



CLIENT MEMORANDUM

To: Wisconsin Broadcasters Association, Inc.
Wisconsin Grocers Association, Inc./Piggly Wiggly Midwest, LLC
Wisconsin Hotel & Lodging Association, Inc.
Wisconsin Independent Businesses, Inc.
Wisconsin Propane Gas Association, Inc.
Wisconsin Restaurant Association, Inc.
Wisconsin Small Businesses United, Inc.

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Date: April 12, 2018

Subject: Exemption for Machinery, Tools and Patterns

The purpose of this memorandum is to briefly summarize the new personal property tax exemption for machinery, tools and patterns. Specifically, this memorandum describes the terms of the exemption, explains the unwarranted attempts by some assessors to limit the exemption, and explains the steps to challenge illegal attempts to limit the exemption.

BACKGROUND

The 2017-2019 Wisconsin Biennial Budget Act ("Budget Act") created a new personal property tax exemption, at Wis. Stat. § 70.111(27), for non-manufacturing machinery, tools and patterns, which was effective January 1, 2018 ("Machinery Exemption"). For this purpose, "machinery" was defined as "a structure or assemblage of parts that transmits force, motion, or energy from one part to another in a predetermined way by electrical, mechanical, or chemical means" and to exclude buildings and machinery used in manufacturing (certain manufacturing-related machinery and equipment already is exempt under other provisions). The Budget Act also provided that taxing jurisdictions are reimbursed for losses due to the Machinery Exemption based on the value of machinery, tools and patterns reported as of January 1, 2017.

As you know, Wisconsin businesses generally are required to report personal property each year on a Statement of Personal Property ("Statement"), which is filed with the local assessor on or before March 1. The Statement is a form prescribed by the Wisconsin Department of Revenue ("Department"), which also provides assessors with guidance on how to value and assess the personal property. Local assessors use the information on the Statement to issue a notice of assessment on which tax bill are based.

Prior to 2018, the Statement provided several schedules on which to report personal property, including machinery, tools and patterns on Schedule C; furniture, fixtures and office equipment on Schedule D; exempt computer equipment and software (owned), cash registers and single-function fax machines on Schedule D1; multifunction faxes, copiers, postage meters, telephone systems and computerized equipment on Schedule D2; leased equipment on Schedule F; supplies on Schedule G; and all other personal property on Schedule H. Consistent with the changes in the Budget Act, the Statement has been modified by the Department and no longer requires reporting on Schedules C (machinery, tools and patterns) or D1 (exempt computer equipment, etc.).

During informal conversations with industry trade group representatives after the enactment of the Machinery Exemption, Department leadership indicated the Department had no plans to issue formal guidance to clarify what constitutes "machinery" for purposes the new personal property tax exemption. Rather, the Department's leadership indicated that any determination as to what constituted exempt machinery was to be made by each assessor with the understanding that the reimbursements for the loss of revenue would be limited to the "machinery, tools and patterns" reported on Schedule C as of January 1, 2017.

Prior to 2018 some taxpayers reported machinery, tools and patterns on other schedules of the Statement. If those taxpayers correctly remove machinery, tools and equipment from the other schedules, some municipalities may experience reductions to their personal property tax base that are not reimbursed by state aid.

DISCUSSION

In light of the foregoing, some assessors have asserted the Machinery Exemption is limited to personal property that was reported on the 2017 Schedule C and to new personal property that would have been reported on the 2018 Schedule C. However, the plain language of the statute which controls any exemption determination does not contain such a limitation; the Department's explanation of limitation on the state reimbursement cannot change or contradict the statute; there is no official list of exempt and taxable property for purposes of the Machinery Exemption; the issue of reimbursement is independent from the issue of exemption; and taxpayers are entitled to fair play by tax officials.

1. The plain language of the Machinery Exemption controls

The interpretation of a statute is a question of law and is subject to de novo review by the courts. If the statute is clear on its face, then a court's inquiry into the Legislature's intent terminates and the court applies the law to the facts of the case. *Country Meadows W. P'Ship v. Vill. of Germantown*, 2000 WI App 127, 614 N.W.2d 498. For purposes of the Machinery Exemption, "machinery" is defined as (1) a structure or assemblage of parts; (2) that transmits force, motion or energy; (3) from one part to another; (4) in a predetermined way; (5) by electrical, mechanical or chemical means; and (6) is not a building and is not used in manufacturing. In the case of the Machinery Exemption, the statute is unambiguous; there is no requirement that an exempt machine previously have been reported on the 2017 Schedule C; there is no reference to the types of places at which exempt machines typically would be located;

and there are no examples of exempt or nontaxable machines. Rather, there is a plain language definition of what constitutes a machine.

2. The Department's and Assessment Manual's interpretation of Machinery Exemption cannot contradict the plain statutory language

Compliance with the Wisconsin Property Assessment Manual ("Manual") is not a defense when the Manual gives guidance contrary to statute because the Manual cannot change or violate an unambiguous statute. *Metro. Holding Co. v. City of Milwaukee*, 173 Wis. 2d 626, 495 N.W.2d 314 (Wis. 1993). The Manual is published by the Department and, in this case, offers only limited guidance as to the Machinery Exemption. However, when a statute is new and the statute is clear and plain on its face--as is the Machinery Exemption--the courts give the Department's interpretation no deference. *See generally Wis. Dep't of Revenue v. Caterpillar, Inc.*, 2001 WI App 35, 625 N.W.2d 338 (noting "any deviation from the plain meaning of the statute" is inherently unreasonable); *Wis. Dep't of Revenue v. A. Gagliano Co., Inc.*, 284 Wis. 2d 741, 702 N.W.2d 834 (Ct. App. 2005) (noting no deference is given an agency's interpretation when it "contradicts the plain language" of a statute). Furthermore, even when the Manual correctly interprets state law, assessors generally are required to follow the Manual only when *valuing* real or personal property--not when making an exemption determination. Wis. Stat. §§ 70.32(1) and 70.34. In other words, an assessor (not the Department) is solely responsible for making an exemption determination. In this case, the Department has failed to issue any formal substantive guidance relating to the Machinery Exemption (even if it were authorized by law to do so) but has continued to list examples of equipment and, by implication, suggest the equipment cannot be a machine. Any such implication ignores the plain language of the Machinery Exemption, which provides a definition of "machine" that could encompass some of the listed examples of equipment.

3. There is no official list of "exempt machinery" or "taxable equipment"

Article I, Section 8 of the Wisconsin Constitution requires the rule of taxation to be uniform ("Uniformity Clause") and a taxing authority violates the Uniformity Clause when its method of assessment is arbitrary or relies on improper classifications or considerations. *Noah's Ark Family Park v. Vill. of Lake Delton*, 216 Wis. 2d 387, 573 N.W.2d 852 (1998). In this case, the risk of a non-uniform and unconstitutional assessment increases when the Machinery Exemption is read to impose requirements that do not exist. For example, any statement that there is an official or statutorily-authorized list of "exempt machinery" or "taxable equipment," is simply incorrect. The Machinery Exemption provides a definition of machinery and does not list of the types of locations at which exempt machinery typically would be located, or limit its application only to property that was reported on Schedule C in 2017. Any such reading of the Machinery Exemption ignores the plain language, is arbitrary and relies on an improper classification. For example, for purposes of the Machinery Exemption, an exempt machine could not possibly be of a type normally found in a manufacturing plant because the Machinery Exemption plainly excludes machines used in manufacturing--that's logically inconsistent and results in an arbitrary classification. "It is important that taxpayers receive fair play from tax officials." *IBM Credit Corp. v. Vill. of Allouez*, 188 Wis. 2d 143, 524 N.W.2d 132 (1994).

4. The Machinery Exemption and reimbursements are independent and separate issues

While the Legislature agreed to partly reimburse taxing jurisdictions for the loss of revenue from the Machinery Exemption (as measured by the 2017 assessment of machinery, tools and patterns), the assessor's exemption determination is an entirely separate issue. In fact, taxing jurisdictions will be reimbursed for the January 1, 2017 assessment of Schedule C property regardless of whether a taxpayer disposed of the property in 2017, regardless of whether the property was subject to further depreciation in 2017 and 2018, and regardless of whether the property had been incorrectly or inadvertently reported on Schedule C in 2017. More importantly, if the Legislature had wanted to limit or tie the Machinery Exemption to property previously reported on Schedule C, it could have done so.

5. A taxpayer may appeal an assessor's valuation and exemption determinations, though the process differs

The assessor's *valuation* determination may be appealed to the board of review of the taxation district in which the property was located by giving the board's clerk notice of intent to file an objection within 48 hours before the board's first meeting, followed by the filing of a written objection to the valuation within the first two hours of the board's first meeting. If the board fails to adjust the value, then the taxpayer has two options--file an immediate appeal to circuit court that is limited to the record created at the board of review; or pay the tax due on the assessment, serve a claim for refund on the clerk of the taxation district by January 31 of the following year and, if denied, file an *de novo* appeal with the circuit court (one that is not limited to the record created at the board of review).

The assessor's *exemption* determination may be appealed to the circuit court only after the tax is paid, and after serving a claim for refund on the clerk of the taxation district by January 31 of the following year. Because the Machinery Exemption is an exemption, and the local board of review has no jurisdiction on exemption determinations, if a taxpayer is not able to convince an assessor to grant the Machinery Exemption, then the next step is to pay the tax and serve a claim for unlawful assessment with the municipal clerk prior to the following January 31. Please note, there are mandatory procedures in serving a claim which, if not followed, could lead to a taxpayer losing its appeal rights.

CONCLUSION

While the Machinery Exemption is unambiguous, its application to an item of personal property is necessarily fact-specific. This memorandum was intended to offer guidance of a general nature and not apply a specific set of facts to the law. Taxpayers and assessors should consult with their advisors for a more complete analysis of the Machinery Exemption as it applies to specific facts.