

STATE OF WISCONSIN
TAX APPEALS COMMISSION

WRJ TRANSPORT, INC. and
WILLIAM JAY,

DOCKET NO. 14-V-174

Petitioners,

vs.

WISCONSIN DEPARTMENT OF TRANSPORTATION,

Respondent.

RULING AND ORDER

DAVID D. WILMOTH, COMMISSIONER:

This case comes before the Commission for decision on Respondent's Motion for Summary Judgment filed with the Commission on February 9, 2015. The Petitioners, WRJ Transport, Inc. ("WRJ") and Mr. William Jay, are represented in this matter by Attorney Joseph W. Seifert. The Respondent, the Wisconsin Department of Transportation ("the Department"), is represented by Assistant General Counsel Bennett J. Conard.¹

FACTS

1. WRJ was an interstate contract motor carrier which operated qualified motor vehicles, as defined in Wis. Stat. § 341.45(1)(am). (Affidavit of Thomas C.

¹ Initially, the Department was represented by Assistant General Counsel Paul E. Nilsen, with the assistance of Mr. Conard who was then a Student Legal Intern. Upon later joining the legal staff of the Department, Attorney Conard assumed the representation of the Department.

Rabaglia, the Department's Lead Auditor of the Motor Carriers Audit Unit ("Rabaglia Aff.") ¶¶ 5 and 6.)

2. During the period July 1, 2009, through June 30, 2012, WRJ operated qualified motor vehicles upon the highways of the State of Wisconsin using motor vehicle fuel, as defined in Wis. Stat. § 78.005(13), purchased in various jurisdictions outside the State of Wisconsin. (Rabaglia Aff., ¶¶ 7, 8, 9, 10, 11, and 12.)

3. On August 2, 2013, the Department sent an audit notification letter and a pre-audit questionnaire to WRJ related to fuel taxes payable by WRJ to Wisconsin and other state members of the International Fuel Tax Agreement ("IFTA") and the International Registration Plan ("IRP"). The audit notification letter directed WRJ to complete the questionnaire and make certain records available to the auditor within 30 days. (Rabaglia Aff., Ex. 1.)

4. The Department did not receive a completed questionnaire or any other response regarding the August 2, 2013, audit notification letter. As a result, on September 5, 2013, the Department sent WRJ a second letter requesting records and directing completion of the pre-audit questionnaire. WRJ was given an additional 15 days past the original deadline to provide the requested documentation. The letter cited the Wisconsin Administrative Code provisions which indicate that any officer, employee, fiduciary, or agent who is responsible for paying taxes, fees, interest, penalties, or other charges may be held personally liable and that the Department has the authority to suspend any permit, license, or registration of such a responsible person. (Rabaglia Aff., Ex. 2.)

5. Following the second audit notification letter, after the expiration of the new deadline without a response, the Department audited WRJ on September 20, 2013. The audit resulted in an estimated assessment in the amount of \$242,352.29. The Department notified WRJ through a letter dated September 23, 2013, and directed to Mr. Jay that WRJ had 30 days in which to pay or request a redetermination. Citing Wis. Admin. Code § Trans 152.17, the Department warned again that any officers, employees, fiduciaries or agents may be held personally liable for the taxes and fees and may have their personal privileges to operate in Wisconsin and other jurisdictions suspended. (Rabaglia Aff., Ex. 3.)

6. The Department sent Mr. Jay a letter dated October 31, 2013, stating that his personal operating privileges were revoked due to WRJ's failure to pay the estimated assessment amount or to request a redetermination. (Rabaglia Aff., Ex. 4.)

7. By letter dated March 28, 2014, more than six months after the issuance of the estimated assessment, Mr. Jay requested a redetermination from the Department. (Rabaglia Aff., Ex. 7.)

8. A conference was held in connection with the redetermination at which time Mr. Jay provided WRJ's records to the Department's auditor. The Department's review of the records and its redetermination of the IFTA and IRP audits were completed on April 22, 2014, and the Department determined that WRJ owed \$38,762.63. The redetermination letter dated April 23, 2014, notified WRJ of the redetermination and informed Mr. Jay that the redetermined amount should be remitted within 30 days of the date of the letter to avoid suspension of his operating privileges on

highways in Wisconsin and other jurisdictions. The letter also stated that WRJ and Mr. Jay had 30 days in which to request an informal appeal to the Department. (Rabaglia Aff., Ex. 5.)

9. Mr. Jay submitted a written request for an appeal to the Department on May 9, 2014. On May 15, 2014, the Department denied this request for an informal appeal and also denied Mr. Jay's request for reinstatement of his personal operating privileges because WRJ did not question the IFTA and IRP audit portions of the assessment and had provided no further evidence for outstanding IRP fees due from the years 2011 and 2013. (Rabaglia Aff., Ex. 6.)

10. On June 18, 2014, WRJ filed a Petition for Review with the Commission appealing the Department's actions on its Petition for Redetermination, the Department's denial of its request for an appeal, and the Department's denial of Mr. Jay's request for the reinstatement of his personal operating privileges. In the Petition for Review, the Petitioners contended that they had not received the initial notices sent by the Department, the notice of assessment, or the letters concerning the personal liability of Mr. Jay. (Commission file.)

11. After filing its Petition for Review with the Commission, WRJ provided satisfactory proof to the Department that a payment had been made on its behalf by Talmer Bank in the amount of \$9,576.57 for 2011 IRP fees, for which the Department had failed to credit WRJ. The Department adjusted WRJ's IRP liability to reflect this payment. (Rabaglia Aff., ¶ 41.)

12. On February 9, 2015, the Department filed with the Commission a

Notice of Motion and Motion for Summary Judgment, along with a supporting affidavit, exhibits, and a Brief in Support of Motion for Summary Judgment. (Commission file.)

13. The Petitioners' representative was twice given an opportunity to submit materials in opposition to the Department's Motion for Summary Judgment but did not do so.

14. Because of a concern that no response had been received from the Petitioners' representative and because all correspondence had gone directly to the representative and not to the Petitioners, the Commission issued an order, dated August 20, 2015, scheduling a telephone status conference including the Department, the Petitioners' representative, and the Petitioners.

15. At the telephone status conference held on October 6, 2015, the Commission expressed its concern that it had not heard from the Petitioners in this matter and wanted to assure that they had nothing to submit in opposition to the Department's Motion for Summary Judgment. The Commission informed the parties that, unless they submitted something further, the Commission would issue a Ruling and Order affirming the Department's assessment against WRJ. But it questioned the ability of the Department to assert personal liability against Mr. Jay and to suspend his personal operating privileges while the assessment against WRJ was on appeal and the amounts assessed were not, therefore, due and owing or delinquent. The Petitioners' representative stated that the Petitioners did not oppose an order affirming the assessment against WRJ, but Mr. Jay opposed the imposition of individual liability against him. As a result, the Commission ordered the Department to submit a brief

addressing its ability to assert personal liability against Mr. Jay and to suspend his personal operating privileges and the Petitioners to submit a responsive brief.

16. On October 15, 2015, the Department filed a Supplemental Brief with the Commission asserting that Mr. Jay was personally liable for WRJ's assessment pursuant to Wis. Admin. Code § Trans 152.17(a) and that the amount of WRJ's assessment was delinquent because (1) the assessment against WRJ became final and conclusive 30 days after the issuance of the assessment because WRJ did not file a timely petition for redetermination with the Department, and/or (2) the assessment against WRJ was a "jeopardy assessment" pursuant to Wis. Admin. Code § Trans 152.16 which caused the amount of the assessment to become immediately due and payable.

17. On November 23, 2015, the Petitioners filed a responsive Supplemental Brief with the Commission asserting that (1) neither Mr. Jay nor WRJ received the Department's assessment and the Petition for Redetermination was timely because it was filed within 30 days of the Mr. Jay's first receipt of correspondence from the Department in this matter, and (2) even if the Petition for Redetermination was late, the Department agreed to grant a redetermination.

18. By correspondence to the parties, dated December 11, 2015, the Commission noted that the Department, in its Supplemental Brief, claimed for the first time that the Petition for Redetermination had not been timely filed and that the assessment had therefore become final and non-appealable. As a consequence, the Commission treated the Department's position as a motion to dismiss for lack of jurisdiction and directed the parties to provide factual evidence regarding the mailing and

receipt, or lack thereof, of the assessment.

19. On January 14, 2016, the Department filed with the Commission an affidavit of Jody Grossman, dated January 14, 2016. ("Grossman Aff.")

20. Mr. Grossmann is the Supervisor of the Motor Carriers Audit Unit for the Department, a position he has held since April 6, 2015. (Grossman Aff., ¶ 1.)

21. As part of his duties as Supervisor of the Motor Carriers Audit Unit, Mr. Grossman managed the Motor Carrier Audit Unit personnel and daily operations as well as administered the policy and procedures relating to the audit of motor carriers subject to the IRP, IFTA, and other aspects of motor carrier regulation and operations. (Grossman Aff., ¶ 2.)

22. Mr. Grossman did not sign or mail the WRJ audit notices or the assessment. The Department's former lead auditor, Thomas Rabaglia, signed the initial audit notice and questionnaire to WRJ. Department auditor Jan McAllister signed the follow up letter granting WRJ additional time to respond to the audit questionnaire. Mr. Rabaglia signed the assessment. (Grossman Aff., ¶¶ 2, 11, 13, 16.)

23. Mr. Grossman made his affidavit based on his personal knowledge of standard practices of the Department's Motor Carrier Audit Unit and his review of the records in the Department's files. (Grossman Aff., ¶¶ 4,5.)

24. In response, on January 28, 2016, the Petitioners filed with the Commission an affidavit of William R. Jay, dated January 17, 2016. (Affidavit of William Jay ("Jay Aff."))

25. WRJ was closed for business by a Bankruptcy Court Trustee on or

about August 17, 2012. WRJ maintained its business address at 826 Mohr Avenue, Waterford, WI, 53185 until October 13, 2012. (Jay Aff., ¶ 6.)

26. On October 13, 2012, WRJ stopped all mail and requested the U.S. Postal Service to forward all mail to P.O. Box 100573, Cudahy, WI. (Jay Aff., ¶ 7, Ex. A.)

27. Mr. Jay was informed by the USPS that mail was forwarded to the Cudahy post office box for approximately 6 months, and that mail sent to the Mohr Avenue address after approximately April 14, 2013, would be returned to the sender with a label indicating the new and correct address. (Jay Aff., ¶ 8, 9.)

28. Mr. Jay did not receive the Department's audit notification letter and a pre-audit questionnaire, dated August 2, 2013, which was addressed to the Mohr Avenue address. (Jay Aff., ¶ 12.)

29. Mr. Jay did not receive the Department's follow-up letter requesting records and directing completion of the pre-audit questionnaire, dated September 5, 2013, which was addressed to the Mohr Avenue address. (Jay Aff., ¶ 15.)

30. Mr. Jay did not receive the Department's assessment, dated September 23, 2013, which was addressed to the Mohr Avenue address and to 4875 South Packard Avenue, Cudahy, WI 53110. As of September 23, 2013, Mr. Jay resided at 6020 376th Avenue, Burlington, WI, 53105. (Jay Aff., ¶¶ 16, 17, 18, 19, Ex. B.)

31. Mr. Jay did not receive a copy of the audit notification letters or the assessment until his attorney presented him with copies in January of 2016. (Jay Aff., ¶ 22.)

CONCLUSIONS OF LAW

1. The Petition for Redetermination filed by the Petitioners was timely and the Commission has jurisdiction over this appeal.
2. The Department's assessment against WRJ is presumed to be correct and WRJ bears the burden of proving its invalidity.
3. WRJ has provided no evidence that the assessment made against it was incorrect in any respect; the assessment is, therefore, valid.
4. The assessment against WRJ was not a jeopardy assessment under Wis. Admin. Code § Trans 152.16 so the amount of the assessment did not become immediately due and payable.
5. At no time were the amounts assessed against WRJ delinquent so the Department had no legal basis to assess Mr. Jay personally or to suspend his personal operating privileges.

APPLICABLE LAW

Wis. Admin. Code § Trans 152.13(3). Assessments.

(b) If any person fails to make records available upon proper request or if any person fails to maintain records from which the true liability may be determined, the department may assess a tax or registration fee based upon the department's estimation of the tax or registration fee liability. The department may make an estimate from information previously furnished by the person, if available, may make an estimate based upon 4 miles per gallon, and any other pertinent information that may be available to the department. The assessment made by the department pursuant to this procedure shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person to

establish by a fair preponderance of evidence that the assessment is erroneous or excessive.

Wis. Admin. Code § Trans 152.14. Appeal procedures.

(1) General. A person feeling aggrieved by the notice of an action may petition the department's motor carrier tax and permit section for a redetermination. If a person files a petition for redetermination, the additional tax or overpayment shall not become due and payable until 30 days after the matter becomes final.

...

(3) Filing deadline. A petition for redetermination shall be filed within 30 days after the receipt of notice of an action. A petition for redetermination is not considered filed within the 30 day period unless it is actually received by the department's motor carrier tax and permit section, or unless it is mailed in a properly addressed envelope, with postage prepaid, the envelope is postmarked before midnight of the 30th day and the petition is actually received by the department within 5 days of the prescribed 30th day date.

...

(8) Further appeal. Any person who has filed a petition for determination with the department and who is aggrieved by the redetermination of the department may, within 30 days after the redetermination but not thereafter, file a petition for review of the action of the department with the tax appeals commission.

Wis. Admin. Code § Trans 152.16. Jeopardy assessment.

Before any tax or fee becomes due, if the department has reason to believe that any licensee or registrant, including former registrants or licensees, intends or is likely to evade or attempt to evade payment of the tax or fee when due, or intends or is likely to convey, dispose of, or conceal his or her property or abscond from the state, or do any other act which would render the state insecure in the collecting the tax or fee when due, the department may demand payment forthwith of all taxes and fees accrued by the licensee or registrant, which shall immediately become payable and collectible as if delinquent, and the property of the licensee or registrant shall be subject to attachment as provided in s. 78.70, Stats.

Wis. Admin Code § Trans 152.17. Actions to collect tax, fees and penalties.

(1) Department collection. The department shall make initial efforts to collect delinquent fuel tax and registration fees. The department may:

(a) Assess the person responsible for paying the fuel use taxes and registration fees. The department may subpoena any records necessary to determine the person responsible for paying the fuel use taxes and registration fees. Any officer, employee, fiduciary or agent who is responsible for paying taxes, fees, interest, penalties or other charges under this chapter incurred by another person but not paid is personally liable for those taxes, fees, interest, penalties or other charges. The officer, employee, fiduciary or agent may appeal that determination under the procedures of subch. III.

(b) Suspend or refuse to issue any permit, license or registration to any person who is responsible for paying the fee, taxes, interest or penalty under this chapter.

MOTION TO DISMISS

In the Department's Supplemental Brief, dated October 15, 2015, the Department stated, "While WisDOT agreed to provide WRJ a review of its records after the deadline for requesting a redetermination, it was not a 'redetermination' as defined in Trans 152.14 because the assessment was already due and payable." This is in contrast to the statement made in its initial brief in this matter: "WisDOT agreed to perform a re-determination of the assessment despite the time delay in requesting the re-determination."

In neither its Answer nor its Motion for Summary Judgment did the Department take the position that the assessment became final and delinquent because the Petitioners failed to file a timely petition for redetermination. It is a new position,

but one which is potentially dispositive of the case. If the Petitioners did not, in fact, file a timely petition for redetermination, then the assessment became final and non-appealable. If the redetermination became final, the Commission would have no jurisdiction over this matter and could do nothing other than dismiss the Petition for Review. *Jones v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-730, (WTAC 2013); *Kaminske v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-638 (WTAC 2012); *Williams v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-880, (WTAC 2006).² Consequently, we treat this position as a Motion to Dismiss the Petitioners' Petition for Review for lack of jurisdiction.

There is no question that the Petitioners filed their Petition for Redetermination with the Department more than six months after the date of the Department's initial assessment. But the Petitioners assert that they never received a copy of the assessment nor any of the notices sent by the Department before the assessment. Mr. Jay claims that he did not receive any notifications from the Department until December 2014, at which point he immediately contacted them and provided tax documents and information to assist with an audit. Following this, the Department concluded that Mr. Jay was not entitled to a reduction of his assessment and Mr. Jay promptly requested a redetermination, which was granted. So the question is whether the Petitioners filed their Petition for Redetermination with the Department within 30 days of their ultimate receipt of the assessment or, perhaps more

² Although these cases involve petitions to the Department of Revenue as opposed to the Department of Transportation, the language of the DOT rule for filing a petition for redetermination is virtually identical to the language of the statute for filing a petition for redetermination with the DOR. The statutory provision for filing appeals with the Commission applies to both Departments.

fundamentally, whether they received a copy of the assessment at any time before they requested a redetermination.

The assessment was sent via regular mail as opposed to registered or certified mail.³ Thus, there is no direct evidence that WRJ or Mr. Jay actually received the assessment. Absent proof of actual receipt, the best evidence the Department could have provided to show that the assessment was mailed would have been an affidavit of mailing signed by Mr. Rabaglia at the time he mailed the assessment. The second best evidence of mailing would have been a present-day affidavit of Mr. Rabaglia stating that he mailed the assessment on a particular date.⁴ The Department provided neither of these. What the Department did provide was an affidavit of an employee who had no personal knowledge of the mailing of this particular assessment. His affidavit was based on a review of records in the Department's files (which the Commission already had and found insufficient to show the assessment was mailed or received) and his personal knowledge of the standard practices of the Department's Motor Carrier Audit Unit. But he had no personal knowledge that those standard practices were followed in connection with the issuance of the assessment against WRJ. Moreover, his affidavit states that he has held his position with the Department since April 6, 2015, a full 18 months after the date of the

³ Although the Department's rule does not specify how a notice of assessment is to be sent, "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314 (1950).

⁴ The Department did submit an affidavit of Mr. Rabaglia in connection with its Motion for Summary Judgment. Although a copy of the assessment is an exhibit to that affidavit, Mr. Rabaglia never states that he mailed the assessment to WRJ or to Mr. Jay.

assessment. There is no evidence of any sort that he had personal knowledge of the standard practices of the Motor Carrier Audit Unit at the time the assessment was sent.

By contrast, Mr. Jay's affidavit is made based on his direct personal knowledge of relevant facts. He states that he did not receive the assessment against WRJ and, in fact, did not receive any notices or correspondence from the Department until December 2014. His affidavit identifies his home address and changes in address and office closures for WRJ during the period in which the Department says it sent audit notifications and the assessment to Mr. Jay and WRJ. Mr. Jay's affidavit offers a plausible and credible explanation as to why correspondence from the Department, including the assessment, would not have been received by him or WRJ. His credibility is bolstered by the fact that, when he states he eventually received a notice related to this matter, he responded immediately by producing some of the requested documentation, and thereafter acted promptly to preserve his rights.

The Department has provided the Commission with no credible evidence to support its contention that WRJ failed to file a timely petition for redetermination. Consequently, the Commission has jurisdiction over this matter and the Department's Motion to Dismiss is denied.

MOTIONS FOR SUMMARY JUDGMENT

A motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2).

Motion for Summary Judgment against WRJ

The facts contained in the affidavit and exhibits submitted by the Department in support of its Motion for Summary Judgment upholding its assessment against WRJ are uncontroverted. The Petitioners stated that they have no objection to the entry of an order affirming the assessment against WRJ. Consequently, there is no genuine issue as to any material fact, and the Department is entitled to judgment as a matter of law. The Department's Motion for Summary Judgment affirming its assessment against WRJ is granted.

Motion for Summary Judgment against Mr. Jay

Section Trans 152.17(1)(a) of the Wisconsin Administrative Code provides that, where fuel tax and registration fees are not paid, any officer, employee, fiduciary, or agent, who is responsible for paying the taxes, fees, interest, and penalties, is personally liable for the obligation. Further, Wis. Admin. Code § Trans 152.17(1)(b) provides that the Department may suspend or refuse to issue any permit, license, or registration to any person who is responsible for paying fees, taxes, interest, or penalties and fails to do so.

The Department determined that Mr. Jay was a person responsible for paying the fuel tax and registration fees of WRJ and, consequently, assessed Mr. Jay for

the taxes and fees assessed against WRJ. Upon his failure to pay the assessment, the Department suspended Mr. Jay's personal operating privileges and he appealed. The Department moved the Commission for summary judgment upholding its actions against Mr. Jay.

Section Trans 152.17(1) of the Wisconsin Administrative Code states, and the Department acknowledges, that assessment of taxes and fees against a responsible person and suspension of the operating privileges of a responsible person may be done only if the taxes and fees the Department seeks to collect are delinquent. The Code provision provides that "[i]f a person files a petition for redetermination, the additional tax or overpayment shall not become due and payable until 30 days after the matter becomes final." Taxes and fees do not become delinquent until they are due and payable, and remain unpaid. The taxes and fees assessed against WRJ cannot be delinquent until 30 days after the final resolution of its appeal, and the taxes and fees remain unpaid. Only then could the Department take collection action against Mr. Jay as a responsible person.

The Department offers two arguments as to why the taxes and fees it assessed against WRJ became delinquent, thereby justifying its collection activities against Mr. Jay. First, the Department asserts that WRJ did not file a timely petition for redetermination and, as a result, the assessed amounts became due and payable 30 days after the assessment date. That is an argument we rejected in connection with ruling on the Department's Motion to Dismiss.

The Department's second argument is that the assessment made against WRJ was a "jeopardy assessment" and that the amounts assessed became immediately due and payable. Wis. Admin. Code § Trans 152.16 provides:

Before any tax or fee becomes due, if the department has reason to believe that any licensee or registrant ... intends or is likely to evade or attempt to evade payment of the tax or fee when due, or intends or is likely to convey, dispose of, or conceal his or her property or abscond from the state, or do any other act which would render the state insecure in the collecting the tax or fee when due, the department may demand payment forthwith of all taxes and fees accrued by the licensee or registrant, which shall immediately become payable and collectible as if delinquent.

The assessment notice issued by the Department to WRJ was not a jeopardy assessment. It made no reference to a jeopardy assessment. It made no reference to the Department having reason to believe that WRJ or Mr. Jay might intend to engage in conduct which would render the state insecure in the collecting the taxes and fees when due nor did it make a demand for immediate payment of the taxes and fees. On the contrary, the assessment specifically stated that remittance of the amounts due must be made within 30 days. It went on to say: "You may request a re-determination of the results of the audit by making a written request to me and providing additional records ... within 30 days of the date of this letter. ... If I do not receive your written request for a re-determination within 30 days, the audit findings are final and the tax assessment must be paid in full." That language recited the rules applicable to an ordinary assessment, not a jeopardy assessment.

In her follow-up, pre-audit letter addressed to WRJ, the Department's auditor stated, "Failure to provide the requested records ... will result in jeopardy assessments. The IFTA jeopardy assessment reduces your MPG (Miles per Gallon) to 4.0 MPG with no tax paid credit for gallons claimed on quarterly returns." Later references to a "jeopardy assessment" in her audit notes were crossed out when WRJ provided records to the Department. Wisconsin Administrative Code § Trans 152.13(3)(b) allows the Department to make estimated assessments when a person fails to maintain or provide required records and specifically authorizes the Department to make estimates using 4 miles per gallon. It appears, in this case, that the Department is confusing an *estimated* assessment under § Trans 152.13(3)(b) with a *jeopardy* assessment under § Trans 152.16. They are two very different things.

Because the Petitioners timely requested a redetermination of the Department's assessment and because the assessment was not a jeopardy assessment, the amount of the assessment will not become due and owing until 30 days after the final resolution of the Petitioners' appeal. Consequently, the assessed amounts were not delinquent and the Department had no legal basis to assess Mr. Jay personally or to suspend his personal operating privileges.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED** that

1. The Department's Motion to Dismiss for lack of jurisdiction is denied;

2. The Department's Motion for Summary Judgment affirming its assessment against WRJ is granted;

3. The Department's Motion for Summary Judgment affirming its assessment against Mr. Jay and its suspension of his personal operating privileges is denied; and

4. There being no remaining questions of fact, Summary judgment is granted to Mr. Jay overturning the Department's assessment against him personally and overturning the suspension of his personal operating privileges, nunc pro tunc.⁵

Dated at Madison, Wisconsin, this 12th day of July, 2016.

WISCONSIN TAX APPEALS COMMISSION



Lorna Hemp Boll, Chair



David D. Wilmoth, Commissioner



David L. Coon, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

⁵ Wis. Stat. § 802.08(6) provides, "If it shall appear to the court that the party against whom a motion for summary judgment is asserted is entitled to a summary judgment, the summary judgment may be awarded to such party even though the party has not moved therefor."

WISCONSIN TAX APPEALS COMMISSION
5005 University Avenue - Suite 110
Madison, Wisconsin - 53705

NOTICE OF APPEAL INFORMATION

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES ALLOWED
FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS
RESPONDENT**

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternatively, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeals Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier within 30 days of this decision if there has been no petition for rehearing, or within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or the Wisconsin Statutes. The website for the courts is <http://wicourts.gov>.

This notice is part of the decision and incorporated therein.