

Vote Record

Assembly Committee on Transportation

Date: 4-22-99
 Moved by: Turner Seconded by: Young
 AB: 136 Clearinghouse Rule: _____
 AB: _____ SB: _____ Appointment: _____
 AJR: _____ SJR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member

	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Rep. David Brandemuehl Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Jeff Stone	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Eugene Hahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Michael Huebsch	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Steve Kestell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Joseph Leibham	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Jerry Petrowski	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. John Townsend	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Julie Lassa	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Donald Hasenohrl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Barbara Gronemus	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Robert Turner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Leon Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. John Steinbrink	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Larry Balow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 15 _____ 2 _____

Motion Carried

Motion Failed

Krause, Sheri

From: Frazier, Carson
Sent: Monday, April 12, 1999 8:10 AM
To: Krause, Sheri
Subject: Question from Assembly Highways/Transportation Committee

Sheri: at Thursday's hearing, I was asked how long a person has to appeal a IRP or IFTA audit under current procedure to Division of Hearings and Appeals. The answer is 30 days, same as proposed for appeal to Tax Appeals Commission. Thanks.

Carson P. Frazier
DMV, Bureau of Vehicle Services
(608)266-7857
carson.frazier@dot.state.wi.us

AB136



DAVID BRANDEMUEHL

State Representative
49th Assembly District

TO: All Legislators

FROM: Rep. David Brandemuehl

DATE: January 22, 1999

RE: Co-sponsorship of LRB 1648/2, relating to transferring IFTA and IRP appeals from division of hearings and appeals to the tax appeals commission.

Ainsworth Albers
Hahn Lassa
Steinbrink Lehman
Powers Kelsa
Goetsch Montgomery
Buse
Huelsman
Darling
Schultz
Farrow

Wisconsin participates in an international fuel tax program (IFTA) and a multi-state registration (IRP) program for motor carriers. Compliance with these registration and fuel tax laws is through audits of motor carrier records. Presently, a carrier may appeal an adverse decision by the Department of Transportation (DOT) to the Department of Administration Division of Hearings and Appeals (DOHA).

Since the DOHA is accustomed to administrative hearings and has only had to decide one DOT registration/fuel tax appeal, it has not had an opportunity to develop expertise in tax matters. The Tax Appeals Commission, on the other hand, is accustomed to hearing tax appeals and has developed expertise and procedures to decide tax cases. In addition, as noted in the analysis, the courts will afford determinations of the Tax Appeals Commission with a higher degree of deference than determinations of DOHA because of the Commission's expertise and specialized knowledge in tax appeals.

Thus, I am introducing legislation to transfer IFTA and IRP appeals from the DOHA to the Tax Appeals Commission. The Tax Appeals Commission, the Department of Administration, the DOT and the Department of Revenue support this change. The analysis is printed below. If you are interested in co-sponsoring **LRB 1648/2**, please contact my office at 266-1170 by **February 12, 1999**.

Analysis by the Legislative Reference Bureau

Under current law, determinations of the department of transportation (DOT) may be appealed to the division of hearings and appeals (DOHA) attached to the department of administration, if the determination is one that entails a right to a hearing.

This bill transfers from DOHA to the tax appeals commission appeals of any final DOT determinations that concern the international registration plan (under which an eligible vehicle owner registers his or her vehicle for all states traveled in, instead of registering the vehicle in each of those states) or that concern a motor vehicle fuel or alternate fuel use tax, including determinations under a fuel tax agreement (under which fuel taxes imposed by a state are apportioned to the states in which the vehicle was operated). Because of the tax appeals commission's expertise and specialized knowledge in tax appeals, courts will afford determinations of the tax appeals commission with a higher degree of deference than determinations of DOHA. *Roehl Transport v. DOHA*, 213 Wis.2d 452, 458-59 (1997). The bill creates a 30-day time limit for filing these appeals.



BILL SUMMARY

AB 136: Transferring IRP and IFTA Appeals

Date: May 12, 1999

BACKGROUND

Wisconsin currently participates in an international fuel tax program (IFTA) and a multi-state registration program (IRP) for motor carriers. Compliance with these registration and fuel tax programs is verified through audits of motor carrier records and any adverse decisions by the DOT may be appealed to the Department of Administration Division of Hearings and Appeals within 30 days of the decision.

SUMMARY OF AB 136

Assembly Bill 136 would transfer IFTA and IRP appeals from the Division of Hearings and Appeals to the Tax Appeals Commission. The deadline for filing an appeal will continue to be 30 days.

FISCAL EFFECT

No fiscal estimate was prepared for Assembly Bill 136.

PROS

1. The Division of Hearings and Appeals is accustomed to administrative hearings and has only had to decide one DOT registration/fuel tax appeal. Thus, it has not had an opportunity to develop expertise in tax matters and requires significantly more staff time to review and prepare for each case due to the unfamiliarity with these issues.
2. AB 136 will allow appeals to be made to the Tax Appeals Commission which has developed the expertise and procedures to decide tax cases.
3. The courts have acknowledged that they will afford determinations of the Tax Appeals Commission with a higher degree of deference than determinations of the Division of Hearings and Appeals because of the Commission's expertise and specialized knowledge in tax appeals.
4. All parties involved have agreed to this transfer.

CONS

1. None.

SUPPORTERS

Rep. David Brandemuehl, author; Sen. Roger Breske, lead co-sponsor; Carson Frazier, Wisconsin Department of Transportation.

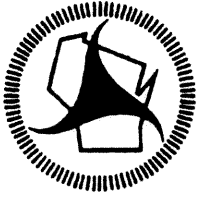
OPPOSITION

No one testified or registered in opposition to AB 136.

HISTORY

Assembly Bill 136 was introduced on February 22, 1999, and referred to the Assembly Committee on Transportation. A public hearing was held on April 8, 1999. On April 22, 1999, the Committee voted 15-0-2 [Rep. Huebsch and Rep. Gronemus were absent] to recommend passage of AB 136.

CONTACT: Sheri Krause, Office of Rep. David Brandemuehl



Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

DIVISION OF MOTOR VEHICLES
4802 Sheboygan Avenue
P.O. Box 7949
Madison, WI 53707-7949

ASSEMBLY HIGHWAYS AND TRANSPORTATION COMMITTEE

APRIL 8, 1999

HEARING TESTIMONY

Carson P. Frazier

AB 136: transfers appeals of IRP and IFTA audit determinations from the Division of Hearings and Appeals to the Tax Appeals Commission

- Wisconsin is a member of the International Registration Plan (IRP) and the International Fuel Tax Agreement (IFTA), along with the 47 contiguous states and some (3 IRP and 10 IFTA) Canadian Provinces.
- These are base-state agreements, in which a motor carrier registers or files taxes in the motor carrier's base (home) state for all jurisdictions in which the motor carrier operates. Amount of registration fees and fuel taxes due each state is determined based on the number and percentage of miles which the motor carrier operates in each state.
- Compliance for IRP and IFTA is assured by audits, in which a motor carrier's vehicle mileage logs and other records are compared with reported mileage by state.
- When a discrepancy is found through audit, the motor carrier's registration fees or fuel taxes are adjusted. This could result in an audit assessment of substantial fees or taxes that the motor carrier owes to Wisconsin.
- Current law follows general precedent that agency administrative decisions may be appealed to the Division of Hearings and Appeals. Further review is afforded through judicial review under ch. 227, Stats.
- However, the decisions made in IFTA audits are decisions on taxes and decisions made in IRP audits are decisions on fees based upon the same information.
- Because of the Tax Appeals Commission's expertise and specialized knowledge in tax appeals, it is appropriate that tax decisions are made by the Tax Appeal Commission. Actual cases appealed are rare enough that the Division of Hearings and Appeals has little opportunity to develop this specialized knowledge, thus requiring significant staff time to review and prepare for each case – time which is not available for other workload needs.
- In addition, our Court of Appeals in an IFTA appeal found that "the Division of Hearings and Appeals—is a division of a management services agency. It has not been shown to possess any experience, expertise or specialized knowledge in the area of fuel or excise taxation, and it has no legislatively imposed duties to enforce or

administer the state's tax laws. Under well-established law, its decision is entitled to no deference whatsoever and will be reviewed *ab initio* (from the beginning)." Roehl Transport, Inc., v. Wisconsin Division of Hearings and Appeals, 213 Wis 2d 452, 570 N.W.2d 864 (1997).

- The Court said that the "Tax Appeals Commission is entitled to deference because it 'has primary responsibility for [tax] policy determinations.'" Id.
- If history is a valid predictor of the future, there will not be a large number of appeals, probably less than one per year.
- All parties – the Division of Hearings and Appeals, the Department of Administration, the Tax Appeals Commission, and the Department of Revenue – support the transfer of IRP and IFTA audit appeals to the Tax Appeals Commission.