



1997 ASSEMBLY BILL 752

January 27, 1998 - Introduced by Representative BRANDEMUEHL, by request of Department of Transportation. Referred to Committee on Highways and 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); *to repeal and recreate* 73.01
3 (4) (a) and 73.01 (5) (a); and *to create* 85.013 (2) (b) and 341.43 (2) of the
4 statutes; **relating to:** transferring appeals of certain determinations of the
5 department of transportation from the division of hearings and appeals to the
6 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 attached to the department of administration, if the determination is one that entails a right to a hearing.

This bill transfers from the division of hearings and appeals 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

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apportioned to the states in which the vehicle was operated). 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, 70.995 (8), 76.38 (12) (a), 76.39 (4) (c), 76.48
6 (6), 76.91, 77.26 (3), 77.59 (6) (b), 78.01, 78.22, 78.40, 78.555, 139.02, 139.03, 139.06,
7 139.31, 139.315, 139.33, 139.76 and, 139.78, 341.405 and 341.45, subch. XIV of ch.
8 71 and subch. VII of ch. 77. Whenever with respect to a pending appeal there is filed
9 with the commission a stipulation signed by the department of revenue and the
10 adverse party, under s. 73.03 (25), or the department of transportation and the
11 adverse party agreeing to an affirmance, modification or reversal of the ~~department's~~
12 department of revenue's or department of transportation's position with respect to
13 some or all of the issues raised in the appeal, the commission shall enter an order
14 affirming or modifying in whole or in part, or canceling the assessment appealed
15 from, or allowing in whole or in part or denying the petitioner's refund claim, as the
16 case may be, pursuant to and in accordance with the stipulation filed. No
17 responsibility shall devolve upon the commission, respecting the signing of an order
18 of dismissal as to any pending appeal settled by the department of revenue or the
19 department of transportation without the approval of the commission.

20 **SECTION 2.** 73.01 (4) (a) of the statutes, as affected by 1995 Wisconsin Act 351,
21 section 10, and 1997 Wisconsin Act (this act), is repealed and recreated to read:

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1 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,
2 the commission shall be the final authority for the hearing and determination of all
3 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
4 70.11 (21), 70.38 (4) (a), 70.397, 70.64 and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss.
5 76.39 (4) (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (6) (b), 78.01, 78.22, 78.40, 78.555,
6 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 341.405 and 341.45,
7 subch. XIV of ch. 71 and subch. VII of ch. 77. Whenever with respect to a pending
8 appeal there is filed with the commission a stipulation signed by the department of
9 revenue and the adverse party, under s. 73.03 (25), or by the department of
10 transportation and the adverse party agreeing to an affirmance, modification or
11 reversal of the department of revenue's or department of transportation's position
12 with respect to some or all of the issues raised in the appeal, the commission shall
13 enter an order affirming or modifying in whole or in part, or canceling the assessment
14 appealed from, or allowing in whole or in part or denying the petitioner's refund
15 claim, as the case may be, pursuant to and in accordance with the stipulation filed.
16 No responsibility shall devolve upon the commission, respecting the signing of an
17 order of dismissal as to any pending appeal settled by the department of revenue or
18 the department of transportation without the approval of the commission.

19 **SECTION 3.** 73.01 (4) (e) 1. of the statutes is amended to read:

20 73.01 (4) (e) 1. Except for hearings on ss. 341.405 and 341.45 and except as
21 provided in subd. 2., the department of revenue shall be deemed to acquiesce in the
22 construction so adopted unless the department of revenue seeks review of the order
23 or decision of the commission so construing the statute. For purposes of this
24 subdivision, the department of revenue has sought review of the order or decision if
25 it seeks review and later settles the case or withdraws its petition for review or if the

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1 merits of the case are for other reasons not determined by judicial review. The
2 construction so acquiesced in shall thereafter be followed by the department of
3 revenue.

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

5 73.01 (4) (e) 2. The Except for hearings on ss. 341.405 and 341.45, the
6 department of revenue may choose not to appeal and to nonacquiesce in the decision
7 or order by sending a notice of nonacquiescence to the clerk of the commission, to the
8 revisor of statutes for publication in the Wisconsin administrative register and to the
9 taxpayer or the taxpayer's representative before the time expires for seeking a
10 review of the decision or order under s. 73.015. The effect of this action is that,
11 although the decision or order is binding on the parties for the instant case, the
12 commission's conclusions of law, the rationale and construction of statutes in the
13 instant case are not binding upon or required to be followed by the department of
14 revenue in other cases.

15 **SECTION 5.** 73.01 (5) (a) of the statutes, as affected by 1997 Wisconsin Act 27,
16 section 2354, is amended to read:

17 73.01 (5) (a) Any person who is aggrieved by a determination of the state board
18 of assessors under s. 70.995 (8) or by the department of revenue under s. 70.11 (21)
19 or who has filed a petition for redetermination with the department of revenue and
20 who is aggrieved by the redetermination of the department of revenue may, within
21 60 days of the determination of the state board of assessors or of the department of
22 revenue or, in all other cases, within 60 days after the redetermination but not
23 thereafter, file with the clerk of the commission a petition for review of the action of
24 the department of revenue and the number of copies of the petition required by rule
25 adopted by the commission. Any person who is aggrieved by a determination of the

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1 department of transportation under s. 341.405 or 341.45 may, within 30 days after
2 the determination of the department of transportation, file with the clerk of the
3 commission a petition for review of the action of the department of transportation
4 and the number of copies required by rule adopted by the commission. If a
5 municipality appeals, its appeal shall set forth that the appeal has been authorized
6 by an order or resolution of its governing body and the appeal shall be verified by a
7 member of that governing body as pleadings in courts of record are verified. The clerk
8 of the commission shall transmit one copy to the department of revenue, or to the
9 department of transportation, and to each party. In the case of appeals from
10 manufacturing property assessments, the person assessed shall be a party to a
11 proceeding initiated by a municipality. At the time of filing the petition, the
12 petitioner shall pay to the commission a \$25 filing fee. The commission shall deposit
13 the fee in the general fund. Within 30 days after such transmission the department
14 of revenue, except for petitions objecting to manufacturing property assessments, or
15 the department of transportation, shall file with the clerk of the commission an
16 original and the number of copies of an answer to the petition required by rule
17 adopted by the commission and shall serve one copy on the petitioner or the
18 petitioner's attorney or agent. Within 30 days after service of the answer, the
19 petitioner may file and serve a reply in the same manner as the petition is filed. Any
20 person entitled to be heard by the commission under s. 76.38 (12) (a), 76.39 (4) (c),
21 76.48 or 76.91 may file a petition with the commission within the time and in the
22 manner provided for the filing of petitions in income or franchise tax cases. Such
23 papers may be served as a circuit court summons is served or by certified mail. For
24 the purposes of this subsection, a petition for review is considered timely filed if

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1 mailed by certified mail in a properly addressed envelope, with postage duly prepaid,
2 which envelope is postmarked before midnight of the last day for filing.

3 **SECTION 6.** 73.01 (5) (a) of the statutes, as affected by 1997 Wisconsin Act 27,
4 section 2355, and 1997 Wisconsin Act (this act), is repealed and recreated to read:

5 73.01 (5) (a) Any person who is aggrieved by a determination of the state board
6 of assessors under s. 70.995 (8) or by the department of revenue under s. 70.11 (21)
7 or who has filed a petition for redetermination with the department of revenue and
8 who is aggrieved by the redetermination of the department of revenue may, within
9 60 days of the determination of the state board of assessors or of the department of
10 revenue or, in all other cases, within 60 days after the redetermination but not
11 thereafter, file with the clerk of the commission a petition for review of the action of
12 the department of revenue and the number of copies of the petition required by rule
13 adopted by the commission. Any person who is aggrieved by a determination of the
14 department of transportation under s. 341.405 or 341.45 may, within 30 days after
15 the determination of the department of transportation, file with the clerk of the
16 commission a petition for review of the action of the department of transportation
17 and the number of copies required by rule adopted by the commission. If a
18 municipality appeals, its appeal shall set forth that the appeal has been authorized
19 by an order or resolution of its governing body and the appeal shall be verified by a
20 member of that governing body as pleadings in courts of record are verified. The clerk
21 of the commission shall transmit one copy to the department of revenue, or to the
22 department of transportation, and to each party. In the case of appeals from
23 manufacturing property assessments, the person assessed shall be a party to a
24 proceeding initiated by a municipality. At the time of filing the petition, the
25 petitioner shall pay to the commission a \$25 filing fee. The commission shall deposit

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1 the fee in the general fund. Within 30 days after such transmission the department
2 of revenue, except for petitions objecting to manufacturing property assessments, or
3 the department of transportation, shall file with the clerk of the commission an
4 original and the number of copies of an answer to the petition required by rule
5 adopted by the commission and shall serve one copy on the petitioner or the
6 petitioner's attorney or agent. Within 30 days after service of the answer, the
7 petitioner may file and serve a reply in the same manner as the petition is filed. Any
8 person entitled to be heard by the commission under s. 76.38 (12) (a), 76.39 (4) (c),
9 76.48 or 76.91 may file a petition with the commission within the time and in the
10 manner provided for the filing of petitions in income or franchise tax cases. Such
11 papers may be served as a circuit court summons is served or by certified mail. For
12 the purposes of this subsection, a petition for review is considered timely filed if
13 mailed by certified mail in a properly addressed envelope, with postage duly prepaid,
14 which envelope is postmarked before midnight of the last day for filing.

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

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

17 85.013 (2) (b) Any hearing under s. 227.42 shall be held before the tax appeals
18 commission under s. 73.01 if the hearing concerns any of the following:

- 19 1. The international registration plan under s. 341.405.
- 20 2. A fuel tax agreement under s. 341.45.

21 **SECTION 9.** 341.43 (title) of the statutes is amended to read:

22 **341.43 (title) Audits and appeals.**

23 **SECTION 10.** 341.43 of the statutes is renumbered 341.43 (1).

24 **SECTION 11.** 341.43 (2) of the statutes is created to read:

