

**COURT OF APPEALS
DECISION
DATED AND FILED**

FEBRUARY 17, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-1836-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

WERNER W. BRANDT AND ELIZABETH BRANDT,

PETITIONERS-APPELLANTS,

v.

WISCONSIN DEPARTMENT OF REVENUE,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: FRANCIS T. WASIELEWSKI, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Werner Brandt appeals from the Tax Appeals Commission's determination that he was not entitled to certain capital loss carry forwards he had claimed on his tax returns for the years 1979 through 1987.¹ On

¹ Elizabeth Brandt, Werner's wife, is also an appellant. We refer to only Werner Brandt in this opinion.

appeal, Brandt concedes that he was not entitled to the carry forwards from 1980-1987, but argues that he is entitled to the capital loss carry forward for 1979. Because Brandt did not raise this argument before the commission, we conclude that he has waived the argument. Accordingly, we affirm.

The primary issue before the commission was whether stock inherited by Brandt's former wife, Melitta Brandt, was jointly owned or individually owned by her. The commission concluded that the stock was individually owned by Melitta Brandt and disallowed capital loss carry forwards Werner Brandt had claimed on his tax returns for the years 1979 through 1987. On appeal, Brandt argues that he is only entitled to the carry forward for 1979, the year preceding his divorce from Melitta Brandt, because he and Melitta filed a joint return for 1979.

An issue not raised before the commission generally cannot be raised on appeal. *DOR v. Wisconsin Tel. Co.*, 72 Wis.2d 259, 267, 240 N.W.2d 411, 415 (1976). Before the commission, Brandt never attempted to distinguish 1979 from the other years at issue. Rather, he argued that he enjoyed beneficial joint ownership of the stock when the stock was sold. The extensive litigation in this case has always treated the status of the stock the same for all of the years involved. We will not consider on appeal a theory of law never argued before the commission or in the trial court. Because Brandt did not previously raise this issue, he has waived his right to make this argument.

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

