STATE OF WISCONSIN

TAX APPEALS COMMISSION

CANNON & DUNPHY, S.C., **DOCKET NO. 13-S-221**

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

(This ruling, which replaces the original ruling of the same date, contains typographical and citation formatting corrections which do not affect the verbiage or substance of the ruling.)

LORNA HEMP BOLL, CHAIR:

This case comes before the Commission for decision on Motions by both parties for Summary Judgment. The Petitioner, Cannon & Dunphy, S.C., a law firm based in Brookfield, Wisconsin, is self-represented by Attorney Sarah F. Kaas. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Julie A. Zimmer. Both parties have filed briefs and affidavits in support of their respective positions.

The case involves two distinct issues: (1) whether the cost of obtaining copies of medical records from health care providers on behalf of clients is subject to Wisconsin use tax, and (2) whether Wisconsin sales tax has been paid on the firm's

purchase of a granite counter top. For the reasons stated below, we find for the Petitioner on the first issue and the Department on the second.

FACTS

Although the parties have provided only a partial Stipulation of Facts ("Stip."), the facts upon which both sides rely are essentially the same in all material aspects and the parties have agreed that this case is resolvable through Summary Judgment.

1. Cannon & Dunphy, S.C. is a nine-attorney Milwaukee area law firm that focuses primarily on representing personal injury clients. (Stip. ¶ 1.)

2. By Notice of Field Audit Action dated February 8, 2013, the Department of Revenue assessed Cannon & Dunphy $21,171.28 in "sales/use tax" for the period December 31, 2008 to December 31, 2011 (calendar years 2008 through 2011 being the "years at issue"). (Stip. ¶ 2.)

3. By letter dated April 8, 2013, Cannon & Dunphy timely appealed the Field Audit Action, opposing $18,159.88[1] of the assessment—which consisted of tax of $14,443.67 on copies of medical records and a purchase from Halquist Stone, along with 12% interest on those amounts of $3,716.21 through April 9, 2013. (Stip. ¶ 3.)

4. By letter dated April 8, 2013, Cannon & Dunphy sent a check made payable to the Wisconsin Department of Revenue which included a payment of $18,159.88 for the disputed amount made to stop the accumulation of interest. (Stip. ¶ 4.)

[1] There are some minor discrepancies regarding the itemization and final tally of the medical records charges. However, given our holding, these disagreements will not be addressed here.

5. By letter dated August 28, 2013, the Department denied Cannon & Dunphy's Petition for Redetermination. The denial specifically stated, "Photocopies of medical records are subject to Wisconsin sales tax under sec. 77.52(1), Wis. Stats (2008-2010)." Although not expressly addressed, the appeal regarding the granite purchase was denied as well. (Stip. ¶ 5; Pet. For Review, P-App. 101.)

6. Cannon & Dunphy timely appealed the Department's decision to the State of Wisconsin Tax Appeals Commission by Petition for Review dated October 23, 2013. (Stip. ¶ 6.)

7. During the pendency of this case, the parties have resolved certain details and the assessments have been revised accordingly. The total amount remaining in dispute is $6,509.95. (Anfang Aff. ¶ 8.)

8. The parties agreed to have this dispute resolved by this Commission through cross-motions for summary judgment. (Stip. ¶ 7.)

9. In conjunction with its representation of clients, Cannon and Dunphy requests medical records from health care providers on behalf of its clients. When Cannon & Dunphy requests medical records on behalf of clients, those records may be provided in either hard copy or electronic copy. (Stip. ¶ 12.)

10. The parties agree that electronic copies, copies sent by email, and facsimile copies of medical records printed by requesters are not taxable as "tangible personal property" within the provisions of Wis. Stat. § 77.52(1). (Stip. ¶¶ 14-16.)

11. In 2008, along with other granite purchased for business purposes, Cannon & Dunphy purchased a granite countertop which should have been subject to

sales tax but the seller neglected to charge sales tax. (Pet. For Rev.)

12. At some point the granite seller was the subject of an audit by the Department regarding its sales taxes. That audit resulted in adjustments for a period spanning July 1, 2003, through December 31, 2006. (Anfang Aff., DOR Ex. 3.)

13. Petitioner has provided an email from the granite seller's current CFO, stating that the sales tax on Petitioner's countertop was paid in conjunction with the audit. (Watson Aff., Ex. 3.) A second email clarified as follows: "I went through our old records, but can't find any of the original paperwork." The CFO's email further states, "From our memory, Wisconsin extrapolated the sales for 2008 into the sales tax audit. We believe the original audit period did not include 2008, but when the issue was found, they expanded the time frame and included 2008." (Watson Aff., Ex. 4.)

APPLICABLE LAW[2]

Applicable Statutes

> **146.83 Access to patient health care records.**
> **(3f)(a)** Except as provided in sub. (1f) or s. 51.30 or 146.82 (2), if a person requests copies of a patient's health care records, provides informed consent, and pays the applicable fees under par. (b), the health care provider shall provide the person making the request copies of the requested records.
>
> **77.53 Imposition of Use Tax**
> **(1)** Except as provided in sub. (1m), an excise tax is levied and imposed on the use or consumption in this state of taxable services under s. 77.52 purchased from any retailer, at the rate of 5% of the purchase price of those services; on the storage, use or other consumption in this state of tangible personal property . . . if the purchaser has the right to use the goods on a permanent or less than permanent basis and

[2] Reference to the Wisconsin statutes includes the years under review, specifically the statutes in effect for 2007-08, 2009-10, and 2011-12.

regardless of whether the purchaser is required to make continued payments for such right, at the rate of 5 percent of the purchase price of the goods . . . .
(1b) The storage, use, or other consumption in this state of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), and the use or other consumption in this state of a taxable service, purchased from any retailer is subject to the tax imposed in this section unless an exemption in this subchapter applies.

The following section is found in the Department of Revenue's rules in Tax Chapters of the Wisconsin Administrative Code. It sets forth Wisconsin's "true objective" test for transactions involving a mix of goods and services.

Tax § 11.67 Service enterprises.
(1) General. When a transaction involves the transfer of tangible personal property . . . along with the performance of a service, and the transaction is neither a bundled transaction, as defined in s. Tax 11.985, nor a transaction to which s. 77.52 (2m) (b), Stats., applies, the true objective of the purchaser shall determine whether the transaction is a sale of tangible personal property . . . or the performance of a service with the transfer of the property, item, or good being incidental to the performance of the service. If the objective of the purchaser is to obtain the personal property, item, or good, a taxable sale of that property, item, or good is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved even though, as an incidence to the service, some tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., may be transferred.
Example: A person performing business advisory, record keeping, payroll, and tax services for small businesses is providing a service even though this person may provide forms and binders without charge as part of the service. The person is the consumer, not the seller, of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., furnished as an incidence to the service. (emphasis added)

The "true objective" test above does not apply if the transaction is a

bundled transaction or if the transaction is a taxable service under Wis. Stat. § 77.52(2m)(b).

> **77.51(1f)(b) Bundled Transaction does not include:**
> 1. The retail sale of tangible personal property and a service, if the tangible personal property is essential to the use of the service, and provided exclusively in connection with the service, and if the true object of the transaction is the service.
>
> **77.52(2m)(b)** With respect to the services subject to tax under sub. (2) (a) 7., 10., 11. and 20., all property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) physically transferred, or transferred electronically, to the customer in conjunction with the selling, performing or furnishing of the service is a sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) separate from the selling, performing or furnishing of the service.

Under the facts of this case, the only subsection listed in Wis. Stat. § 77.52(2m)(b) which could arguably trigger taxation on goods transferred in conjunction with a taxable service is Wis. Stat. § 77.52(2)(a)7, which addresses photography. (Wis. Stats. §§ 77.51(2)(a) 10, 11, and 20 do not fit the facts of this case.)

> **77.52(2)(a)7.** Photographic services including the processing, printing and enlarging of film as well as the service of photographers for the taking, reproducing and sale of photographs.
>
> **Tax § 11.47 (1)**
> **(1)** TAXABLE SALES. Taxable services and sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., of commercial photographers and others providing photographic services, including videotaping, include charges for:
> **(e)** Reproducing copies of documents, drawings, photographs, videos, or prints by mechanical and chemical reproduction machines, blue printing and process camera equipment.

However, Wis. Admin Code Tax § 11.47(1) predates the case law cited below. ("Code Note: The interpretations in s. Tax 11.47 are effective under the general sales and use tax law on and after September 1, 1969, except [certain modifications not pertinent to this case]." Note to Wis. Admin. Code § 11.47(1).) The production of information in printed form was addressed by the courts the 1970s and 1980s; we summarize those cases below.

Most hospital activity constitutes nontaxable taxable services, but some activities can be taxable as the retail sales of tangible personal property or taxable services.

> **Tax § 11.67(3) Special situations.**
> (a) *Hospitals and clinics.* Hospitals and medical clinics generally provide nontaxable professional services. They are, therefore, the consumers of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., used in rendering the services. Hospitals and clinics which, in addition to rendering professional services, also sell tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services are retailers and shall obtain a seller's permit and report the tax on these sales.
> **Examples:**
> **1)** Sales of drugs by a hospital or clinic pharmacy are taxable if they are not dispensed under a prescription.
> **2)** Sales of parking for motor vehicles by a hospital or clinic are taxable.

Legal Standards and Applicable Case Law

Assessments made by the Department are presumed to be correct, and the burden is on the Petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Itsines v. Dep't of Revenue*, Wis. Tax Rptr.

(CCH) ¶ 401-341 (WTAC 2010), *citing Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984).

The imposition of a tax is to be narrowly construed. "A tax cannot be imposed without clear and express language for that purpose, and where ambiguity and doubt exist, it must be resolved in favor of the person upon whom it is sought to impose the tax." *Dep't of Revenue v. Milwaukee Refining Corp.*, 80 Wis. 2d 44, 48, 257 N.W.2d 855 (1977).

In Wisconsin, the Commission and the courts have looked to the essence of the transaction when determining whether a particular tax applies. Several of the more notable cases dealing with similar facts to those of this case have done just that. The common theme is a search for the "true objective" of the transaction, which has been memorialized in the Wisconsin Administrative Code Tax § 11.67.

In a 1978 case involving keypunched cards, magnetic tapes, and paper computer printouts, the Commission ruled that computer code delivered in such tangible form was taxable. The taxpayer appealed and the Wisconsin Supreme Court reversed the Commission explaining, "Clearly, tangible property, that is cards, tapes, or print-outs, were transferred in the case at bar. However, embodied in the cards, tapes, and print-outs is the essence of the transaction between Data Center and its customers: the purchase of coded or processed data, an intangible." *Janesville Data Center, Inc. v Dep't of Revenue*, 84 Wis. 2d 341, 267 N.W.2d 656 (1978). The test is to look at the essence rather than the nature of just one segment of the transaction. *Id.* at 346.

In 1986, the Wisconsin Court of Appeals faced a similar situation in *Frisch, Dudek, and Slattery, Ltd. v. Dep't of Revenue*, 133 Wis. 2d 444, 396 N.W.2d 355 (Ct. App. 1986). That case involved the photocopies a law firm made in the course of representation of a client and for which the client was billed. Again, the Commission found a taxable sale, and again the higher court said no. The court of appeals did not believe that a sale to the client had occurred because the copies were used mainly by the firm or provided to opposing counsel or the court and the client actually received very few of the records. The court of appeals applied the "true objective" test and found that "Frisch's clients [did] not patronize the firm to purchase photocopies." *Id.*

The *Frisch* court bolstered its decision by holding that "even if it could be said that a 'sale' occurred as to those copies which were provided to the clients," the law firm was not a retailer partially because it had no profit motive for the copying activity. The second line of reasoning relied on the *Kollasch v. Adamany*, 104 Wis. 2d 552, 313 N.W.2d 47 (1981), a decision which has since been overruled by statutory changes which added the language "regardless of whether mercantile in nature" to the definition of retailer. However, the first line of reasoning in *Frisch* remains good law.

In 1989, in *Dep't of Revenue v. Dow Jones & Co.*, 148 Wis. 2d 872, 436 N.W.2d 921 (Ct. App. 1989), a news service provided customers with teleprinting machines for its news service and charged a fee for the use of the machines. The Department had sought to tax the fee charged to a customer as a transfer of tangible personal property or alternatively as "rent." The Commission explained that the transaction involved both the transfer of tangible personal property and the performance of a service. As such,

the "true objective" test applied. Citing *Janesville Data Center*, the Commission looked to the essence of the transaction and found it to be the news service; the transfer of tangible personal property was only incidentally involved.

Both sides have cited additional cases from jurisdictions outside Wisconsin, but we find sufficient basis for this decision in the Administrative Code and statutes of this state as well as in the Wisconsin cases explained above.

ANALYSIS

The Petitioner has objected to the use tax on purchases of paper medical records and granite during the period under review. We address the issues in that order.

I. MEDICAL RECORDS

The facts concerning the medical records are not in dispute. Thus, the issue is only one of the application of the statutes and code provisions to the facts; that is a question of law for which summary judgement may be appropriate. *Bucyrus-Erie Co. v. ILHR Dep't*, 90 Wis. 2d 408, 417, 280 N.W.2d 142 (1979).

This first issue requires us to clarify the subject matter of the transaction. Is it tangible personal property, intangible personal property, or mix of tangible personal property and the performance of a service? [3]

Petitioner begins with an assertion that the medical records do not constitute tangible personal property. Because the medical records were photocopied

[3] Two other positions were argued early on, but abandoned. First, the "occasional sale" exception does not apply because the hospital holds a seller's permit. Second, the "profit motive" test also does not apply since the legislature effectively overruled *Kollasch* by adding the "regardless of whether the sale is mercantile in nature" language to the definition of retailer in Wis. Stat. § 77.51(13)(a).

and delivered in paper form, they are tangible. *Frisch, Dudek,* 133 Wis. 2d at 447 ("Neither party seriously argues that photocopies are not tangible personal property as defined by sec. 77.51(5).").

But are the photocopies the subject matter of the transaction? The Department has conceded that the medical records delivered electronically are not taxable. (Anfang Aff. ¶ 7.) The tangible nature of the printed medical records distracts from the actual nature of the transaction. The patient's interest is not in obtaining the paper but the information contained therein, just as the customer was not interested in obtaining the punch cards or paper on which the code was printed in *Janesville Data Center.* Petitioner, on behalf of its clients, the patients of the health care providers, is seeking to obtain the information contained in those records - an intangible. The sale of an intangible is not taxable in Wisconsin. *Janesville Data Center.*

One could also view the transaction as a mixture of tangible personal property and a service, that service is either the bigger picture of health care services or the more immediate service of the production of a detailed description of the medical services rendered, i.e., record retrieval, review, copying, etc.

Petitioner argues the latter: "The paper on which some of the clients' medical information is copied may be tangible personal property, but the labor involved in the physical retrieval and duplication of the medical records, as well as the information provided by the health care providers contained in the medical records are intangible information and services." We agree.

The Wisconsin Administrative Code Tax § 11.67 specifically addresses mixed transactions of goods and services. The Code sets forth the "true objective test," which focuses on the purpose of the transaction. The test does not apply in two situations: (1) bundled transactions and (2) the services subject to tax under sub. (2) (a) 7, 10, 11, and 20.

Per the Code, a transaction is not a bundled one if the good involved "is essential to the use of the service, and provided exclusively in connection with the service, and if the true object of the transaction is the service." An essential part of medical care is the creation of a record of that care. This aspect is so essential that health care providers are required by statute to provide documentation of their care. The records are provided exclusively in connection with the medical care service; one cannot request medical records if one has not received medical care. Finally, the true object of the transaction is to obtain the details of the medical care provided; the health care provider must make that information available; it must retrieve, review, copy, perhaps certify and ship services which make such information available.

Paper copies of records are not readily available waiting to be requested; they are exclusively provided in connection with the statutorily mandated service of providing details of patients' medical care upon the request of the patients. This transaction is not a bundled transaction.

The "true objective" test also does not apply if the services provided are taxable under 77.52(2m)(b). That section refers specifically to taxable services under 77.51(a) subsections (7), (10), (11), and (20). Clearly, the provision of health care services

is not a taxable service. The Department argues that the service rendered falls under subsection (7) because, it argues, photocopying falls under the definition of photography. In Wisconsin, a service must fall clearly within the definition of a listed service within Wis. Stat. § 77.52(2)(a). *Brennan Marine v. Dep't of Revenue,* Wis. Tax Rptr. (CCH) ¶ 401-474 (WTAC 2011). We hold that Petitioner did not purchase photocopying services[4] but rather the service of production of the details of patients' medical care, which is not a listed taxable service.

Because the two exceptions do not fit the facts of this case, the "true objective" test applies. The root of the transactions in this case is medical care. Patients may authorize another, in this case the law firm representing them, to request and obtain information concerning the details of the medical care they received. The Wisconsin Statutes require health care providers to provide copies of the requested records, and the health care providers are compensated for the service of providing the records in an amount determined by statute. Wis. Stat. § 146.83.

In the course of its representation, Petitioner requested medical records from various health care providers on behalf of clients. The health care providers would have no records to provide had they not provided the care to the patients who request the records. They are required to document the health care services they render. That documentary record of their services is intimately entwined with the provision of health care services and would not exist had services not been rendered.

[4] The Department's own example to its rule in Wis. Admin. Code Tax § 11.67 excludes the provision of forms given to business advisory clients from sales tax; presumably, those forms are photocopied but likewise they are incidental to the service provided.

One step removed but just as important, the paper records would not be available without required service of making the information concerning the patients' care available to the patients. The health care providers did not make copying services available to the general public, nor did they make those patients' medical records available for sale to the public.

We look particularly to the *Janesville Data* case, which espouses the Department's rule on "true objective." In *Janesville Data,* the Wisconsin Supreme Court acknowledged that tangible personal property was transferred but declared that "the object of the transaction was the sale of intangible coded information, not the sale of tangible personal property." The Texas case cited in the *Janesville Data* decision said, "In determining the 'object of this transaction,' many factors are relevant. We have attempted to follow the design and purposes of the statute. The issue must be answered on a case-by-case basis. Although tangible personal property, i.e., cards, does change hands, the receipt of the cards does not constitute the essence of the transaction, the basic purpose of the customer in entering into the transaction." The Wisconsin Supreme Court pointed out that "the object of the Plaintiff's customers is to obtain a great deal more than the key punch cards [or computer printouts]." The court placed focus on the "essence" of the transaction and found that the essence was to obtain the coded information. *Janesville Data Center,* citing *Bullock v. Statistical Tabulating Corp.,* 549 S.W.2d 166 (Tex. 1977). Likewise, the Petitioner in this case is seeking to obtain information.

As in *Frisch* where the law firm client had not sought out the law firm to obtain photocopying services, the patients in this case, through the Petitioner as their authorized agent, did not seek out the healthcare providers to make copies for them. The patients sought out the health care providers for medical care and treatment and the related required duties of providing them with a record of those services.

The Department points to the language of the Wisconsin Supreme Court in *National Amusement Co. v. Dep't of Taxation*, 41 Wis. 2d 261, 163 N.W.2d 625 (1969). That case involved a movie theater's sale of concessions. The theater argued that the food sales were incidental to its primary business, but the court held that it nevertheless was a retailer of the concessions and those sales were taxable. The Supreme Court explained that the food services in *National Amusement* were not simply a convenience or service provided to movie patrons but essentially a business endeavor unto itself.

Such is not the case here. The provision of medical information is not a separate business activity. One cannot request medical records from a health care provider from whom one has not received medical services; one cannot request someone else's records. One cannot take a random document to a healthcare provider and request that copies be made. The act of copying the records is not at all like the types of separate business activity, such as the gift shop or the parking garage, where the sales are taxable.

The Department also attempts to differentiate these facts from those in the example to its rule in Wis. Admin. Code Tax § 11.67(1). That example states as follows:

> Example: A person performing business advisory, record keeping, payroll, and tax services for small businesses is providing a service even though this person may provide forms and binders without charge as part of the service. The person is the consumer, not the seller, of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., furnished as an incidence to the service.

The Department's own example shows a transaction in which information and/or nontaxable services are the essence of the transaction - no different from the situation at hand. The forms in the binders would obviously be printed on paper just as the medical records were in this case.

The Department further argues for taxation based the hospital's status as a "retailer" under Wis. Admin. Code Tax § 11.67(3)(a). This Code section requires hospitals to obtain a retail permit for certain activities "in addition to rendering professional services" which constitute the sale of taxable goods or services. The Code explains this to mean such activities as sales of over-the-counter medicines and parking. *National Amusement* would have the list also include sales of gift shops items, coffee shop food, and the like.

However, the health care provider's status as a "retailer" does not mean every sale by the provider is to be taxed. The records production services of the hospitals are not analogous to the separate concession business enterprise of *National Amusement*. The provision of such documentation cannot compare to a side business such as concession sales (or gift shop, parking lot, or over-the-counter pharmacy product sales) where the purchaser need not be a patient. People who are not patients

can purchase items in the hospital gift shop, can park in the parking lot, and can buy bandages or aspirin in the gift shop without purchasing any medical service at all. Those sales are not mixed with or part of the performance of medical services.

In contrast, these are not services available to anyone who comes on the premises. Non-patients cannot buy medical records from the hospital; non-patients cannot bring documents to the hospital and expect that the hospital will sell copying services to them. These record production services are only available to patients who have received medical care from these providers.

Medical care services are generally nontaxable professional services under the Administrative Code. Wis. Admin. Code Tax § 11.67(3)(a). The statutory duty to provide medical documentation of the care provided is intimately related to the medical services provided to the person requesting it. The provision of patient records is simply a continuation of the medical services provided by the hospital to the patient.[5] The production of details of the medical services rendered is encompassed in the types of professional services which are nontaxable.

We find the true objective of a patient's request for the production of medical records, in whatever form provided, is to obtain medical information. The transaction primarily involves the professional services of providing medical care and

---

[5] We further note that, even though the copies are requested by and provided to the law firm, the patient's medical records are provided at the request of and on behalf of the patient. The law firm is acting as the patient's agent. The law firm would have no reason or right, independently of its representation of the patient, to request or receive the records.

the required production of the information relating to that care; these are not taxable services.

GRANITE PURCHASE

Petitioner contests the use tax assessed on the purchase of the granite countertop. Petitioner contends that sales tax has now been paid by the seller and that the Department cannot collect twice. As support, Petitioner has submitted emails from the seller regarding the conclusion of the Department's audit of the seller. However, the Department's field audit work papers show that adjustments related to the audit covered a period spanning July 1, 2003, to December 31, 2006. Petitioner's 2008 purchase did not fall within the timeframe of the audit.

The parties have agreed that this matter is resolvable through summary judgment; thus, we conclude that a trial would reveal no addition helpful factual evidence in this regard. Given the limited amount of evidence available, we reiterate that the Petitioner bears the burden to show error. The proffered emails at best provide hazy memory without documentation and are insufficient to meet Petitioner's burden of proof in light of the paperwork produced by the Department. "While we are not unmindful of the practical difficulties taxpayers would face in a case like this in providing such documentation to the Commission, we cannot help but agree with the proverbial observation that the palest ink is usually better than the clearest memory." *King's Enterprises of Wausau, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-579 (WTAC 2012); aff'd by *King's Enterprises of Wausau, WI, v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-685 (Cir. Ct. 2013), aff'd by *King's Enterprises of Wausau, WI, v. Dep't of*

Revenue, Wis. Tax Rptr. (CCH) ¶ 401-754 (Ct. App. 2013). We find that the Petitioner has not met its burden, and thus we uphold the assessment as it relates to the granite purchase.

ORDER

Based upon the foregoing,

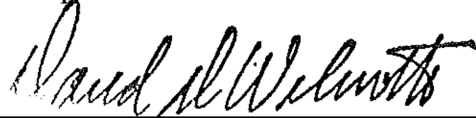
IT IS HEREBY ORDERED that Petitioner's Petition is granted as it relates to the taxability of the medical records.

IT IS FURTHER ORDERED that the Department's assessment, as it relates to Petitioner's granite purchase, is upheld.

Dated at Madison, Wisconsin, this 30th day of June, 2015.

WISCONSIN TAX APPEALS COMMISSION

Lorna Hemp Boll, Chair



David D. Wilmoth, Commissioner

ATTACHMENT: **NOTICE OF APPEAL INFORMATION**

WISCONSIN TAX APPEALS COMMISSION
5005 University Avenue - Suite 110
Madison, Wisconsin - 53705

NOTICE OF APPEAL INFORMATION

NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternatively, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. **Several points about starting a case:**

1. **The petition must be filed in the appropriate county circuit court and served upon the Tax Appeals Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier** within 30 days of this decision if there has been no petition for rehearing, or within 30 days of service of the order that decides a timely petition for rehearing.

2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.

3. The 30-day period starts the day after personal service or the day we mail the decision.

4. **The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.**

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or the Wisconsin Statutes. The website for the courts is *http://wicourts.gov*.

This notice is part of the decision and incorporated therein.