

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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WISCONSIN ASSOCIATION OF  
CAMPGROUND OWNERS, INCORPORATED,

DOCKET NO. 17-J-060

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**RULING & ORDER**

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**LORNA HEMP BOLL, COMMISSIONER:**

This case comes before the Commission for decision on cross-motions for summary judgment. The underlying action is a request for a review of a Declaratory Ruling by the Department. The Petitioner, the Wisconsin Association of Campground Owners, Incorporated ("WACO"), of Ettrick, Wisconsin, is represented in this matter by Attorney Don M. Millis of Reinhart Boerner Van Deuren, s.c. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Kelly A. Altschul. Following a Circuit Court Ruling which found that the Commission has jurisdiction to review this Declaratory Ruling, the Commission finds error and sets the Department's Ruling aside.

**FACTS**

The Department submitted Proposed Findings of Fact, dated August 31, 2017,

which were taken largely from the Petitioner's Petition for Review. In its initial brief filed with the Commission on December 20, 2017, the Petitioner stated that it had no objection to the Department's Proposed Findings of Fact. The Commission adopts the following Proposed Findings of Fact, which it considers relevant to this Ruling.<sup>1</sup>

1. WACO is a Wisconsin non-stock corporation whose members own recreational mobile homes. (Proposed Findings of Fact ("PFF") ¶ 1.)

2. Early in 2015, the statutory assessor for several townships notified one of WACO's members that his mobile home would be added to the Town of Mecan's property tax rolls. (PFF ¶ 7.)

3. Following discussions with the individual member of WACO, on May 9, 2016, Department officials sent a letter to the member reiterating the Department's position that it would continue to advise assessors to deny exemption to any recreational mobile home that is classified as real property. (PFF ¶¶ 5-11.)

4. The Department is charged with, among other things, administering and enforcing Chapter 70 of the Wisconsin Statutes and, as part of its responsibility to administer and enforce Chapter 70, has provided guidance to assessors and taxpayers regarding the elements of the exemption for recreational mobile homes found in Wis. Stat. § 70.111(19). (PFF ¶ 2.)

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<sup>1</sup> Edited as to form only.

5. The Department's 2016 Property Tax Guide for Manufactured and Mobile Home Owners, Prop. 075 (R. 1-16), takes the same position as asserted in the Department's letter dated May 9, 2016. (PFF ¶ 12.)

6. On September 22, 2016, WACO submitted to the Department a Petition for Declaratory Ruling Regarding the Applicability of Wis. Stat. § 70.111(19). (PFF ¶ 13.)

7. The Department's January 13, 2017 Declaratory Ruling takes the position that property meeting the definition of a recreational mobile home, as defined by Wis. Stat. § 66.0435(1)(hm), must be classified as personal property in order to qualify for the property tax exemption under Wis. Stat. § 77.111(19). (PFF ¶ 15-16.)

8. On March 10, 2017, WACO filed a timely Petition for Review of Declaratory Ruling with the Wisconsin Tax Appeals Commission. (PFF ¶ 17, Commission file.)

9. The parties filed cross-motions for summary judgment, along with supporting briefs. (Commission file.)

10. The Ruling process was interrupted by the Commission's question as to whether it was proper for the Commission to assume subject matter jurisdiction over a question outside the Commission's assigned scope of subject matter jurisdiction simply because it was presented to the Commission in the context of a review of a Declaratory Ruling. After a ruling by a Trempealeau County Circuit Judge, the case is now back before this Commission for consideration of the substantive issue. (Trempealeau County Circuit Court decision issued April 29, 2020, in Case No. 19-CV-53.)

## APPLICABLE LAW

**Wis. Stat. § 70.111. Personal property exempted from taxation.**

The property described in this section is exempted from general property taxes:

**(19) Camping trailers, recreational mobile homes, and recreational vehicles.**

(a) Camping trailers as defined in s. 340.01 (6m).

(b) Recreational mobile homes, as defined in s. 66.0435(1) (hm), and recreational vehicles, as defined in s. 340.01 (48r).

The exemption under this paragraph also applies to steps and a platform, not exceeding 50 square feet, that lead to a doorway of a recreational mobile home or a recreational vehicle, but does not apply to any other addition, attachment, deck, or patio.

**Wis. Stat. § 66.0435. Manufactured and mobile home communities.**

**(1) Definitions. In this section:**

(hm). "Recreational mobile home" means a prefabricated structure that is no larger than 400 square feet, or that is certified by the manufacturer as complying with the code promulgated by the American National Standards Institute as ANSI A119.5, and that is designed to be towed and used primarily as temporary living quarters for recreational, camping, travel, or seasonal purposes.

## DECISION

In early 2015, a member of Petitioner's organization was alerted to the fact that recreational mobile homes were going to be added to the property tax rolls of a municipality in Trempealeau County. Rather than waiting for that to happen, Petitioner instead requested a prospective Declaratory Ruling from the Department that its members' recreational mobile homes are exempt under Wis. Stat. § 70.111(19).

Petitioner, as a "group or association of interested persons," asked the Department for a general ruling applicable to its many members under Wis. Stat. §

227.41(5)(a). Therefore, procedurally, the matter was brought properly to the Department. Whether the issue was then properly brought to the Commission was addressed summarily by the Trempealeau County Circuit Court, which ruled that the Commission's jurisdiction includes all appeals of the Department's Declaratory Rulings, apparently regardless of the topic or the Commission's lack of expertise thereon.

This case involves a Declaratory Ruling regarding the applicability of an exemption to non-manufacturing property, assets normally outside the oversight duties assigned to the Tax Appeals Commission by Chapter 73 of the Wisconsin Statutes.<sup>2</sup> The Petitioner seeks review of the Department's Declaratory Ruling, which states that "property meeting the definition of 'recreational mobile home' as defined in Wis. Stat. § 66.0435(1)(hm) must be classified as personal property to qualify for the property tax exemption under Wis. Stat. § 70.111(19)."

#### *Standards to Be Applied*

As noted by the parties, this is the first time the Commission has reviewed and ruled on a Declaratory Ruling issued by the Department since the advent of Wis. Stat. § 227.41(5)(a) which binds taxpayers to such a ruling "unless it is altered or set aside by the tax appeals commission or a court or the applicable rule or statute is repealed or materially amended."

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<sup>2</sup> According to Wis. Stat. § 227.41(5)(a), "A ruling, including the denial of the petition [for declaratory judgment] shall be subject to review by the tax appeals commission as provided in ch. 73." Although Chapter 73 does not provide for the Commission's consideration of issues involving non-manufacturing property taxes, either real or personal, we proceed in light the Trempealeau County Circuit Court Ruling to the contrary.

First, there is some question as to the proper standard of review. Technically, the Petitioner is correct that the issue here is one of simple legal interpretation. The Commission, as the final arbiter of questions of tax law, does not defer to the prior decisions of an agency, especially when that agency is a party holding an interest in its own decision. Wis. Stat. § 227.10(2g).<sup>3</sup> Therefore, we review the issue addressed in the Department's Declaratory Ruling *de novo* as a question of law.

Second, the method of analysis must be clarified. The Department's Ruling presents a question of law involving the language of a non-manufacturing property tax exemption. Although non-manufacturing property exemptions are not normally within our purview, we believe it is appropriate to apply the same well-settled principles of statutory interpretation generally used by the Commission: When interpreting a statute, we assume that the legislature's intent is expressed in the statutory language. Statutory interpretation "begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry." *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. We look first at the wording which constitutes the exemption. "If the language is clear and unambiguous on its face, we must construe the statute in accordance with its ordinary meaning and may not resort to extrinsic aids." *Id.*

Third, we clarify the burden of proof. This matter involves the application of an exemption. Exemptions shall be strictly but reasonably construed in favor of taxation, with the burden of proof resting with the person claiming the exemption. Wis.

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<sup>3</sup> Wis. Stat. § 227.10(2g). No agency may seek deference in any proceeding based on the agency's interpretation of any law.

Stat. § 70.109. The Commission will apply a strict but reasonable construction resolving any doubts regarding the exemption in favor of taxability. *United Rentals, Inc. v. City of Madison*, 2007 WI App 131, ¶ 13, 302 Wis. 2d 245, 733 N.W.2d 322.

### *Analysis*

This case involves Recreational Mobile Homes (RMHs). Wisconsin Statute § 70.111(19) exempts RMHs from taxation. For the purpose of this exemption, RMHs are defined by reference to Wis. Stat. § 66.0435(1)(hm). The exemption refers to no other definitions or qualifiers. The plain language of Wis. Stat. § 70.111(19) indicates that any RMHs that meet the definition of Wis. Stat. § 66.0435(1)(hm) are exempt. Period.

The Department's Ruling relies on caselaw which predates the current version of the statute. The courts in those cases found ambiguity in potentially conflicting, long-since amended, definitions of and references to the term "mobile home." In efforts to resolve those ambiguities, those courts properly resorted to resources outside the language of the statutes. One such source was the title of the section in which the exemption is found.

Before the rules of statutory construction allow us to travel down a similar path, we note that, while titles to statutes can be used to resolve ambiguities in a statute, titles may not be relied upon to create ambiguity where none exists. *Wisconsin Valley Improvement Co. v. Public Service Comm.*, 9 Wis. 2d 606, 618, 101 N.W.2d 798 (1960). The reasoning for this rule of construction is that titles, by law, are not part of the statutes. See Wis. Stat. § 990.001(6).<sup>4</sup>

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<sup>4</sup> Wis. Stat. § 990.001(6). STATUTE TITLES AND HISTORY NOTES. The titles to subchapters, sections, subsections, paragraphs and subdivisions of the statutes and history notes are not part of the statutes.

Thus, we first look to the language of the exemption. The language of Wis. Stat. § 70.111(19) refers directly to the RMH definition of Wis. Stat. § 66.0435(1)(hm). It does not make any reference to the more generic term "mobile home," nor does it make reference to any other statutory definitions. Instead, Wis. Stat. § 70.111(19) unambiguously establishes an exemption for any RMH which is a prefabricated structure no larger than 400 square feet (or meets the ANSI definition) and "is designed to be towed and used primarily as temporary living quarters for recreational, camping, travel, or seasonal purposes." The language is clear and unambiguous on its face. Thus, any consideration of the section's title is inappropriate.

We then ask whether it matters whether an RMH, so defined, must nevertheless be evaluated as to whether it is personal property. Since one cannot design real property such that it can be towed, logic dictates that any RMH that fits the Wis. Stat. § 66.0435(1)(hm) definition, at least at the time of design, is personal property. For RMHs which remain unaltered, further questions need not be asked.

The bone of contention regarding the Department's Ruling, however, concerns those RMHs which may have subsequently lost their original personal property characteristics. For example, an RMH may now be partially or completely set on a foundation, connected to utilities. Does that matter when it comes to qualifying for this exemption? The answer is no. The only qualifier for this exemption is that an RMH must meet the definition of Wis. Stat. § 66.0435(1)(hm). We find the language is clear: If an RMH meets the definition in Wis. Stat. § 66.0435(1)(hm), it is exempt. If it does not meet that definition, then it is not exempt.



The Department's Ruling requires RMHs to be personal property in addition to meeting the definition of Wis. Stat. § 66.0435(1)(hm). To reach this conclusion, the Department relies mainly on the title of Wis. Stat. § 70.111 which refers to personal property. However, as noted in Wis. Stat. § 990.001(6), a statute's title is not part of the statute. Therefore, the title is not considered unless there is ambiguity. The title itself cannot be used to create ambiguity. *Wisconsin Valley Improvement Co. v. Public Service Comm.*, 9 Wis. 2d 606, 618, 101 N.W.2d 798 (1960). In keeping with the statutes and caselaw, we will not reach to the section's title in search of ambiguity.

The Commission does, however, believe some of the Department's points should be addressed. First, after assuming RMHs must be personal property, the Department offers Wis. Stat. § 70.043, which explains when to classify certain "mobile homes" as personal property or as real property:

Wis. Stat § 70.043. Mobile Homes.

(1) A mobile home, as defined in s. 101.91(10), or a manufactured home, as defined in s. 101.91(2), is an improvement to real property if it is connected to utilities and is set upon a foundation upon land which is owned by the mobile home or manufactured home owner. In this section, a mobile home or manufactured home is "set upon a foundation" if it is off its wheels and is set upon some other support.

(2) A mobile home, as defined in s. 101.91(10), or a manufactured home, as defined in s. 101.91(2), is personal property if the land upon which it is located is not owned by the mobile home or manufactured home owner or if the mobile home or manufactured home is not set upon a foundation or connected to utilities.

We find that reference to Wis. Stat. § 70.043 is misplaced. The RMHs at issue in the Department's Ruling are those defined in Wis. Stat. § 66.0435(1)(hm). The property

classification scheme described in Wis. Stat. § 70.043 applies to mobile homes defined in Wis. Stat. § 101.91(10) and manufactured homes defined in Wis. Stat. § 101.91(2). In Wis. Stat. 66.0435(1)(d), mobile homes are defined by reference to Wis. Stat. § 101.91(10) and include “any additions, attachments, annexes, foundations and appurtenances.” RMHs are, instead, defined separately in the self-contained definition of Wis. Stat. § 66.0435(1)(hm) without reference to Wis. Stat. § 101.91(10).

At least for the purpose of this exemption, the legislature has separately and specifically defined a “recreational mobile home” with reference to a statute different from the more general definition of a “mobile home.” The exemption language does not involve “mobile home[s] as defined in s. 66.0435(1)(d),” but the more specific “recreational mobile homes, as defined in Wis. Stat. § 66.0435(1)(hm).” The current definition for RMHs does not reference any other statutory definitions such as Wis. Stat. §§ 66.0435(1)(d) or 101.91(10). The current RMH definition no longer even incorporates the term “mobile home.”<sup>5</sup> Thus, the exemption applies to any RMH that is “a prefabricated structure that is no larger than 400 square feet, [or that meets the required ANSI standard], and that is designed to be towed and used primarily as temporary living quarters for recreational, camping, travel, or seasonal purposes.”<sup>6</sup> We find no need to look any further.

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<sup>5</sup> The Wis. Stat. § 66.0435(1)(hm) definition of RMH was updated by 2007 Act 11 to replace the term “mobile home,” with “prefabricated structure,” a change which eliminates any remaining confusion with other definitions.

<sup>6</sup> The exemption applies a bit more broadly but that secondary language is not at issue: “The exemption under this paragraph also applies to steps and a platform, not exceeding 50 square feet, that lead to a doorway of a recreational mobile home or a recreational vehicle, but does not apply to any other addition, attachment, deck, or patio.”

The Department's Ruling requires RMHs to meet a second condition of being personal property not mentioned in the exemption in order to be exempt. We cannot sanction the Department's declaration of an additional requirement in the face of a clear definition provided by the legislature for the purpose of this exemption.

Second, the Department urges us to consider legislative history as well as several cases<sup>7</sup> predicated on outdated statutory language different from the exemption language at issue. Because the current statutory language is clear and unambiguous, *Kalal* and its ilk dictate that we do not delve into this extrinsic material.

The Department offers the 2002 *Ahrens* decision as support for its Ruling. That case analyzed an older version of Wis. Stat. § 70.111(19) which referenced by implication multiple mobile home definitions which were difficult, if not impossible, to reconcile. The *Ahrens* court found the statute ambiguous and specifically requested the legislature review the confusing language.<sup>8</sup> The legislature is presumed to be aware of existing caselaw. See *State of Wisconsin ex rel. James G. Campbell and Holly Campbell v. Township of Delavan*, 210 Wis. 2d 239, 565 N.W.2d 209 (Ct. App. 1997) ("Under the canons of statutory construction, there is a statutory presumption that the legislature knows about the previous statute and about the impact that case law . . . had upon it"). In legislation post-dating the *Ahrens* decision, the legislature provided the current specific definitional reference to Wis. Stat. § 66.0435(1)(hm) for the purpose of Wis. Stat. § 70.111(19). That definition speaks to the original design of the

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<sup>7</sup> *Pulsfus Poultry Farms, Inc. v. Town of Leeds*, 149 Wis. 2d 797, 440 N.W.2d 329 (1989) and *Ahrens v. Town of Fulton*, 2002 WI 29, 251 Wis. 2d 135, 641 N.W.2d 423.

<sup>8</sup> *Ahrens* at ¶ 33: "We have proceeded in this manner. Nevertheless, given the problems in terms of assessment, the legislature should pay immediate attention to the statutes at issue in this case."

RMH. If there was concern over whether subsequent modifications of those RMHs should limit a taxpayer's access to this exemption, the legislature could have addressed it in the new language it chose or by providing other statutory references. It did not.

Third, the Department argues that Wis. Stat. § 70.111 is simply not intended to address real property. This is a veiled attempt to use the section title as persuasive, an improper analytic strategy when no ambiguity exists. Nevertheless, we note that Wis. Stat. § 70.111 does in fact contemplate potential application to real property.<sup>9</sup> For example, Wis. Stat. § 70.111(14) exempts milkhouse equipment even if it is real property. The Department argues that the language in the milkhouse exemption would be unnecessary and superfluous if Wis Stat. § 70.111 applied generally to real property. This line of reasoning fails in light of the language of Wis. Stat. § 70.111(27), which conversely states that the exemption for machinery, tools, and patterns does not apply to buildings. If Wis. Stat. § 70.111 could never apply to real estate, then that final phrase of Wis. Stat. § 70.111(27) would similarly be unnecessary or superfluous.

Finally, much is made of the guidance provided by the Department in Prop.

075 (R. 1-16).

To be considered exempt, the mobile or manufactured home must:

- Be classified as personal property under sec. 70.043(2), Wis. Stats.
- Meet the definition of a recreational mobile home in sec. 66.0435(1)(hm), Wis. Stats.

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<sup>9</sup> We also take note of a seemingly complementary section, Wis. Stat. § 70.11, which (although admittedly in the absence of a similarly limiting title) contains exemptions applicable to real property as opposed to personal property – except when it doesn't. Wisconsin Statute § 70.11 mainly contains real property exemptions but also includes several personal property exemptions (machinery, tools, and patterns Wis. Stat. § 70.11(27); computers Wis. Stat. § 70.11(39); cash registers and fax machines Wis. Stat. § 70.11(39m)), though one would assume exemptions for such items would be found in Wis. Stat. § 70.111.

While the Department must be held to its guidance vis-à-vis a taxpayer who relies on it to its detriment<sup>10</sup>, the same does not hold true when the guidance works in the Department's favor. The Tax Appeals Commission is the final authority on tax issues, per Wis. Stat. § 73.01(4)(a), any guidance by the Department to the contrary notwithstanding. Here, the Department has issued guidance that includes a qualifier that is not contained in the language of the statute. Only the Legislature has the power to alter or add to the exemption requirements.

### CONCLUSIONS OF LAW

The Department issued a Declaratory Ruling that "property meeting the definition of 'recreational mobile home' as defined in Wis. Stat. § 66.0435(1)(hm) must be classified as personal property to qualify for the property tax exemption under Wis. Stat. § 70.111(19)."

The exemption section at issue states that "property described in this section [sec. 70.111] is exempt from general property taxes." Subsection 19 describes "recreational mobile homes" by reference only to Wis. Stat. § 66.0435(1)(hm). Because the Department's Ruling holds that "recreational mobile homes," which meet definition of Wis. Stat. § 66.0435(1)(hm), must also meet another unwritten personal property classification requirement, we conclude:

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<sup>10</sup> Wis. Stat. § 73.16(2)(a). [I]n the course of any determination, or in the course of any proceeding appealing any determination, the department shall not take a position that is contrary to any rule promulgated by the department that was in effect during the period related to the determination or that is contrary to any guidance published by the department prior to that period and not subsequently retracted, altered, or amended by the department or the legislature or by a final and conclusive decision of the tax appeals commission or courts.

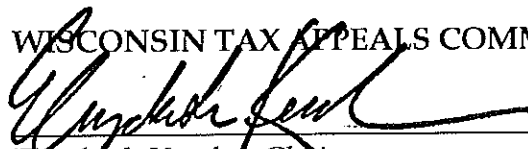
1. The provisions of Wis. Stat. § 70.111(19) are not ambiguous.
2. The term “recreational mobile home” is fully and unambiguously defined in Wis. Stat. § 66.0435(1)(hm) for the purpose of the Wis. Stat. § 70.111(19) exemption.
3. Petitioner has met the burden of showing that recreational mobile homes that meet the definition set forth in Wis. Stat. § 66.0435(1)(hm) qualify for exemption from general property taxes pursuant Wis. Stat. § 70.111(19).
4. To the extent that the Department’s Declaratory Ruling requires a classification requirement not contained or referenced in Wis. Stat. §§ 70.111(19) or 66.0435(1)(hm), the Department’s Ruling is in error.

**ORDER**


The Declaratory Ruling issued by the Department on January 13, 2017, is hereby set aside pursuant to Wis. Stat. § 227.41(5)(a). There being no other questions of fact or law remaining for determination, this matter is dismissed.

Dated at Madison, Wisconsin, this 13<sup>th</sup> day of November, 2020.

WISCONSIN TAX APPEALS COMMISSION

  
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Elizabeth Kessler, Chair

  
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Lorna Hemp Boll, Commissioner

  
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David L. Coon, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

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. Alternately, 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 Appeal 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 <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.