners and the expiration of their terms of office during the 2007-2009 biennium were as follows:

| <u>Commissioner</u> | <u>Expiration of Term</u> |
|--|---------------------------|
| Diane E. Norman, Acting Chairperson ¹ | March 1, 2013 |
| David C. Swanson, Chairperson ² | March 1, 2011 |
| Roger W. LeGrand ³ | March 1, 2015 |
| Thomas J. McAdams ⁴ | March 1, 2013 |

During the 2007-2009 biennium, the support staff of the Commission consisted of the following employees in the classified service:

| <u>Employee</u> | <u>Classification</u> | <u>Working Title</u> |
|-----------------|-----------------------|---|
| Nancy Batz | OPA(B) | Legal Assistant |
| Bonnie Jorstad | OA | Clerk/Receptionist/ Scheduling Assistant |

¹ Resigned from the Commission in February 2008.

² Acting Chairperson from February through April 2008; appointed Chairperson on May 1, 2008.

³ Appointed in April 2008; reappointed as of March 1, 2009.

⁴ Appointed in August 2008.

FUNCTIONS

Created in 1939, the Tax Appeals Commission (preceded by the Board of Tax Appeals) is a quasi-judicial state agency whose primary function is to hear and determine disputes between taxpayers and the Wisconsin Departments of Revenue and Transportation. As such, it operates much as the United States Tax Court does on the federal level.

Pursuant to the provisions of Wis. Stat. § 73.01(4), and subject to judicial review, the Commission is the final authority for the hearing and determination of all questions of fact and law arising in the following areas of state taxation: individual income, corporation franchise/income, fiduciary, withholding, gift, sales and use, recycling surcharge, county sales tax, car line, cigarette use, controlled substances, metalliferous minerals occupation, motor fuel and alternative fuel, International Registration Plan fees, intoxicating liquor, cigarettes and tobacco products, homestead credit, farmland preservation credit, assessments of manufacturing property, pollution abatement, taxation district appeals regarding the relative value of taxable property in taxation districts of a county, real estate transfer fees, telephone license fees, and electric cooperative association license fees.

Commission hearings generally are held in either Madison or Milwaukee. The Commission also occasionally schedules hearings at other locations within the State when convenient for the taxpayers and other parties. Budgetary constraints generally require the Commission to limit commissioners' travel and hold more hearings in Madison, sometimes requiring taxpayers to travel further distances to meet the personal appearance requirements of the statutes.

When travel is particularly inconvenient or impractical, the Commission will allow a party to testify by telephone when all parties consent to this arrangement. This procedure saves time and expense for taxpayers and the State. Hearings are typically conducted by one commissioner. Other than Small Claims appeals, decisions are made by a majority of the Commission, after discussion and review of the evidence and briefs submitted by the parties.

A party may appeal an adverse decision of the Commission to circuit court. During the 2007-2009 biennium, the Wisconsin circuit courts, Court of Appeals and Supreme Court considered a number of appeals of past Commission decisions and consistently affirmed those decisions.

CASE LOAD

The following is a comparison of the number of appeals filed and disposed of in the last five fiscal years:

| <u>Fiscal Year</u> | <u>Filed</u> | <u>Disposed</u> |
|--------------------|--------------|-----------------|
| 2008-09 | 225 | 251 |
| 2007-08 | 209 | 195 |
| 2006-07 | 256 | 342 |
| 2005-06 | 305 | 724 |
| 2004-05 | 278 | 495 |

The following table shows the types of appeals filed during the 2007-2009 biennium:

| <u>Type of Appeal</u> | <u>FY '07-08 Number</u> | <u>FY '08-09 Number</u> |
|----------------------------------|-----------------------------|-----------------------------|
| (I) Income and Franchise Tax | 87 | 115 |
| (S) Sales and Use Tax | 31 | 32 |
| (M) Manufacturing Assessments | 46 | 36 |
| (H) Homestead Credit | 21 | 19 |
| (T) Real Estate Transfer Fee | 8 | 8 |
| (V) Vehicle | 1 | 6 |
| (W) Withholding Tax | 13 | 7 |
| (L) Liquor excise Tax | 0 | 1 |
| (C) Cigarette Tax | 0 | 1 |
| (D) Controlled Substances | 0 | 0 |
| (F) Farmland Preservation Credit | 0 | 0 |
| (R) Recycling Surcharge | 2 | 0 |
| (U) Utility | 0 | 0 |
| (O) Other | 0 | 0 |
| (X) Event Tax | 0 | 0 |
| Total | 209 | 225 |

MANAGEMENT OF APPEALS

During the 2007-2009 biennium, the number of appeals pending before the Commission remained consistent. The following table shows, by month and fiscal year, the number of appeals filed, the number of appeals disposed of, and the balance of appeals on hand:

| <u>Month</u> | <u>FY '07-08</u> | | | <u>FY '08-09</u> | | |
|--------------|------------------|-----------------|----------------|------------------|-----------------|----------------|
| | <u>Filed</u> | <u>Disposed</u> | <u>Balance</u> | <u>Filed</u> | <u>Disposed</u> | <u>Balance</u> |
| June (06) | | | 269 | | | 283 |
| July | 17 | 15 | 271 | 15 | 12 | 285 |
| August | 14 | 19 | 266 | 19 | 9 | 295 |
| September | 16 | 13 | 269 | 11 | 31 | 275 |
| October | 21 | 22 | 268 | 22 | 65 | 232 |
| November | 10 | 10 | 268 | 20 | 19 | 233 |
| December | 30 | 10 | 288 | 19 | 23 | 229 |
| January | 20 | 24 | 284 | 20 | 22 | 227 |
| February | 9 | 15 | 278 | 22 | 16 | 233 |
| March | 16 | 18 | 276 | 18 | 6 | 245 |
| April | 18 | 14 | 280 | 15 | 29 | 231 |
| May | 22 | 23 | 279 | 27 | 9 | 249 |
| June | 16 | 12 | 283 | 17 | 10 | 256 |

GOALS AND OBJECTIVES

Appeals filed with the Commission continue to range from relatively simple, straightforward cases to cases involving complex legal issues, which often present questions of first impression and voluminous factual records. The Commission has continued to be flexible in presiding over appeals on a case-by-case basis, utilizing different procedures for the various types of appeals it handles.

Recent experience indicates that the Commission's caseload continues to be dominated by the more complicated appeals, which require an expenditure of a greater amount of time and resources to resolve. In those appeals, the Commission has implemented procedures such as pretrial conferences to narrow the focus at trial and to reduce the number of disputes over tangential factual issues. In order to advance consideration of the substantive issues, it has also made an effort to promptly resolve any non-dispositive disputes, such as discovery or evidentiary motions.

The Commission believes that taxpayers in the less complicated, more straightforward appeals are entitled to prompt resolution of their appeals. To that end, the procedures in certain small claims cases have been simplified in order to expedite consideration of those appeals.

During the 2007-2009 biennium, the Commission engaged in a comprehensive review of its rules of practice and procedure in Chapter TA 1 of the Wisconsin Administrative Code. In 2008, the Commission published a Proposed Rule-Making Order revising and updating those rules and held a public hearing regarding the proposed order on September 17, 2008. The Commission expects to complete its final revision of the proposed rules during the 2009-2011 biennium.

The Commission has only two support staff, and budgetary concerns prevent adding staff. Staff members ensure that the Commission's office is open during business hours and handle communications with parties who have cases pending before the Commission, inquiries from the public, and all filing, calendaring and scheduling. Because neither current staff member is a court reporter, the preparation of hearing transcripts is contracted out on an as-needed basis. Due to the small size of the staff, issues of flexible work hours or alternative work patterns have not been addressed.

Despite the challenges presented by budget reductions, the Commission remains committed to providing Wisconsin taxpayers with a fair, impartial, and thorough consideration of every tax appeal.

Dated at Madison, Wisconsin, this 15th day of October, 2009.

WISCONSIN TAX APPEALS COMMISSION



David C. Swanson, Chairperson