



OFFICE OF THE CLERK
Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215

P.O. Box 1688

MADISON, WI 53701-1688

TELEPHONE (608) 266-1880

FACSIMILE (608) 267-0640

Web Site: www.wicourts.gov

March 21, 2008

To:

F. Thomas Creeron III
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Leonard S. Sosnowski
Foley & Lardner LLP
P.O. Box 1497
Madison, WI 53701-1497

Maureen A. McGinnity
Foley & Lardner LLP
777 E. Wisconsin Ave. Ste. 3600
Milwaukee, WI 53202-5367

Rebecca Kathryn Mason
Godfrey & Kahn, S.C.
P.O. Box 2719
Madison, WI 53701-2719

Andrew L. Nelson
Foley & Lardner LLP
P.O. Box 1497
Madison, WI 53701-1497

Brady C. Williamson Jr.
Godfrey & Kahn, S.C.
P.O. Box 2719
Madison, WI 53701-2719

You are hereby notified that the Court has entered the following order:

2004AP3239

Wisconsin Dep't of Revenue v. Menasha Corp.
L.C. No. 2003CV3922

This court having reviewed the record, having considered the briefs submitted by the parties, and having heard oral argument, requests additional information and additional briefs.

IT IS ORDERED, that petitioner-respondent-petitioner, Wisconsin Department of Revenue, and respondent-appellant, Menasha Corporation, address the following matter in letter briefs:

1. What impact, if any, do the acquiescence and non-acquiescence provisions of Wis. Stat. §§ 73.01(4)(e)1 and 73.015(2) (2003-04) have on the standard of review and degree of deference to be accorded the Department of Revenue and Tax Appeals Commission in the instant matter?

2. In responding to the first question, consider the applicability, if any, of Sea View Estates Beach Club, Inc. v. DNR, 223 Wis. 2d 138, 588 N.W.2d 667 (Ct. App. 1998) and Roehl Transport, Inc. v. Division of Hearings & Appeals, 213 Wis. 2d 452, 570 N.W.2d 864 (Ct. App. 1997), to the instant matter. These two cases involved Wis. Stat. §§ 227.43(1)(b)(br) and 227.46(3)(b) empowering the Department of Transportation and the Department of Natural Resources to direct whether an adjudicative decision by a hearing examiner appointed by the Division of Hearings & Appeals be the final decision of the Department. These two cases, and the different standards of review and degrees of deference in the two types of cases, are explained in Racine Harley-Davidson v. State, 2006 WI 86, ¶¶39-55 (and the cases subsequent to Sea View and Roehl Transport cited therein), 292 Wis. 2d 549, 717 N.W.2d 184.

3. In responding to the first question, consider also the continuing relevance, if any, of case law relating to judicial review of and deference to the decisions of the Tax Appeals Commission when the case law does not consider the power of the Department of Revenue to acquiesce or nonacquiesce and does not consider or apply the Sea View or Roehl Transport line of cases. With this point in mind, see the discussion in Racine Harley-Davidson, 292 Wis. 2d 549, ¶¶36-37, 55 (and the cases cited therein) relating to the Tax Appeals Commission.

IT IS FURTHER ORDERED, that by April 1, 2008, the parties shall simultaneously file letter briefs addressing the above matter.

David R. Schanker
Clerk of Supreme Court