



1999 ASSEMBLY BILL 136

February 22, 1999 - Introduced by Representatives BRANDEMUEHL, AINSWORTH, ALBERS, GOETSCH, HAHN, KELSO, LASSA, J. LEHMAN, MONTGOMERY, POWERS and STEINBRINK, cosponsored by Senators BRESKE, HUELSMAN, DARLING, SCHULTZ and FARROW. Referred to Committee on Transportation.

1 **AN ACT to renumber** 85.013 (2) and 341.43; **to amend** 73.01 (4) (a), 73.01 (4) (e)
2 1., 73.01 (4) (e) 2., 73.01 (5) (a) and 341.43 (title); and **to create** 85.013 (2) (b)
3 and 341.43 (2) of the statutes; **relating to:** transferring appeals of certain
4 determinations of the department of transportation from the division of
5 hearings and appeals to the tax appeals commission.

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

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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.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 73.01 (4) (a) of the statutes is amended to read:

2 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,
3 the commission shall be the final authority for the hearing and determination of all
4 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
5 70.11 (21), 70.38 (4) (a), 70.397, 70.64 and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss.
6 76.39 (4) (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (6) (b), 78.01, 78.22, 78.40, 78.555,
7 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76 and, 139.78, 341.405 and
8 341.45, subch. XIV of ch. 71 and subch. VII of ch. 77. Whenever with respect to a
9 pending appeal there is filed with the commission a stipulation signed by the
10 department of revenue and the adverse party, under s. 73.03 (25), or the department
11 of transportation and the adverse party agreeing to an affirmance, modification or
12 reversal of the department's department of revenue's or department of
13 transportation's position with respect to some or all of the issues raised in the appeal,
14 the commission shall enter an order affirming or modifying in whole or in part, or
15 canceling the assessment appealed from, or allowing in whole or in part or denying
16 the petitioner's refund claim, as the case may be, pursuant to and in accordance with
17 the stipulation filed. No responsibility shall devolve upon the commission,
18 respecting the signing of an order of dismissal as to any pending appeal settled by
19 the department of revenue or the department of transportation without the approval
20 of the commission.

21 **SECTION 2.** 73.01 (4) (e) 1. of the statutes is amended to read:

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1 73.01 (4) (e) 1. Except for hearings on ss. 341.405 and 341.45 and except as
2 provided in subd. 2., the department of revenue shall be deemed to acquiesce in the
3 construction so adopted unless the department of revenue seeks review of the order
4 or decision of the commission so construing the statute. For purposes of this
5 subdivision, the department of revenue has sought review of the order or decision if
6 it seeks review and later settles the case or withdraws its petition for review or if the
7 merits of the case are for other reasons not determined by judicial review. The
8 construction so acquiesced in shall thereafter be followed by the department of
9 revenue.

10 **SECTION 3.** 73.01 (4) (e) 2. of the statutes is amended to read:

11 73.01 (4) (e) 2. The Except for hearings on ss. 341.405 and 341.45, the
12 department of revenue may choose not to appeal and to nonacquiesce in the decision
13 or order by sending a notice of nonacquiescence to the clerk of the commission, to the
14 revisor of statutes for publication in the Wisconsin administrative register and to the
15 taxpayer or the taxpayer's representative before the time expires for seeking a
16 review of the decision or order under s. 73.015. The effect of this action is that,
17 although the decision or order is binding on the parties for the instant case, the
18 commission's conclusions of law, the rationale and construction of statutes in the
19 instant case are not binding upon or required to be followed by the department of
20 revenue in other cases.

21 **SECTION 4.** 73.01 (5) (a) of the statutes is amended to read:

22 73.01 (5) (a) Any person who is aggrieved by a determination of the state board
23 of assessors under s. 70.995 (8) or by the department of revenue under s. 70.11 (21)
24 or who has filed a petition for redetermination with the department of revenue and
25 who is aggrieved by the redetermination of the department of revenue may, within

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1 60 days of the determination of the state board of assessors or of the department of
2 revenue or, in all other cases, within 60 days after the redetermination but not
3 thereafter, file with the clerk of the commission a petition for review of the action of
4 the department of revenue and the number of copies of the petition required by rule
5 adopted by the commission. Any person who is aggrieved by a determination of the
6 department of transportation under s. 341.405 or 341.45 may, within 30 days after
7 the determination of the department of transportation, file with the clerk of the
8 commission a petition for review of the action of the department of transportation
9 and the number of copies of the petition required by rule adopted by the commission.

10 If a municipality appeals, its appeal shall set forth that the appeal has been
11 authorized by an order or resolution of its governing body and the appeal shall be
12 verified by a member of that governing body as pleadings in courts of record are
13 verified. The clerk of the commission shall transmit one copy to the department of
14 revenue, or to the department of transportation, and to each party. In the case of
15 appeals from manufacturing property assessments, the person assessed shall be a
16 party to a proceeding initiated by a municipality. At the time of filing the petition,
17 the petitioner shall pay to the commission a \$25 filing fee. The commission shall
18 deposit the fee in the general fund. Within 30 days after such transmission the
19 department of revenue, except for petitions objecting to manufacturing property
20 assessments, or the department of transportation, shall file with the clerk of the
21 commission an original and the number of copies of an answer to the petition
22 required by rule adopted by the commission and shall serve one copy on the petitioner
23 or the petitioner's attorney or agent. Within 30 days after service of the answer, the
24 petitioner may file and serve a reply in the same manner as the petition is filed. Any
25 person entitled to be heard by the commission under s. 76.38 (12) (a), 1993 stats., or

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1 s. 76.39 (4) (c), 76.48 or 76.91 may file a petition with the commission within the time
2 and in the manner provided for the filing of petitions in income or franchise tax cases.
3 Such papers may be served as a circuit court summons is served or by certified mail.
4 For the purposes of this subsection, a petition for review is considered timely filed
5 if mailed by certified mail in a properly addressed envelope, with postage duly
6 prepaid, which envelope is postmarked before midnight of the last day for filing.

7 **SECTION 5.** 85.013 (2) of the statutes is renumbered 85.013 (2) (a).

8 **SECTION 6.** 85.013 (2) (b) of the statutes is created to read:

9 85.013 (2) (b) Any hearing under s. 227.42 shall be held before the tax appeals
10 commission under s. 73.01 if the hearing concerns an additional assessment, refund
11 or denial of refund under any of the following:

12 1. The international registration plan under s. 341.405.

13 2. A fuel tax agreement under s. 341.45.

14 **SECTION 7.** 341.43 (title) of the statutes is amended to read:

15 **341.43 (title) Audits and appeals.**

16 **SECTION 8.** 341.43 of the statutes is renumbered 341.43 (1).

17 **SECTION 9.** 341.43 (2) of the statutes is created to read:

18 341.43 (2) Any person feeling aggrieved by a notice under this section of
19 additional assessment, refund or denial of refund may, within 30 days after the
20 receipt of the notice, petition the department for a redetermination. A person feeling
21 aggrieved by a redetermination may appeal to the tax appeals commission in the
22 manner provided for appeals of tax determinations under s. 73.01 (5). If an appeal
23 of a redetermination is not filed within the time period provided under s. 73.01 (5),
24 the redetermination is final and conclusive.

25 **SECTION 10. Initial applicability.**

