

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 22, 2004

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 03-0992
STATE OF WISCONSIN**

Cir. Ct. No. 02CV002086

**IN COURT OF APPEALS
DISTRICT IV**

WILLIAM JAKEL AND KATHLEEN JAKEL,

PETITIONERS-APPELLANTS,

v.

WISCONSIN DEPARTMENT OF REVENUE,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
MARYANN SUMI, Judge. *Affirmed.*

Before Deininger, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. William and Kathleen Jakel appeal the circuit court's order affirming a decision of the Wisconsin Tax Appeals Commission.¹

¹ We review the decision of the agency, not the circuit court. See *Wisconsin Cent. Ltd. v. PSC*, 170 Wis. 2d 558, 567, 490 N.W.2d 27 (Ct. App. 1992).

The issue is whether termination payments William Jakel received from State Farm Insurance after he retired are taxable as capital gains or as ordinary income. We affirm.

¶2 After briefing for this appeal was complete, the Seventh Circuit Court of Appeals decided a case that directly addresses the issue before us, *Baker v. Commissioner of Internal Revenue*, 338 F.3d 789 (7th Cir. 2003). Like this case, *Baker* involved a retired State Farm insurance agent who treated termination payments as capital gains, rather than as ordinary income, and discussed the same legal issue: whether the termination payments were capital gains because they were consideration for the sale of a capital asset—the goodwill of the agent’s business. *Id.* at 792. The *Baker* court concluded that the payments were ordinary income because the goodwill of a business can only be transferred with other assets of the business with which it is connected, and here the agent had no other assets to sell.² *Id.* at 793-94.

¶3 It has long been established that Wisconsin courts consider federal court rulings on issues of taxation persuasive where, as here, the Wisconsin and federal statutes are similar in language and operation. See *Department of Taxation v. Siegman*, 24 Wis. 2d 92, 97, 128 N.W.2d 658 (1964). Here, the commission’s analysis, which we give at least due weight,³ paralleled the analysis

² The Jakels concede that the issue in *Baker v. Commissioner of Internal Revenue*, 338 F.3d 789 (7th Cir. 2003), which was pending before the Seventh Circuit during briefing, is identical to this case.

³ We give due weight to the commission’s decision when it has previously decided an issue at least once. See *Zignego Co., Inc. v. DOR*, 211 Wis. 2d 819, 825, 565 N.W.2d 590 (Ct. App. 1997). The commission has also decided that termination payments received by a State Farm agent were taxable as ordinary income, not as capital gains, for the sale of goodwill in *Gudal v. DOR*, Wis. Tax Rptr. (CCH) ¶400-541 (Apr. 19, 2001).

in *Baker*. We believe the analysis employed by both the commission and by the *Baker* court is a reasonable reading of the case law and statutes. We also conclude that the Jakels have not proffered a more reasonable interpretation than that espoused by the commission. See *Zignego Co., Inc. v. DOR*, 211 Wis. 2d 819, 825-26, 565 N.W.2d 590 (Ct. App. 1997) (declining to overturn an agency decision accorded due weight deference if the decision is reasonable, and no more reasonable interpretation is available). Therefore, we affirm.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

