

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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RODNEY A. SAWVELL  
D/B/A PRAIRIE CAMPER SALES (P),

DOCKET NO. 06-S-140 (P)

Petitioner,

vs.

**RULING AND ORDER  
GRANTING MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT**

WISCONSIN DEPARTMENT OF REVENUE

Respondent.

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**DAVID C. SWANSON, COMMISSIONER:**

This matter comes before the Commission for a ruling on a motion for partial summary judgment filed by respondent, the Wisconsin Department of Revenue ("Department"). Petitioner, Rodney A. Sawvell, doing business as Prairie Camper Sales ("Petitioner"), is represented by Attorney Mark A. Peterson of Peterson, Antoine & Peterson, S.C., who has submitted an affidavit with exhibits, a brief and certain additional documents in opposition to the Department's motion. The Department is represented by Attorney Linda M. Mintener, who has submitted affidavits with exhibits, a brief and a reply brief in support of the motion.

Having considered the entire record herein, the Commission finds, rules, and orders as follows:

**JURISDICTIONAL AND MATERIAL FACTS**

1. Since 1978, Petitioner has owned and operated Prairie Camper Sales, which is located in the Town of Prairie du Chien, Wisconsin, approximately one

mile from the Mississippi River and the Iowa border. Approximately 95% of Petitioner's business consists of sales of non-motorized recreational vehicles, including campers, travel trailers, 5<sup>th</sup>-wheel campers and park campers (collectively herein, "campers or trailers"). Petitioner's other business activities include servicing such vehicles and selling related parts and supplies.

2. Petitioner has held Wisconsin Seller's Permit No. 301882 since February 19, 1980.

3. Many of Petitioner's sales are made to residents of Iowa, and the sales at issue in this matter were all made to Iowa residents.

4. Prior to the commencement of this matter, Petitioner's standard practice had been to collect and remit any Wisconsin sales tax due on the purchase of a camper or trailer by a Wisconsin resident to the Department. When selling to customers from other states, including Iowa, Petitioner typically advised the purchasers to pay any sales or use tax due on their purchases to the state where the vehicle would be titled, registered and licensed. Petitioner did not collect or remit any Wisconsin sales tax on these purchases to the Department, nor did he collect and remit sales tax to any other state, including Iowa.

5. In 2004, the Department conducted a field audit of Petitioner's sales and use tax payments for the period at issue and determined that Petitioner had not collected and remitted Wisconsin sales tax on his sales of campers or trailers to non-residents even when said vehicles had been transferred to the buyers in Wisconsin.

6. Prior to the 2004 field audit, the Department had not disputed the accuracy or adequacy of Petitioner's sales and use tax filings and payments.

7. On August 21, 2005, the Department issued to Petitioner a Notice of Amount Due and Notice of Field Audit Action showing a sales/use tax assessment against Petitioner for the period January 1, 2000 through December 31, 2003 (the "period at issue") in the total amount of \$40,044.35, which included \$30,324.67 in tax, \$9,719.68 in interest (at 12%) and no penalty (the "Assessment").

8. The Assessment mainly involves: (1) sales tax on Petitioner's sales of campers or trailers to non-residents where the transfers occurred in Wisconsin; and (2) Wisconsin state and county use tax on some of Petitioner's expense purchases. No part of the Assessment involves sales of motorized vehicles.

9. On or about September 26, 2005, Petitioner filed a petition for redetermination of the Assessment with the Department.

10. On March 20, 2006, the Department denied the petition for redetermination and issued to Petitioner a Notice of Amount Due with interest updated to May 16, 2006, in the total amount of \$42,118.05.

11. Petitioner timely filed a petition for review with the Commission on May 20, 2006.

12. On June 5, 2006, the Department filed its answer to the petition.

13. On February 2, 2007, the Department filed a notice of motion and motion for partial summary judgment pursuant to Wis. Stat. § 802.08 and Wis. Admin. Code §§ Tax Appeals 1.31(1) and 1.39, with supporting affidavits, exhibits and brief, arguing that there is no genuine issue as to any material fact and that the Department is entitled to judgment as a matter of law with respect the issues discussed herein. The Department subsequently filed a corrected copy of its brief on April 11, 2007.

14. On March 22, 2007, Petitioner filed a brief in opposition to the motion with supporting affidavit and exhibits. In his brief, Petitioner requests that the Commission strike the Department's motion and award Petitioner reasonable costs and attorney's fees because the Department cited an unpublished opinion of the Wisconsin Court of Appeals without citing it as such. (Pet. Brief at II.)

15. On April 12, 2007, Petitioner filed an additional exhibit in support of his position.

16. On April 16, 2007, the Department filed its reply brief.

17. Petitioner's sales of campers or trailers to non-residents that are at issue in the Assessment all occurred in Wisconsin, and the vehicles sold were all delivered to the purchasers in Wisconsin.

18. Petitioner has conceded that his sales of campers or trailers to non-residents that are at issue in the Assessment were subject to Wisconsin sales tax, but asserts the doctrine of equitable estoppel as a defense against the Assessment.

19. Petitioner has conceded that the portion of the Assessment in which the Department assessed use tax on purchases on which he paid no sales tax, where the property was used or stored in Wisconsin other than for resale, is correct.

20. The Assessment does not include any county sales tax, and the county use tax assessed relates only to the portion of the Assessment that Petitioner has conceded to be correct.

21. At various times before, during and after the period at issue, Petitioner contacted personnel at the Department, the Wisconsin Department of Transportation (“WDOT”), the Iowa Department of Revenue and the Iowa Department of Transportation and requested advice regarding state sales and use taxes.

22. Since approximately 1977, the Department has consistently taken the position in its publications that sales of non-motorized recreational vehicles, such as those at issue in this matter, to residents and non-residents are taxable when the transfer takes place in Wisconsin, and that the exemption provided under Wis. Stat. § 77.54(5)(a) does not apply to such sales.

23. As a result of the Department’s field audit, Petitioner, with the consent of his affected Iowa customers, applied to the Iowa Department of Revenue (“Iowa DOR”) for a refund of the Iowa use tax that these customers had paid to Iowa when they had registered their campers or trailers at issue in this matter in Iowa. Petitioner claimed a refund in the total amount of \$30,471.89 for the period of April 2000 through December 2003. The Iowa DOR granted Petitioner a partial refund in the total

amount of \$21,978.25 (\$19,563.00 plus interest to May 2005) (the "Iowa Refund"), but denied his claim for the years 2000 and 2001 because Petitioner had filed his claim for those years outside the applicable Iowa statute of limitations.

24. Petitioner currently is holding the Iowa Refund and states that he intends to pay it to either the Department or to the State of Iowa, apparently depending upon the outcome in this matter.

25. Petitioner now collects and remits Wisconsin sales tax on sales of campers and trailers to non-residents where the vehicles are delivered to the buyers in Wisconsin.

### **ISSUES PRESENTED**

1. Did Wisconsin sales tax apply to Petitioner's sales of the subject campers and trailers to non-residents of Wisconsin where such campers and trailers were delivered to the buyers in Wisconsin?

2. Has Petitioner contested any Wisconsin use tax or Wisconsin county tax in this petition?

3. Is Petitioner entitled to any credit for the Iowa sales or use tax that some of his customers paid to the State of Iowa when they registered the subject campers and trailers in Iowa, where Iowa has refunded a portion of those taxes to Petitioner?

4. Does the Assessment result in any impermissible double taxation?

5. Can Petitioner assert the doctrine of equitable estoppel as a defense against the Assessment based on alleged information provided by the Iowa Department of Revenue, Iowa Department of Transportation or Wisconsin Department of Transportation, or based on the Department's alleged lack of action or failure to act or upon any information provided after the end of the audit period?

## RULING

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). A party moving for summary judgment has the burden to establish the absence of a genuine, that is, disputed, issue as to any material fact. *Grams v. Boss*, 97 Wis. 2d 332, 338-39, 294 N.W.2d 473 (1980). Any doubts as to the existence of a genuine issue of material fact are to be resolved against the moving party. *Id.* at 338-339 (citations omitted). The Department has moved for partial summary judgment in this matter with respect to five specific issues, which are discussed below.

**1. Did Wisconsin sales tax apply to Petitioner's sales of the subject campers and trailers to non-residents of Wisconsin where such campers and trailers were delivered to the buyers in Wisconsin?**

Petitioner has conceded that his sales of campers or trailers to non-residents that are at issue in the Assessment were subject to Wisconsin sales tax. The sales of campers or trailers to non-residents that are at issue in the Assessment all

occurred in Wisconsin, and the vehicles sold were all delivered to the purchasers in Wisconsin. Under Wisconsin law, these sales were taxable. *See*, Wis. Stats. §§ 77.51(13), 77.51(14r), 77.52(1), 77.52(13), 77.54(5)(a); Wis. Admin. Code § Tax 11.83(1)(b) and (4); *see, also, Spickler Enterprises, Ltd. v. Wis. Dep't of Revenue*, Wis. Tax Rptr CCH ¶400-187 (WTAC 1995), *aff'd*, Wis. Tax Rptr CCH ¶400-279 (Dane Co. Cir. Ct. 1997), *aff'd in unpublished decision*, 215 Wis.2d 323, 572 N.W.2d 902 (Ct. App. 1997), *pet. den'd*, 216 Wis.2d 613, 579 N.W.2d 45 (Table) (1998); *Mrotek, Inc. v. Wis. Dep't of Revenue*, Wis. Tax Rptr CCH ¶400-315 (WTAC 1995). Consequently, there is no genuine issue as to a material fact with respect to this issue, and the Department is entitled to summary judgment on this issue.

**2. Has Petitioner contested any Wisconsin use tax or Wisconsin county tax in this petition?**

In his pleadings and responses to the Department's discovery requests, Petitioner has conceded that the portion of the Assessment in which the Department assessed use tax on purchases on which he paid no sales tax, where the property was used or stored in Wisconsin other than for resale, is correct. Furthermore, the Assessment does not include any county sales tax, and the county use tax assessed relates only to the portion of the Assessment that Petitioner has conceded to be correct. Consequently, no Wisconsin use tax or county tax is at issue in this matter, and the Department is entitled to summary judgment on this issue.

**3. Is Petitioner entitled to any credit for the Iowa sales or use tax that some of his customers paid to the State of Iowa when they registered the subject campers and trailers in Iowa, where Iowa has refunded a portion of those taxes to Petitioner?**

Petitioner, with the consent of his affected Iowa customers, applied to the Iowa Department of Revenue (“Iowa DOR”) for a refund of the Iowa use tax that these customers had paid to Iowa when they had registered their campers or trailers at issue in this matter in Iowa. The Iowa DOR granted Petitioner a partial refund in the total amount of \$21,978.25 (\$19,563.00 plus interest to May 2005) (the “Iowa Refund”), but denied his claim for the years 2000 and 2001 because Petitioner had filed his claim for those years outside the applicable Iowa statute of limitations. Petitioner states that he intends to pay the Iowa Refund either to the Department or back to Iowa, but currently retains possession of those funds.<sup>1</sup> However, Petitioner further asserts that, if he pays the Iowa Refund to the Department and thereby partially satisfies the Assessment, the Department should also credit him with the amount that the Iowa DOR refused to refund for the years 2000-2001 because Iowa’s statute of limitations had run before he filed his refund claim.

Petitioner’s claim rests on his personal concept of fairness, not law, and he cites no authority in support of his request for this credit. He states that he is willing to pay the amount of the Iowa Refund towards the Assessment, but objects to being required to pay the amount of the refund claim denied by the Iowa DOR, because those Iowa customers have already paid Iowa use tax and he believes that he should not be required to pay Wisconsin sales tax on the same transactions. He further insists that the Department should obtain these funds directly from the Iowa DOR, rather than requiring him to pay the tax on the sales that was due to Wisconsin.

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<sup>1</sup> In the pleadings, neither party addresses any differential in the applicable Wisconsin sales tax and Iowa use tax rates, or in the interest rates applicable to the Wisconsin deficiency and Iowa refund. However, it does not appear that any such differences would affect the calculation of the Assessment.

There is simply no basis in Wisconsin law for the Commission to order the Department to grant such a credit to Petitioner, or for the Department to allow such a credit, or for the Department to request additional funds from the Iowa DOR on behalf of Petitioner. The additional question of whether the Assessment might represent impermissible double taxation is discussed below.

**4. Does the Assessment result in any impermissible double taxation?**

As described above, Petitioner maintains that the portion of his Iowa refund claim denied by the Iowa DOR for years 2000-2001 represents transactions that have already been taxed, and that the Assessment therefore should be null and void with respect to those transactions because it results in double taxation of the same transactions. As a constitutional matter, the first state of purchase or use may impose a sales or use tax, and thereafter no other state may tax the transaction “unless there has been no prior tax imposed . . . or if the tax rate of the prior taxing state is less, in which case the subsequent taxing state imposes a tax measured only by the differential rate.” *Okla. Tax Com’n v. Jefferson Lines, Inc.*, 514 U.S. 175, 194 (1995) (citations omitted). Wisconsin follows this rule pursuant to Wis. Stat. § 77.53(16), which applies as a credit against Wisconsin sales tax the amount of sales or use tax paid to another state “in which the purchase was made” or “in which the sale occurred.” Wis. Stat. § 77.53(16).

There is no dispute in this matter that the sales at issue all occurred in Wisconsin, and that the purchases were made and the campers and trailers at issue were all delivered in Wisconsin. By paying Petitioner the Iowa Refund, Iowa has agreed that Wisconsin was the proper state to tax these transactions. By refusing to pay

the portion of his refund claim that is barred by its statute of limitations, Iowa is not asserting a right to tax these transactions.

Moreover, Petitioner has not been double-taxed. The use taxes from 2000-2001 that Iowa has retained were paid by Petitioner's customers, not Petitioner. If these transactions give rise to any constitutional claim, which is doubtful at best, it would be an action by Petitioner's 2000-2001 Iowa customers against the Iowa DOR for their unrefunded use taxes.

**5. Can Petitioner assert the doctrine of equitable estoppel as a defense against the Assessment based on alleged information provided by the Iowa Department of Revenue, Iowa Department of Transportation or Wisconsin Department of Transportation, or based on the Department's alleged lack of action or failure to act or upon any information provided after the end of the period at issue?**

Petitioner argues that he contacted personnel at the Department, the Wisconsin Department of Transportation ("WDOT"), the Iowa Department of Revenue and the Iowa Department of Transportation and requested advice regarding state sales and use taxes at different times before, during and after the period at issue. Petitioner states that he received conflicting advice from these various sources, some of which encouraged him to follow his previous standard practice of not collecting and remitting Wisconsin sales tax on sales of campers and trailers to Iowa residents even when the vehicles were delivered to the buyers in Wisconsin. Petitioner argues that the Commission therefore should bar the Department from pursuing the Assessment on the grounds of equitable estoppel.

In its motion, the Department requests that the Commission render summary judgment regarding certain applications of this doctrine. First, the Department requests that the Commission prohibit the use of equitable estoppel as a defense against the Assessment based on alleged information provided by the Iowa Department of Revenue, Iowa Department of Transportation or WDOT, because these parties do not represent the Department. Second, the Department requests that the Commission prohibit the use of equitable estoppel as a defense against the Assessment based on the Department's alleged lack of action or failure to act or upon any information provided after the end of the period at issue. The Department specifically limits its request so as not to attempt to prevent Petitioner from raising this defense with respect to the Department's own alleged action or non-action before or during the period at issue.

The defense of equitable estoppel consists of action or non-action which, on the part of one against whom estoppel is asserted, induces reasonable reliance thereon by the other, either in action or non-action, which is to his detriment. *Sanfelippo v. Wis. Dep't of Revenue*, 170 Wis. 2d 381 (Ct. App. 1992), citing *Wis. Dep't of Revenue v. Moebius Printing Co.*, 89 Wis. 2d 610, 279 N.W.2d 213 (1979). Estoppel may be applied against the state when the elements of estoppel are clearly present, and it would be unconscionable to allow the state to revise an earlier position. *Id.*, citing *Wis. Dep't of Revenue v. Family Hosp., Inc.*, 105 Wis. 2d 250, 254 (1982). Estoppel is not applied as freely against governmental agencies as it is against private persons. *Id.*

Under these criteria, the Department cannot be held responsible for any inaccurate or conflicting advice that Petitioner received from the Iowa Departments of Revenue or Transportation. Estoppel may only be asserted against the party whose action or non-action induced reliance, and there is no identity of interest between the Department and any branch of the Iowa state government. Moreover, Petitioner is located in Wisconsin, the sales at issue all took place in Wisconsin and the campers and trailers at issue were all delivered in Wisconsin. Petitioner's main source for information regarding Wisconsin sales tax should have been the Department, and any reliance he placed on advice given by Iowa agencies regarding Wisconsin taxes was unreasonable.

With respect to the WDOT, Petitioner's argument is somewhat more persuasive, since the WDOT is, like the Department, a branch of the Wisconsin state government. However, the Commission considered almost exactly this same question in *Spickler, supra*, and determined that the petitioner's alleged reliance on oral advice given by WDOT personnel regarding Wisconsin sales tax did not estop the Department in a similar action. In this case, Petitioner also alleges that WDOT personnel provided him with faulty oral advice. Petitioner has not provided any evidence indicating that WDOT personnel who provided advice to him were acting as the Department's agents at the time, nor has he provided any evidence of written advice provided by WDOT personnel. However, Petitioner's affidavit is sufficient to raise a genuine issue of material fact with respect to this issue, so the Commission denies the portion of the Department's motion as applied to alleged statements made by WDOT personnel.

Next, the Department requests that the Commission prohibit Petitioner's use of equitable estoppel as a defense against the Assessment based on the Department's alleged lack of action or failure to act or upon any information provided after the end of the period at issue. First, Petitioner cannot take advantage of the Department's lack of action before and during the period at issue, because the Department's inaction was based on the inaccurate information Petitioner had provided to the Department in his sales tax returns. The Department did not discover Petitioner's error until the 2004 field audit. Second, Petitioner could not have relied on inaccurate information provided by Department personnel after the period at issue, because he was not yet in possession of such information at the time of his alleged reliance.<sup>2</sup> Based on these factors, there is no genuine issue as to any material fact with respect to the assertion of equitable estoppel as a defense against the Assessment as described herein, and the Department is entitled to summary judgment as set forth herein and in the order below.

**6. Petitioner's Motion to Strike and for an Award of Costs and Attorney's Fees**

In his brief, Petitioner requests that the Commission strike the Department's motion and award Petitioner reasonable costs and attorney's fees because the Department cited the unpublished opinion of the Wisconsin Court of Appeals in *Spickler, supra*, without citing it as such. Petitioner argues that the Department thus

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<sup>2</sup> While we agree that Petitioner could not have relied on advice provided after the period at issue, evidence of such post-audit period advice still may be relevant in determining whether the Department provided similar advice before or during the period at issue.

violated Wis. Stat. § 809.23(3)<sup>3</sup> and requests the imposition of penalties under Wis. Stat. § 809.83.

The Commission construes Petitioner's request as a motion, and denies it for the following reasons. First, the Department filed a corrected copy of its brief on April, 11, 2007 and cured this citation error. Second, the Department correctly notes that the Commission and Circuit Court opinions that were affirmed by the Court of Appeals in *Spickler* remain good law and may be cited as such. The fact that the Court of Appeals affirmed these decisions remains a relevant part of the case history and is properly included in the citation of that case, even though its own opinion is unpublished and may not be cited as precedent.

#### **IT IS ORDERED**

1. The Department's motion for partial summary judgment is granted based on our ruling as follows:

- (a) Petitioner's sales of campers or trailers to non-residents that are at issue in the Assessment were subject to Wisconsin sales tax.
- (b) Petitioner does not contest any Wisconsin use tax or Wisconsin county tax in his petition.
- (c) Petitioner is not entitled to any credit for the Iowa sales or use tax that some of his customers paid to the State

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<sup>3</sup> "An unpublished opinion is of no precedential value and for this reason may not be cited in any court of this state as precedent or authority, except to support a claim of claim preclusion, issue preclusion, or the law of the case." Wis. Stat. § 809.23(3).

of Iowa when they registered the subject campers and trailers in Iowa, where Iowa has refunded a portion of those taxes to Petitioner.

(d) The Assessment does not result in any impermissible double taxation.

(e) Petitioner may not assert the doctrine of equitable estoppel as a defense against the Assessment based on alleged information provided by the Iowa Department of Revenue or Iowa Department of Transportation, or based on the Department's alleged lack of action or failure to act prior to the 2004 field audit or upon any information provided after the end of the period at issue.

2. Petitioner's motion to strike and for an award of costs and attorney's fees is denied.

Dated at Madison, Wisconsin, this 12<sup>th</sup> day of October, 2007.

**WISCONSIN TAX APPEALS COMMISSION**

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Diane E. Norman, Acting Chairperson

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David C. Swanson, Commissioner