

STATE OF WISCONSIN
TAX APPEALS COMMISSION

HEALTHCARE SERVICES GROUP, INC.,

DOCKET NO. 14-S-208

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

LORNA HEMP BOLL, CHAIR:

This case comes before the Commission for decision on simultaneous Motions for Summary Judgment. The Petitioner, Healthcare Services Group, Inc. ("HSG"), appears by Attorney Don M. Millis of Reinhart Boerner Van Deuren s.c. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Julie A. Zimmer. Both parties have filed briefs and affidavits with exhibits in support of their Motions.

FACTS

Jurisdictional Facts

1. HSG is a company headquartered in Pennsylvania, which provides services for more than 3,000 clients nationally, approximately 66 of which were Wisconsin nursing homes, retirement centers, and rehabilitation facilities ("facilities")

during 2006-2009 ("Audit Period"). (Affidavit of HSG Director of Taxes Joseph Proll ("Proll Aff."), ¶¶ 2-3.)

2. The Department conducted a field audit of Petitioner for the Audit Period. The Department issued a Notice of Field Audit Action to the Petitioner on March 20, 2012. The Notice showed an assessment of additional Wisconsin sales taxes on Petitioner's sales related to laundry services (but not to housekeeping) in the amount of \$875,543.91, including 12% interest. No penalties were assessed. (Affidavit of Department Large Case Field Audit Resolution Officer James H. Hintz ("Hintz Aff.") ¶ 2, Ex. 3.)

3. HSG timely petitioned the Department for a redetermination of its sales tax assessment by letter dated May 21, 2012. (Hintz Aff. ¶ 3, Ex. 4.)

4. The Department denied the Petition for Redetermination by Notice of Action dated July 16, 2014, which HSG timely appealed to the Wisconsin Tax Appeals Commission on September 3, 2014. (Hintz Aff. ¶¶ 5-6, Exs. 6 and 7.)

Material Facts

5. HSG provides services pursuant to contracts ("Service Agreements") with its clients. Petitioner's Service Agreements with these client facilities typically require that the Petitioner provide "management, supervision and labor necessary to perform . . . laundry services on the premises of the Facility." (Proll Aff. ¶¶ 4 and 5 and Ex. A (representative Service Agreement))¹

¹ Petitioner performs services other than laundry under the Service Agreements; however, this opinion will focus primarily on the laundry aspect of the services because that is the issue in dispute here.

6. In its Petition for Redetermination, HSG described its activities as "laundering and processing of the personal clothing of residents and patients, as well as the collecting and laundering of sheets, pillow cases, blankets and other linen items used in a healthcare facility." The Petition stated that "[a]ll services provided, under any type of Service Agreement, are managed and performed by employees of HSG." (Petition for Redetermination, Hintz Aff., Ex. 4, p. 3.)

7. The sample service agreements provided by both parties clarify that this case involves the "full service" agreements only and does not involve management-only agreements mentioned in some of the documentation. (Zimmer Aff. Ex. 10; Proll Aff. Ex. A.)

8. Petitioner admits some of its employees did the laundry for some or all of the relevant Wisconsin facilities during the Audit Period. (Petitioner's Response to Admission No. 8, Zimmer Aff. Ex. 8.)

9. According to the Petitioner, "HSG does not merely clean laundry." The work performed by HSG employees includes:

- Laundering and processing of resident/patient clothing as well as sheets, pillow cases, blankets and other linens.
- Monitoring and managing the use of linens and the maintenance of appropriate reserves and par levels for the facility.
- Developing new and more efficient methods to satisfy the facility's laundry and linen requirements.
- Cleaning, disinfecting, and sanitizing all areas of the facility, including patient rooms, auxiliary areas, lobbies, public restrooms, offices and corridors.
- Periodic testing for the purpose of infection control.
- Managing productivity and labor hours.

(Affidavit of HSG Divisional Vice President James Schreck ("Schreck Aff." ¶ 5).)

10. The relevant Service Agreements require HSG to provide the following:

- All staffing and payroll responsibility for housekeeping and laundry departments
- All housekeeping supplies and equipment, including all laundry chemicals
- District Manager to oversee operation
- Full-time executive housekeeper
- Employee advertising
- Uniforms
- Payroll processing for housekeeping/laundry departments
- Monthly unit inspections and regular district manager visits
- Additional labor for employee training and orientation
- Regular employee in-service program per state and federal regulations
- All housekeeping equipment necessary for start-up
- Seven days per week supervision

(Zimmer Aff. ¶ 4, Ex. 10, Exhibit 1 of each Service Agreement.)

11. Clients may contract with HSG “due to the high cost of recruiting, hiring, training, managing, and maintaining qualified and dependable housekeeping and laundry staff.” (Supplemental Affidavit of C. Lucy Knull (“Knull Supp. Aff.”) ¶ 3.)

Management and Training

12. An HSG Account Manager supervises the HSG employees at a client facility. The HSG Account Manager is HSG’s onsite management representative at a client facility and is responsible for a variety of tasks including supervising the work of all HSG staff, ensuring that all of the client’s needs are met, addressing personnel and discipline issues, attending daily department meetings held by the client at the facility and communicating on a daily basis with the client facility’s management about services provided by HSG. (Schreck Aff. ¶4.)

13. The HSG Account Manager functions as a facility department head for the client. For example, HSG Account Managers are required to attend department meetings led by the client's facility administrator. During these meetings, the facility administrator typically provides the department heads (including the HSG Account Manager) with the goals and focuses of their respective departments for that day or week, as the case may be. (Schreck Aff. ¶6.)

14. The HSG Account Manager is required to hire, train, and evaluate all staff that she/he supervises in accordance with the guidelines and policies established by both HSG and the guidelines and policies set by the client, which HSG typically agrees to adhere to during the contract term. HSG's employees are notified of, and are expected to comply with, the particular policies and procedures of the facility in which they work, especially policies related to safety, which are specifically crafted by the client. (Schreck Aff. ¶6.)

15. The HSG Account Manager is supported by an HSG District Manager who is responsible for several client facilities. The HSG District Manager typically oversees HSG's activities and maintains and develops a business relationship with the facility administrator at each client facility. (Schreck Aff. ¶ 10.)

16. The client, through its facility administrator, may assign additional duties within the scope of the service agreement and which are customary functions of the department otherwise managed by an HSG Account Manager. For example, the facility administrator may want additional efforts to be undertaken prior and

subsequent to times when there will be a large number of visitors such as before, during, and after family days, holidays and other special events. (Schreck Aff. ¶13.)

17. The client, through its facility administrator, may also, from time to time, give direction to the Account Manager on personnel and/or staffing matters. For example, the facility administrator may direct that HSG employees adhere to personnel policies applicable throughout the facility such as uniforms, cell phone usage, background checks/drug testing, holiday events, and patient-based policies. (Schreck Aff. ¶ 14.)

18. When a service agreement takes effect, HSG typically hires the client's existing workforce, often including the Account Manager. The HSG Account Manager may hire additional employees and may discharge "inherited" employees. The work force and the Account Manager are employees of HSG during the time of the contract. Such was the case during the Audit Period. (Schreck Aff. ¶ 2.)

19. HSG sends its employees into the client facilities daily to perform housekeeping and laundry services. Those employees are typically managed by HSG's onsite lead janitor and housekeeper who assign duties to them and schedule their hours. (Knull Aff. ¶ 4.)

20. HSG has the freedom to schedule the housekeeping/laundry and maintenance staff independently, so long as all necessary tasks were done within the established time-frame (for example, so long as the eating space was cleaned sufficiently quickly after breakfast such that lunch preparations could begin on time). Occasionally, client department heads ask HSG to modify the work being done to meet

the needs of the facilities. For example, the activities director might ask the onsite HSG Account Manager to modify the schedule to accommodate a special event. (Knull Supp. Aff. ¶ 6.)

21. HSG's onsite lead personnel decide the specific tasks to be assigned to HSG employees and the manner in which those tasks are to be carried out. (Knull Aff. ¶ 4.)

22. The facilities' employees do not manage or direct the day-to-day activity of any of Petitioner's employees. (Knull Aff. ¶ 9.)

23. HSG laundry employees are specifically assigned to and report to one client location, although they may, in limited circumstances, report to another client facility on a limited coverage basis. (Schreck Aff. ¶ 3.)

24. HSG laundry employees do not perform services for the public. (Schreck Aff. ¶ 3.)

25. HSG provides training to its employees regarding applicable federal and state safety and health standards. (Knull Aff. ¶ 5; Zimmer Aff. ¶ 4, Ex. 10, Exhibit 1 of each Service Agreement; Petitioner's Form 10-K at Zimmer Aff. ¶ 6, Ex. 13, p. 5 of 59.)

26. Ms. Lucy Knull, a facility administrator of two client facilities, entered into and signed two Service Agreements with the Petitioner that were in effect during the Audit Period. (Knull Supp. Aff. ¶¶ 1-2, Exs. K-1 and K-2.)

27. Ms. Knull explained that, if another department head or a resident approached her with problems or concerns regarding HSG staff, she would ask the

onsite HSG Account Manager or the HSG District Manager to address and resolve any personnel problems. (Knull Supp. Aff. ¶ 9.)

28. If residents or non-HSG facility employees had concerns regarding laundry or housekeeping, they would usually communicate directly with the onsite HSG Account Manager or HSG staff directly. (Knull Supp. Aff. ¶ 10.)

29. For Ms. Knull, one benefit of working with HSG was not having to deal with management issues if she did not want to. However, Ms. Knull noted that, if she personally noticed a task had not been completed according to the policy or procedure in place, she would instruct an HSG employee accordingly and directly. And, if someone in the nursing department noticed the central linen closet was running low on certain items, that person would ask HSG staff directly to address it. (Knull Supp. Aff. ¶¶ 9, 12.)

Specific Laundry-Related Details

30. HSG relies on laundry equipment, such as washing machines and dryers, owned by its clients and located at the clients' facilities. (Schreck Aff. ¶ 8.)

31. Petitioner's Service Agreements provide that each facility "make all of its facilities available to Healthcare so that the aforesaid services [housekeeping and laundry] may be performed by Healthcare." This includes the necessary utilities, such as electricity and water, and laundry equipment. (Zimmer Aff. ¶ 4, Ex. 10, ¶ 5 of each Service Agreement.)

32. When HSG is first engaged by a client, HSG typically utilizes the remaining client supplies (e.g., laundry detergent and other chemicals). However, once

the supply inventory is exhausted, HSG will purchase future supplies and bill the client for the cost. (Schreck Aff. ¶ 9; Knull Aff. ¶ 6; Petitioner's Response to Admission No. 9 at Zimmer Aff. ¶ 2, Ex. 8.)

33. When a client contracts with HSG, the procedures used to process laundry at the facility typically do not change. The HSG employees operate according to the client's needs and in the same manner as the client's own employees did prior to the agreement. (Knull Supp. Aff. ¶ 11.)

34. In addition to cleaning the laundry, HSG laundry staff collects dirty laundry from and returns clean laundry to some residents based on instructions from the client facility because residents had the option to "opt-out" of having their laundry done "in-house." HSG laundry staff also returns linens to and organizes a central linen closet and returns residents' laundry to their personal closets or bureaus based on each resident's preference. (Knull Supp. Aff. ¶¶ 11, 12; Scheck Aff. ¶ 5; Petitioner's Response to Admission No. 8 at Zimmer Aff. ¶ 2, Ex. 8.)

Financial Details

35. Under the contracts, HSG pays all wages, salaries, and other compensation and benefits owing to its employees who work at client facilities. HSG deducts and remits withholding taxes for these employees. (Proll Aff. ¶ 8.)

36. Petitioner's Service Agreements provide that Petitioner pay Worker's Compensation, Liability, FICA, and State and Federal Unemployment for its housekeeping and laundry employees. (Zimmer Aff. ¶ 4, Ex. 10, ¶ 4 of each Service Agreement.)

37. Pursuant to the Service Agreements, HSG charges an annual amount for its housekeeping and laundry services broken down into monthly payments. (Zimmer Aff. ¶ 4, Ex. 10, ¶ 2 of each Service Agreement.)

38. HSG bills each client monthly, allocating the amounts owed into categories based on the nature of the activity performed. According to Petitioner, typically, the billing for activities related to laundry and the billing for janitorial or housekeeping activities is kept separate. If HSG performs services that fall outside of laundry activities and housekeeping/janitorial activities, HSG separately invoices for these other services. (Proll Aff. ¶ 6.)

39. HSG's monthly invoices to the clients during the Audit Period indicate two distinct and separately stated charges under "Services Rendered" - one for "Housekeeping Services" and one for "Laundry Services." (Zimmer Aff. ¶ 4, Ex. 11 representative invoices; see also Petitioner's Response to Admission No. 7 at Zimmer Aff. ¶ 2, Ex. 8.)

40. HSG did not charge, collect, or remit sales taxes on the amounts it received under the Services Agreements from clients in Wisconsin during the Audit Period. (Proll Aff. ¶ 9.)

41. Although the Service Agreements stated that sales taxes would be added to the service billing if applicable, Petitioner did not add Wisconsin sales taxes to its charge for "Laundry Services." (Zimmer Aff. ¶ 4, Ex. 10, ¶ 2 of each Service Agreement, and Ex. 11.)

Petitioner's Formal Filings

42. Petitioner filed a Form 10-K annual report with the U.S. Securities and Exchange Commission ("SEC") for 2006 ("Form 10-K") in which it certified as true that it provided laundry services, among other services, to the healthcare industry and that it was "the largest provider of housekeeping and laundry services to the long-term care industry in the United States...." (Zimmer Aff. ¶ 6, Ex. 13, p. 3 of 59.)

43. Petitioner certified as true the following information about its laundry services to the SEC:

Laundry and linen services. Laundry and linen services represents approximately 23% or \$116,254,000 of consolidated revenues in 2006. Laundry services involve the laundering and processing of the residents' personal clothing. We provide laundry service to all of our housekeeping clients. Linen services involve providing, laundering and processing of the sheets, pillow cases, blankets, towels, uniforms and assorted linen items used by our clients' facilities.

(Zimmer Aff. ¶ 6, Ex. 13, p. 5 of 59.)

44. Petitioner's Form 10-K certified as true that:

We provide our services primarily pursuant to full service agreements with our clients. In such agreements, we are responsible for our management and hourly employees located at clients' facilities. We provide services on the basis of a management agreement for a very limited number of clients. In such agreements, our services are comprised of providing on-site management personnel, while the hourly and staff personnel remain employees of the respective client.

(Zimmer Aff. ¶ 6, Ex. 13, p. 8 of 59.)

RELEVANT STATUTES

77.52 Imposition of retail sales tax. (2007-2008)

(2) For the privilege of selling, performing or furnishing the services described under par. (a) at retail in this state to consumers or users, a tax is imposed upon all persons selling, performing or furnishing the services at the rate of 5% of the gross receipts from the sale, performance or furnishing of the services.

(a) The tax imposed herein applies to the following types of services:

...

(6) Laundry, dry cleaning, pressing and dyeing services, except when performed on raw materials or goods in process destined for sale, except when performed on cloth diapers by a diaper service and except when the service is performed by the customer through the use of coin-operated, self-service machines.

ANALYSIS

A motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2). The effect of counter-motions for summary judgment is an assertion by the parties that the facts are undisputed, that in effect the facts are stipulated such that only issues of law remain. *Eichenseer v. Madison-Dane County Tavern League, Inc.*, 2008 WI 38, ¶4, 308 Wis. 2d 684, 748 N.W.2d 154.

In this case, the facts are substantially undisputed. Thus, the remaining issue for us to consider is which party is entitled to judgment. The application of a

statute to a set of facts is a question of law. *Dep't of Revenue v. J.C. Penney Co.*, 108 Wis. 2d 662, 666, 323 N.W.2d 168, 169 (Ct. App. 1982).

In Wisconsin, goods are presumed by statute to be subject to the sales tax unless they are specifically excluded from taxation. In contrast, services are treated differently. For a service to be taxable in Wisconsin, under Wis. Stat. 77.52(2), the seller must be "selling, performing or furnishing the services described under par. (a)." Thus, only services which are listed in the statute are to be taxed. Laundry services are included in the statutory list under Wis. Stat. § 77.52(2)(a)6.

The parties agree that Petitioner is providing a service. The issue is whether HSG is selling, providing, or furnishing "laundry services" under Wis. Stat. § 77.52(2)(a)6. The services in this case do not fall under the stated exceptions from taxation of laundry services: Petitioner is not laundering raw materials or goods in process destined for sale, Petitioner is not providing coin-operated machines for customers' use, nor is Petitioner running a diaper service.

Petitioner, however, does not rely on an exception but instead argues that the services themselves are not really laundry services. HSG is a business which essentially replaces the in-house laundry department of a facility. Petitioner argues that completely running a laundry department is much more than (and something different from) simply cleaning dirty laundry and, because HSG performs several other (albeit related) functions, its services should not be so easily categorized as "laundry services."

The goal of statutory interpretation is to discern the intent of the legislature. *Teschendorf v. State Farm Ins. Companies*, 2006 WI 89, 293 Wis. 2d 123, 717

N.W.2d 258. We first look to the plain language of the statute. *Hemburger v. Bitzer*, 216 Wis. 2d 509, 517, 574 N.W.2d 656 (1998). If the language in the law is plain, the analysis stops there. Only if the language in the statute is ambiguous may we rely on extrinsic aids such as legislative history, scope, purpose, subject matter, and context to determine the legislature's intent. *Sullivan Bros. Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-600 (WTAC 2012), *aff'd*, Wis. Tax Rptr. (CCH) ¶ 401-803 (Ct. App. 2014). A statute, word, or phrase is ambiguous only when it is capable of being interpreted by reasonably well-informed persons in two or more senses. *See Guertin v. Harbour Assurance Co. of Bermuda, Ltd.*, 135 Wis. 2d 334, 338, 400 N.W.2d 56, 58 (Ct. App. 1986), *aff'd*, 141 Wis. 2d 622, 415 N.W.2d 831 (1987).

Because the facts are substantially undisputed, we look at the activities of Petitioner and ask: Is Petitioner selling, performing, or furnishing laundry services? At first blush, this Commission sees that Petitioner is not only cleaning dirty laundry but providing an entire department, complete with supervisory oversight, for the express purpose of taking care of clients' laundry. The client disbands its own laundry department and hires HSG to perform the services that its own laundry department used to do. The very essence of HSG's activity is to provide laundry services.

If there were any doubt as to the scope of the term "laundry services," caselaw requires a careful analysis of the facts viewed as a whole to determine whether the substance and realities of Petitioner's activities fall within the scope of the specific services, here, laundry services, which are taxed by statute. *Brennan Marine v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶401-474 (WTAC 2011).

Petitioner frames its activities as the management of facilities support services, primarily laundry and housekeeping. Petitioner argues that such ancillary activities as supervising its own employees and having its managerial personnel participate in meetings with heads of other departments at each client facility sufficiently broaden the laundry-related activity to bring the entire service outside the definition of the laundry services taxed by statute. Petitioner even segregates out the services of collecting the dirty laundry and the re-shelving of clean laundry as something separate from “laundry services.” We disagree.

There is evidence that HSG does, or did, in fact have some client relationships which were management-only; in those instances, HSG came in and simply managed the client’s department and the client’s employees. The parties, however, have stipulated that this case does not involve any management-only client agreements. Nevertheless, Petitioner attempts to frame its services completely as department management, ignoring the role of its own employees who are performing an essential service for the client. Meeting with the management group of the client while functioning as a managerial representative of the laundry department is not an isolated unrelated activity; the Account Manager’s attendance at those meetings allows HSG to better perform its laundry services to the client’s satisfaction. The supervision of its employees and attendance at facility meetings are an integral part of the laundry services provided by HSG.

Because the laundry duties subject to these contracts are large-scale, it is likely that a manager is needed, but the primary purpose of the contract is not to have

HSG merely provide a laundry department manager or the attendant managerial and administrative functions, it is for the client to obtain laundry services.

Looking at the substance and realities of the facts as agreed upon by the parties, the agreement between HSG and the client results in the elimination of the client's own laundry department while Petitioner makes it possible for the client still to have clean linens and clothing.

Likening itself to a temporary help company, Petitioner reaches to *Manpower* for support for its arguments that its services should not be taxed. *Manpower Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-223 (WTAC 2009). We find *Manpower* is easily distinguishable.

When *Manpower* places a worker, *Manpower's* client defines the scope of the duties to be performed by the worker by deciding the tasks to be assigned to that worker and the manner in which those tasks are to be carried out. *Manpower's* client also supervises and directs the worker with respect to the worker's activities for the client. *Manpower* does not supervise or direct the activities that the worker performs for the client. Because *Manpower* does not define the scope of the work performed by its workers and because *Manpower* does not direct or supervise its workers, *Manpower* generally is unaware of the specific tasks performed by its workers. *Manpower's* management may know that a particular worker is generally performing certain tasks, such as I.T. (information technology) tasks, clerical tasks or general labor, but does not know the specific tasks performed. In many cases, this means that *Manpower* management does not know if the tasks that are being performed would be considered a taxable service by the Department.

Manpower.

In the *Manpower* case, Manpower provided temporary employees to the client. Manpower neither directed nor supervised the employees. Manpower did not necessarily even know what type of work the client might ask the employee to perform. The client directed, managed, and controlled the activities of the employee onsite.

Some similarities do exist between *Manpower* and the case at hand. The work is done at the client's location utilizing the client's facilities. Petitioner is the employer of the employees performing the work. The duties performed are at least in general terms defined by the client, although through a contractual agreement with the Petitioner. At times, client personnel might provide some specific direction to HSG employees when needed.

In most facets, however, Petitioner's situation bears little resemblance to that of *Manpower*. Petitioner runs a business which supplies onsite laundry services. Petitioner supplies employees, directs its employees with respect to specific day-to-day duties, and, except sometimes at the initiation of a contract, provides the detergent and other necessary supplies.

Counter to its own argument that HSG merely provides management of laundry services, Petitioner shifts focus to describe situations in which the client might engage in management and control. For example, the client administrator may on occasion communicate directly with an HSG employee to direct an activity. The affidavits show, however, that such communication is not the norm and that the client administrator primarily communicates with the Account Manager who then directs the employee.

There is evidence that the client communicates desired details such as where to put the clean linens. Communication between the client and the Account Manager is logical. HSG has to understand its clients' needs and desires, just as a drycleaner will listen to a customer's request for more starch.

The HSG Account Manager supervises and directs HSG employees personally. The HSG Account Manager knows exactly what services the employees are being asked to perform because he or she is the one training them and assigning their duties. Unlike Manpower, HSG is in the best position to know whether its employees are performing a taxable service because HSG is the one directing them to do it. The Account Manager does the very things Manpower did not do with respect to its employees in terms of supervision.

Petitioner argues that HSG "does not contract for a particular result" but simply provides "management of" the laundry department. This focus on the Account Manager ignores the other employees HSG provides and the actual work being done by them. When a client contracts with HSG, the result is the elimination of the client's own laundry employees. Clients hire HSG because they want someone else to do their laundry; they would not contract with Petitioner if the dirty laundry was not going to be cleaned. Moreover, managing its own employees so they provide proper service is part of what a company does in order to sell, provide, or furnish a service.

Petitioner points to the contract verbiage, which we agree is relevant. The contracts state that HSG agrees to provide "management, supervision and labor necessary to perform . . . laundry services on the premises of the Facility." (Proll Aff.

¶5, Ex. A. p. 1.) (emphasis added) By its own admission, Petitioner agrees to provide labor to perform laundry services. Therefore, Petitioner is providing laundry services. The administrative aspects of managing and supervising are for the purpose of seeing that the laundry services get done.

Petitioner points out that, when Petitioner takes on a new contract, Petitioner generally hires the individuals who formerly had performed the laundry services for the facility, so Petitioner claims to simply be managing those employees. However, those employees are employees of the Petitioner during the term of the contract (i.e. while Petitioner is providing the services); the identity of their former employer is irrelevant.

Although not determinative, Petitioner's statements under oath to the SEC indicate a general understanding that Petitioner provides laundry services to its clients. The record includes a statement by Petitioner to the SEC that laundry and linen service represented a significant portion of its business, noting that HSG is "the largest provider of housekeeping and laundry services to the long-term care industry in the United States...." Petitioner's Petition for Redetermination describes its business as "laundering and processing of the personal clothing of residents and patients, as well as the collecting and laundering of sheets, pillow cases, blankets and other linen items used in a healthcare facility." Those functions constitute laundry services.

In a similar vein, Petitioner points to its categorization per the US Census Bureau of the NAICS.² Petitioner falls under NAICS 561210 - Facilities Support Services.

This industry comprises establishments primarily engaged in providing operating staff to perform a combination of support services within a client's facilities. Establishments in this industry typically provide a combination of services, such as janitorial; maintenance; . . . laundry; and related services to support operations within facilities. These establishments provide operating staff to carry out these support activities; but, are not involved with or responsible for the core business or activities of the client.

<http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=561210&search=2002>
NAICS Search.

Petitioner argues that, because its business falls under this facilities support definition, by inference it cannot fall under laundry services. Petitioner misses the point of this "facilities support" category which applies to companies performing a combination of services. Petitioner's facility support services, in this case, are a combination of laundry and housekeeping/janitorial services. If the company performed only one of those services, presumably Petitioner would be categorized in the appropriate single activity category (812320 for laundry or 561720 for housekeeping/janitorial services). The fact that HSG also provides housekeeping does not morph the laundry services into some different type of service; it simply puts the company into the category of companies that perform more than one of these services.

² The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

Courts and commissions must look to the common sense meaning of a statute to avoid unreasonable and absurd results. *Sullivan Bros.* Petitioner is responsible for client laundry. Without HSG, these clients' dirty linens would not be cleaned. Clients eliminate their own laundry service employees when contracting with HSG. Petitioner describes itself as a provider of laundry services and provides onsite managers to manage its own employees who primarily perform laundry services at client facilities.

If Petitioner's arguments were valid, every business that is a service provider could argue that it was only managing its employees rather than providing the actual service. The reality is that HSG is providing laundry services for its clients. We therefore find that Petitioner's services fall squarely within the statutory taxing language.

CONCLUSIONS OF LAW

1. Petitioner is providing laundry services for its full-service contract clients. Such services are taxable under Wis. Stat. § 77.52 (2)(a)6.
2. Petitioner has failed to meet the burden to show that the Department's assessment is incorrect.

ORDER

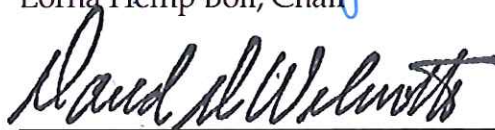
There being no matters of fact or law remaining in dispute, it is hereby ordered that the Department's Motion for Summary Judgment is granted and Petitioner's Motion for Summary Judgment is denied.

Dated at Madison, Wisconsin, this 27th day of July, 2016.

WISCONSIN TAX APPEALS COMMISSION



Lorna Hemp Boll, Chair



David D. Wilmoth, Commissioner



David L. Coon, 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.