

STATE OF WISCONSIN
TAX APPEALS COMMISSION

MODINE MANUFACTURING COMPANY,

DOCKET NO. 14-M-248

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER ON
CROSS MOTIONS FOR SUMMARY JUDGMENT

DAVID L. COON, COMMISSIONER:

This case comes before the Commission for decision on cross motions for summary judgement. The Petitioner, Modine Manufacturing Company, of Racine, Wisconsin, is represented in this matter by Attorney Joseph A. Pickart of Husch Blackwell LLP. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Carley J. Peich Kiesling. For the reasons set forth below, we hold in favor of the Petitioner.

FACTS

Jurisdictional Facts

1. Petitioner filed Form PA-780 on February 26, 2014, and requested that the Department classify the real property at Petitioner's Racine, Wisconsin facility as manufacturing property for property tax purposes for the tax year 2014, pursuant to Wis.

Stat. § 70.995. (Affidavit of Carley J. Peich Kiesling, Attorney in the Office of General Counsel for the Department. ("Peich Kiesling Aff."), ¶ 2, Ex. P-1).

2. By letter dated March 20, 2014, the Department denied Petitioner's request that the real property be classified as manufacturing property. (Peich Kiesling Aff., ¶ 3, Ex. P-2).

3. Petitioner timely petitioned the Department for a redetermination of its March 20, 2014 classification decision. (Peich Kiesling Aff., ¶ 4, Ex. P-3).

4. By Notice of Classification Determination dated September 18, 2014, the Department denied Petitioner's Petition for Redetermination. (Peich Kiesling Aff., ¶ 5, Ex. P-4).

5. On November 13, 2014, Petitioner timely filed a Petition for Review of the denial of the Petitioner for Redetermination. (Commission file.)

Evidentiary Facts

6. Petitioner was incorporated in Wisconsin on June 23, 1916, by its founder, Arthur B. Modine. (Affidavit of Randy DePelecyn, Director of Plant Services, Technical Services, and Security for Petitioner. ("DePelecyn Aff."), ¶ 5.)

7. Petitioner specializes in designing and manufacturing thermal management systems and components. (DePelecyn Aff., ¶ 6.)

8. Petitioner's products are used in light, medium, and heavy-duty vehicles, heating, ventilation, and air conditioning systems, off-highway and industrial equipment, and refrigeration systems. (DePelecyn Aff., ¶ 7.)

9. In 2014, Petitioner owned a facility located in Racine at 1500 De Koven Avenue, that served as its global headquarters and manufacturing facility. (Peich Kiesling Aff., ¶ 7, Ex. P-6, p. 35.)

10. In addition to the Racine facility, Modine has other manufacturing facilities in North America, South America, Europe, Asia, and Africa. (DePelecyn Aff., ¶ 9).

11. For its 2014 Wisconsin property tax assessment, the Department determined that manufacturing activities occurred at the Racine facility including fin roll production, braze frame production, fin machine production, tube mill production, and compound lab blending production. (Affidavit of Melody Ryddner, Property Assessment Specialist – Advanced for the Department, ¶ 2).

12. In addition to the fin roll production, braze frame production, fin machine production, tube mill production, and compound lab blending production, the balance of the Racine facility consisted almost entirely of office structures, warehouses, and storage buildings. (Peich Kiesling Aff., ¶ 11, Ex. P-10).

13. In 2014, Petitioner's Racine facility also contained a Chemistry Laboratory, which served Petitioner's North America regional operations. (Peich Kiesling Aff., ¶ 7, Ex. P-6, p. 39).

14. In 2014, Petitioner's Racine facility also housed Petitioner's Technical Center, which served Petitioner's North American regional operations. The Center conducted performance and durability evaluations for heat-transfer components,

modules, or systems for testing of products made both in Wisconsin and outside of Wisconsin. (Peich Kiesling Aff., ¶ 7, Ex. P-6, pp. 41-43).

15. Petitioner's Racine facility also served as Petitioner's global headquarters, with manufacturing support services including: Product Engineering, Manufacturing Engineering, Engineering, Testing Quality Control, Corporate Finance/Accounting, Intellectual Property, Information Technology, Legal, Human Resources, Research & Development, Chemical Lab, Executive Management/Administration, Record Storage, Research and Development, Warranty Claims, HVAC Finance and Sales, HVAC Engineering, Engine Products and Records Retention, Tax and Sales, and Business Unit Management. (Peich Kiesling Aff., ¶ 7, Ex. P-6, pp. 36-47.)

16. Petitioner's Racine facility supported Petitioner's manufacturing operations both in and outside of Wisconsin. (Peich Kiesling Aff., ¶ 12, Ex. P-11, p. 43.)

17. For classification purposes under the Standard Industrial Classification Manual, 1987 edition, ("SIC Manual"),¹ Petitioner classified itself as a Major Group 37 manufacturer (Transportation Products). (DePelecyn Aff., ¶ 10.) The Department classified Petitioner under SIC Major Group 35 (Industrial and Commercial Machinery and Computer Equipment). (Affidavit of Jennifer H. Jin, Attorney for Petitioner, ¶ 3, Ex. 1.)

¹ The Standard Industrial Classification Manual, 1987 edition, ("SIC Manual") is a federal classification scheme for businesses based upon their primary activity.

APPLICABLE LAW

Summary Judgment

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 cross filing of summary judgment motions citing undisputed facts leaves only questions of law to decide. *Healthcare Services Group, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-086 (WTAC 2016).

Burden of Proof

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. *Puissant v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984).

Applicable Statutes

Wis. Stat. § 70.995 State assessment of manufacturing property.

(1) Applicability.

(a) In this section "manufacturing property" includes all lands, buildings, structures and other real property used in manufacturing, assembling, processing, fabricating, making or milling tangible personal property for profit. Manufacturing property also includes warehouses, storage facilities and office structures when the predominant use of the warehouses, storage facilities or offices is in support of the manufacturing property, and all personal property owned or used by any person engaged in this state in any of the activities mentioned, and used in the activity, including raw

materials, supplies, machinery, equipment, work in process and finished inventory when located at the site of the activity. Establishments engaged in assembling component parts of manufactured products are considered manufacturing establishments if the new product is neither a structure nor other fixed improvement. Materials processed by a manufacturing establishment include products of agriculture, forestry, fishing, mining and quarrying. For the purposes of this section, establishments which engage in mining metalliferous minerals are considered manufacturing establishments.

(b) Materials used by a manufacturing establishment may be purchased directly from producers, obtained through customary trade channels or secured without recourse to the market by transfer from one establishment to another under the same ownership. Manufacturing production is usually carried on for the wholesale market, for interplant transfer or to order for industrial users rather than for direct sale to a domestic consumer.

(c) Manufacturing shall not include the following agricultural activities:

...

(d) Except for the activities under sub. (2), activities not classified as manufacturing in the standard industrial classification manual, 1987 edition, published by the U.S. office of management and budget are not manufacturing for this section.

Wis. Stat. § 70.995(2)

Further classification. In addition to the criteria set forth in sub. (1), property shall be deemed *prima facie* manufacturing property and eligible for assessment under this section if it is included in one of the following major group classifications set forth in the standard industrial classification manual, 1987 edition, published by the U.S. office of management and budget. For the purposes of this section, any other property described in this subsection shall also be deemed manufacturing property and eligible for assessment under this section:

...

(r) 35 — Machinery, except electrical.

(t) 37 — Transportation equipment.

Wis. Stat. § 70.995 (3)

For purposes of subs. (1) and (2) "manufacturing, assembling, processing, fabricating, making or milling" includes the entire productive process and includes such activities as the storage of raw materials, the movement thereof to the first operation thereon, and the packaging, bottling, crating or similar preparation of products for shipment.

Wis. Stat. § 70.995(4)

Whenever real property or tangible personal property is used for one, or some combination, of the processes mentioned in sub. (3) and also for other purposes, the department of revenue, if satisfied that there is substantial use in one or some combination of such processes, may assess the property under this section. For all purposes of this section the department of revenue shall have sole discretion for the determination of what is substantial use and what description of real property or what unit of tangible personal property shall constitute "the property" to be included for assessment purposes, and, in connection herewith, the department may include in a real property unit, real property owned by different persons....

Wis. Stat. § 70.11(27)(a)

In this subsection:

...

5. "Production process" means the manufacturing activities beginning with conveyance of raw materials from plant inventory to a work point of the same plant and ending with conveyance of the finished product to the place of first storage on the plant premises, including conveyance of work in process directly from one manufacturing operation to another in the same plant, including the holding for 3 days or less of work in process to ensure the uninterrupted flow of all or part of the production process and including quality control activities during the time period specified in this subdivision but excluding storage, machine repair and maintenance, research and development, plant communication, advertising, marketing, plant engineering, plant housekeeping and employee safety and fire prevention activities; and excluding generating, transmitting, transforming and furnishing electric current for light or heat; generating and furnishing steam; supplying hot water for

heat, power or manufacturing; and generating and furnishing gas for lighting or fuel or both....

DECISION

The Petitioner in this case timely filed a Form PA-780 for 2014 requesting that the Department classify its plant in Racine as manufacturing property for property tax purposes pursuant to Wis. Stat. § 70.995. The Department denied the classification, and the Petitioner has objected to the Department's denial.

As an initial matter, for a business to qualify for its property to be classified as manufacturing property for purposes of Wis. Stat. § 70.995, the business must be engaged in manufacturing activities. Wisconsin Statute § 70.995(2) states, "In addition to the criteria set forth in sub. (1), property shall be deemed *prima facie* manufacturing property and eligible for assessment under this section if it is included in one of the following major group classifications set forth in the standard industrial classification manual, 1987 edition, published by the U.S. office of management and budget." If a business fits into one of the manufacturing SIC codes or is otherwise engaged in an activity listed in Wis. Stat. § 70.995(2), it is *prima facie* a manufacturing business and may request that its property be classified as "manufacturing property" under Wis. Stat. § 70.995.²

² If a business does not "fit perfectly" into an SIC code, the business may still qualify as a manufacturer and its property as manufacturing property under the general manufacturing definition of Wis. Stat. § 70.995(1), pursuant to provisions of the Wisconsin Property Assessment Manual ("WPAM"). See *Zip Sort, Inc. v. Dep't of Revenue*, 247 Wis. 2d 295, 2001 WI App 185, 634 N.W.2d 99 (Ct. App. 2001). This is not an issue in this matter.

The SIC Manual does not classify property, but classifies businesses based upon what they do, their activity, such as manufacturing versus services. General types of activities are further broken down into major groups that distinguish manufacturers by the primary type of product the business produces (i.e. automotive versus farm machinery). While Wis. Stat. § 70.995(2) clearly uses the word “property” several times, the court in *S.C. Johnson & Son, Inc. v. Dep’t of Revenue*, 202 Wis. 2d 714, 552 N.W.2d 102 (Ct. App. 1996), noting that the language of the statute is confusing, concluded that, in Wis. Stat. § 70.995(2), the legislature meant to say “activities.” The court said that the statute “defines the activities or industries that are considered manufacturing.” *S.C. Johnson*, p.728. The statute creates a presumption related to the activities of a business, not a presumption as to the classification of the property of a business.

There is no material dispute that Modine is a manufacturer and engaged in manufacturing activity. Modine classifies itself under SIC Major Group 37. The Department classifies Modine under SIC Major Group 35. Whether one is more appropriate than the other is not material, as both are manufacturing classifications. The parties agree that Modine fits one of the SIC manufacturing codes and is a manufacturer engaged in manufacturing activities.

The parties’ dispute then revolves around the definitions of “manufacturing property” in Wis. Stat. § 70.995(1)(a). In its two initial sentences, Wis. Stat. § 70.995(1)(a) sets forth three categories of manufacturing property. The court of appeals analyzed this language in the *S.C. Johnson* case:

These two sentences create three categories of manufacturing property: (1) lands, buildings, structures and other real property used in manufacturing, assembling, processing, fabricating, making or milling tangible personal property for profit; (2) warehouses, storage facilities and office structures when the predominant use is in support of property belonging to the first group; and (3) all personal property owned or used by any person in this state in any of the activities mentioned, and used in the activity.

(*S.C. Johnson* at p. 722).

Category one³ is defined in the first sentence of Wis. Stat. § 70.995(1)(a), which, to put it simply, defines the “hardcore” manufacturing lines of a business. The statute states, “In this section ‘manufacturing property’ includes all lands, buildings, structures and other real property used in manufacturing, assembling, processing, fabricating, making or milling tangible personal property for profit.” This sentence is a definition that only answers the question of “what” hardcore manufacturing is, and specifies that it must be “for profit.” For example, this definition would include the building and land that contains the manufacturing machinery where raw material goes in one door and something else comes out the other. This sentence does not specifically use the terms “in this state” or “in Wisconsin,” nor does it give any other location limitation. Both parties agree that there is category one manufacturing property at the Petitioner’s Racine facility. This would include, at a minimum, the fin roll production, braze frame production, fin machine production, tube mill production, and compound lab blending production.

³ For the sake of clarity and brevity, the property described in the first sentence of Wis. Stat. § 70.995(1)(a) will be referred to as “category one” property.

Category two⁴ manufacturing property is defined in the first clause of the second sentence of Wis. Stat. § 70.995(1)(a). This language, which deals with certain types of real property of a manufacturing business that are not category one hardcore manufacturing property states, "Manufacturing property also includes warehouses, storage facilities and office structures when the predominant use of the warehouses, storage facilities or offices is in support of the manufacturing property." As was decided in *S.C. Johnson*, not all property that supports manufacturing property is, by definition, category two manufacturing property. The supporting property is limited to "warehouses, storage facilities or office structures." *S.C. Johnson*, p. 723.⁵

Support activities can be wide-ranging and various. In the Wisconsin Property Assessment Manual ("WPAM"),⁶ the Department has attempted to provide guidance on these support activities:

Some establishments are "in support of the manufacturing property," (called auxiliaries in the SIC Manual). Others are part of "the entire productive process" described in sec. 70.995(3), Wis. Stats., although not part of the exempt "production process" described in sec. 70.11(27), Wis. Stats. Such establishments include but are not limited to the following:

⁴ For clarity, manufacturing property defined in the first clause of the second sentence of Wis. Stat. § 70.995(1)(a) will be referred to as "category two" property.

⁵ Category three manufacturing property contained in the second clause of the second sentence of Wis. Stat. § 70.995(1)(a), relates to personal property, not at issue in this matter, but should not be completely overlooked. It states, "all personal property owned or used by any person engaged in this state in any of the activities mentioned, and used in the activity, including raw materials, supplies, machinery, equipment, work in process and finished inventory when located at the site of the activity." This subsection does include the "in this state" language. This definition supports the plain language reading of the statute in that the legislature clearly limited the personal property to that property which is "in this state." The legislature did not similarly limit the other two categories to only those located "in this state."

⁶ "The assessment manual is promulgated by DOR pursuant to Wis. Stat. § 73.03 and is the primary document for defining assessment standards and practices in Wisconsin." *Zip Sort, Inc.*, ¶ 7.

1. Central administrative activities performing management and general administrative functions such as general management; accounting; computing, tabulating, or data processing; purchasing; engineering and systems planning; advertising; public relations or lobbying; and legal, financial, or related managerial functions.
2. Warehouses and storage activities including potato cellars.
3. Research, development and testing activities.
4. Maintenance and repair activities for machinery and equipment.

WPAM, 10-10.⁷

If the predominant use of an office structure, warehouse, or storage facility is for one or more of the activities listed in the WPAM and is in support of the other manufacturing property of a manufacturer, then that structure is category two property. By definition, that category two property is then also “manufacturing property” under the meaning of Wis. Stat. § 70.995(1)(a).

The Department disagrees, as it interprets the Petitioner’s position to be that “the above section of the WPAM says that all of the structures listed therein are part of the entire productive process as that term is used in § 70.995(3) and therefore are considered manufacturing under § 70.995(1)(a), first sentence.” (Dep’t Reply Brief, p. 4). We do not see the Petitioner making that argument.

The Petitioner is asserting that its buildings at the Racine facility all qualify “under either or both of the first two categories of manufacturing property under § 70.995(1)(a).” (Pet. Brief, p. 10). The Petitioner is asserting that the real property at its

⁷ Citation to the WPAM will be to the WPAM as in effect January 1, 2014; revised 12/2011.

Racine facility is either category one “hardcore” manufacturing property or category two “supporting” manufacturing property.

The list of support activities contained in the WPAM, while not necessarily exhaustive, is a reasonable list of those things that might occur in an office, warehouse, or storage facility “in support of the manufacturing property” of a manufacturer. If the predominant use of an office, warehouse, or storage facility is for those (or similar) activities listed in the WPAM, then that structure supports the manufacturing property and is itself considered manufacturing property under the category two definition.

The real heart of the parties’ disagreement here is whether, in determining whether an office, warehouse, or storage facility predominantly supports the manufacturing property, the definition set forth in Wis. Stat. § 70.995(1)(a) contemplates looking to any manufacturing property of a manufacturer, wherever located, or only to that property located in Wisconsin. Petitioner has office buildings, warehouses, and storage facilities in Wisconsin that do support category one manufacturing in Wisconsin but that also significantly support category one manufacturing property in other states, and globally. The Department claims that the non-category one property located at the Petitioner’s Racine facility cannot qualify as category two manufacturing property because it predominantly supports activities at the Petitioner’s locations outside of Wisconsin as opposed to the Petitioner’s manufacturing property within the state. The first sentence of Wis. Stat. § 70.995(1)(a), though, merely defines category one hardcore manufacturing property without the words “in Wisconsin” or “in this state.” So, if Petitioner’s Wisconsin office building (or warehouse or storage facility) predominantly

supports the category one manufacturing property of the Petitioner wherever located then, by definition, that office building is also manufacturing property under Wis. Stat. § 70.995(1)(a).

In this matter, the Petitioner's real property is virtually all either category one or category two manufacturing property. The property is either category one property, containing manufacturing lines and machinery producing manufactured goods, or category two offices, warehouses, and storage facilities that predominantly support the Petitioner's other manufacturing property. The Department's assessor, in deposition testimony, agreed:

Q: Is it fair to say that you concluded that many of those other activities that you deem non-manufacturing could have very well contributed to or supported the manufacturing activities that you identified as manufacturing?

A: The primary or predominant use at the facility in Racine is research and development or as you state, headquarter office support of manufacturing taking place outside the state of Wisconsin.

(Ex. P-11, p. 43.)

In contrast to the plain reading of the statute outlined above, the Department's contention is that one must read into the statute the words "in this state" or "in Wisconsin" or some other language that limits the definitions to look only at a business's real property located in Wisconsin to determine a particular property's classification. Since the majority of the Petitioner's category one property is located outside of Wisconsin, the Department contends that the other property, which would

otherwise be category two manufacturing property, is disqualified because it primarily supports category one property located outside of Wisconsin.

Statutory interpretation “begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.” *State ex rel, Kalal v. Circuit Court*, 271 Wis. 2d 633, 663, 681 N.W.2d 110 (2004). “Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.” *Id.*; *see also*, Wis. Stat. § 990.01(1). “If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning.” *Id.* “It is reasonable to presume that the legislature chose its terms carefully and precisely to express its meaning.” *State v. McKenzie*, 139 Wis. 2d 171, 177, 407 N.W.2d 274, 277 (Ct. App. 1987). “A number of Wisconsin court cases discuss the courts’ reluctance to add language to statutes to aid construction. For example, in *Lang v. Lang*, 161 Wis. 2d 210, 224, 467 N.W.2d 772 (1991), the court said that ‘We have long stated that we would refuse to read language into the plain language of a statute under the guise of liberal construction.’” *LCM Funds Five North LLC v. Dep’t of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-513 (WTAC 2011) n 4.

As noted above, the category one and category two manufacturing property definitions in Wis. Stat. § 70.995(1)(a) do not include words “in Wisconsin,” “in this state,” or any other geographic qualifier. We know that the legislature is perfectly capable of adding such a qualifier if they so desire – they did exactly that in the definition of category three manufacturing property in the second clause of the second sentence of

Wis. Stat. § 70.995(1)(a). There is simply no basis for our writing such a geographic qualifier into the category one and two manufacturing property definitions when the legislature chose not to, and the statutory language is otherwise clear and unambiguous.

The Department, in support of its contention, makes several additional arguments, which are not persuasive. One argument is an appeal to consider the title of Wis. Stat. § 70.995, which is “State assessment of manufacturing property.” This argument runs contrary to Wis. Stat. § 990.001(6), which clearly states, “The titles to subchapters, sections, subsections, paragraphs and subdivisions of the statutes and history notes are not part of the statutes.” Further, the question presented here is not what property the Department is to assess, but whether property constitutes manufacturing property under the definition of Wis. Stat. § 70.995(1)(a).

The Department also argues that the overall scheme of Chapter 70 is the taxation of property in the State of Wisconsin, citing Wis. Stat. § 70.01, which provides, “Taxes shall be levied, under this chapter, upon all general property in this state except property that is exempt from taxation.” Therefore, the Department argues, it should be apparent and assumed that the definitions in Wis. Stat. § 70.995(1)(a) can only refer to property located in Wisconsin. Further, citing *Thermo Electron, LLC v. Dep’t of Revenue*, Wis. Tax Rptr. (CCH) ¶401-298 (WTAC 2010), the Department notes that statutes need to be read in context. The Department argues that such a contextual reading of all of Chapter 70 leads to the conclusion that “in this state” or “in the State of Wisconsin” should be read into the definitions of category one and category two manufacturing property in Wis. Stat. § 70.995(1)(a).

Contrary to that argument, though, the first two sentences of Wis. Stat. § 70.995(1)(a) only define the type of property, not where the property is located. These definitions tell the “what” about the property of a business, not the “where.” Once a property has been classified as manufacturing or non-manufacturing property under Wis. Stat. § 70.995(1)(a), then, of course, only those properties located in Wisconsin will be levied and assessed, either by the state, as manufacturing property, or by local assessors, as non-manufacturing property. The classification of certain property based upon consideration of both the in-state and out-of-state properties and activities of the business, such as whether an office in Wisconsin predominantly supports the manufacturing property of the business, wherever located, does not compromise the integrity of the context of Chapter 70 as being related to the taxation of Wisconsin property.

The Department further argues that considering out-of-state properties would put the Department in the position of having to evaluate the out-of-state operations of a businesses with property in Wisconsin. For example, the Department suggests that a business with an office building in Wisconsin could simply claim to be a manufacturer whose out-of-state manufacturing property is supported by the Wisconsin office building. Investigating this claim, the Department asserts, would put an undue burden on the Department staff (and Wisconsin taxpayers), would be against public

policy, and would be contrary to statutory sections that allows auditors to conduct field investigation only of in-state property.⁸

If a business seeks classification as a manufacturer under Wis. Stat. § 70.995(2) and for its property then to be classified as manufacturing property under Wis. Stat. § 70.995(1)(a), the Department is already tasked with gathering evidence and information to determine whether the business meets one of the SIC Codes listed in Wis. Stat. § 70.995(2).⁹ That process will usually mean gathering information about the business's out-of-state, as well as in-state, activities. If the Department determines that the business's activities do not meet an SIC code, the inquiry ends as the business is not a manufacturer pursuant to Wis. Stat. § 70.995(1)(d). If it does meet an SIC code under Wis. Stat. § 70.995(2), the Department will, by that point, have received enough credible information to determine whether the business is a manufacturer. This significantly minimizes the chance of a mere unsubstantiated claim by a business that it is a manufacturer. If there is still an issue as to whether a particular office building, for

⁸ The Department here cites Wis. Stat. § 70.995(7)(b): "Each 5 years, or more frequently if the department of revenue's workload permits and if in the department's judgment it is desirable, the department of revenue shall complete a field investigation or on-site appraisal at full value under ss. 70.32 (1) and 70.34 of all manufacturing property in this state." Of course, the only property to be investigated and valued by the assessor would be property located in Wisconsin. The issue in this matter is the initial classification of properties as either manufacturing or non-manufacturing.

⁹ Somewhat incredibly, the Department asserts as follows, "As an initial point, SIC codes are used by the federal government to identify and classify specific categories of business activity that represent the primary line of business of a company. The Department is not charged with classification of companies under the SIC Manual, and has not concluded whether Modine as a global company is properly classified under any particular SIC Manual Major Group for purposes of Wisconsin property tax assessment, as such classification is not the sole factor in determining whether real property located in Wisconsin is classified as manufacturing property in Wisconsin." Considering that the legislature in Wis. Stat. § 70.995(2) specifically made the classification of business under the SIC codes a critical factor in determining whether a business engages in manufacturing activities, the Department does need to consider whether a business falls into an SIC code. In fact, the assessor here did make a classification determination regarding Modine, noting that Modine should be considered to fall under the SIC Major Group 35.

example, supports either in or out-of-state manufacturing property, Department staff can complete a field investigation of the in-state structure to determine whether it supports manufacturing property or something else, wherever located.

Further, if additional information is required, the Department can and does do analyses of the out-of-state operations of businesses in other tax areas. The Department is adept at gathering the sales information related to the out-of-state (and in some instances even global) sales of a business to find the denominator in calculating a business's Wisconsin sales factor for income and franchise tax purposes. *See, e.g., Microsoft Corp. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-162 (WTAC 2017). Gathering appropriate confirmation that a business does engage in manufacturing activity and that a particular office structure, storage facility, or warehouse in Wisconsin does predominantly support other manufacturing property wherever located, should not be difficult for a competent assessor at the Department.

The Department further contends that the words "the manufacturing property" in the first clause of the second sentence of Wis. Stat. § 70.995(1)(a) must refer only to category one hardcore manufacturing property described in the first sentence of that section. As discussed above, even if "the manufacturing property" in the second sentence of the section refers only to manufacturing property described in the first sentence, we have determined that the first sentence does not have a read-in phrase "in Wisconsin" or "in this state."

The Department also argues that it is against public policy for category two support property to be assessed as manufacturing property where no or limited hardcore

manufacturing occurs in Wisconsin. It is not our role to say that enticing manufacturers to locate their corporate headquarters to Wisconsin, regardless of the percentage of their hardcore manufacturing that comes with them, is good or bad public policy. The legislature has written these statutes as they are and is the elected body that should determine public policy.

The Department further argues that it has sole discretion to determine whether a property is "substantially used" for manufacturing or for something else. The Department makes this argument based upon Wis. Stat. § 70.995(4). The Department, in the WPAM, has determined that "substantial use" means greater than 50% use in manufacturing activity, stating: "For property used for a manufacturing activity and other activities 'substantial use' is defined as majority use (more than 50%) of the area occupied. Separate and distinct manufacturing and nonmanufacturing activities may occur on a vacant land parcel. If so, splitting the parcel's legal description is the best alternative. If that is not possible then manufacturing classification depends on the majority use (more than 50%) of the acreage. When multiple uses occur in buildings, majority use of the floor area determines classification." WPAM, 10-16.

In terms of "separate and distinct manufacturing and nonmanufacturing activities" that may occur at a particular location, the WPAM does give a number of examples, such as "a separate and distinct truss manufacturing activity (manufacturing) at a lumberyard (nonmanufacturing)." WPAM, 10-12. In such a case, the Department can evaluate those separate and distinct uses and determine whether the substantial use (more than 50%) is the manufacturing or non-manufacturing activity. In the above

WPAM example, if the lumber yard is more than 50% of the activity, then there is not substantial use for manufacturing. If the percentage is reversed with the greater part being the truss manufacturing, then there is substantial use for manufacturing.

For this reason, the Department goes to great lengths to breakdown the square footage use of the buildings at the subject location. The Department concedes that approximately one-quarter of the Racine facility is category one manufacturing property under Wis. Stat. § 70.995(1)(a). The Department then determines that the balance of the subject property is non-manufacturing for two reasons: 1) Some of the activities conducted on the property, such as research and development, are excluded by statute from the “entire productive process” of manufacturing in Wis. Stat. § 70.995(3); and 2) The supporting activities conducted in the non-category one property, such as the central offices, predominantly support the Petitioner’s global manufacturing, not the Wisconsin manufacturing and, thus, the property does not qualify as category two manufacturing property. The Department contends that there are two separate and distinct uses of the property, manufacturing (less than 25%) and “global headquarters” comprising the balance. Consequently, the Department concludes that the substantial use of the facility is not manufacturing.

As to the first issue, the Department claims that certain activities are excluded by statute from being part of the entire productive process of Wis. Stat. § 70.995(3) and cannot be considered in the substantial use (or even predominant use) calculation. In support of its argument, the Department cites to Wis. Stat. § 70.11(27)(a)5. Based upon the exclusions in Wis. Stat. § 70.11(27)(a)5 for such activities as “storage,

machine repair and maintenance, research and development, plant communication, advertising, marketing, plant engineering, plant housekeeping,” and the like, the Department asserts: “Research and development activities are expressly considered nonmanufacturing under Wisconsin law. The WPAM specifically states that the ‘production process’ does not include research and development.” (Dep’t Brief, p. 22). Presumably, the Department would also object to including in supporting activities anything else in the list of exclusions in Wis. Stat. § 70.11(27)(a)5.¹⁰

The Department is incorrect in the reading of this language in the statute. First, Wis. Stat. § 70.11(27)(a) contains a series of definitions and begins with “In this subsection....” The definitional language relied upon by the Department is clearly limited to defining “the production process” as it relates to the tax exclusion that is the subject of Wis. Stat. § 70.11(27).

Further, the WPAM specifically acknowledges this distinction. The WPAM states, “Others are part of ‘the entire productive process’ described in sec. 70.995(3), Wis. Stats., although not part of the exempt ‘production process’ described in sec. 70.11(27), Wis. Stats.” WPAM, 10-10. There are activities that are part of the “entire productive process” of Wis. Stat. § 70.995(3), or “in support of the manufacturing property” that are not part of the more limited “production process” for the tax exclusion in Wis. Stat. § 70.11(27). In fact, the WPAM defines activities “in support of the manufacturing

¹⁰ The exclusions from “production process” in Wis. Stat. § 70.11(27)(a)5, in addition to “research and development,” also exclude “storage.” If the exclusions in Wis. Stat. § 70.11(27)(a)5 apply to Wis. Stat. § 70.995, the mention of “storage facilities” in Wis. Stat. § 70.995(1)(a) potentially meaningless. Therefore, the exclusions in Wis. Stat. § 70.11(27)(a)5 cannot apply as the Department asserts. (“We are to avoid constructions that result in portions of a statute being superfluous.” *S.C. Johnson*, p. 729).

property" to include "Research, development and testing activities" as well as "Central administrative activities performing management and general administrative functions such as general management; accounting; computing, tabulating, or data processing; purchasing; engineering and systems planning; advertising; public relations or lobbying; and legal, financial, or related managerial functions." WPAM, 10-10. Therefore, if any of those activities are conducted in an office, warehouse, or storage facility predominantly used in support of the manufacturing property, that structure is category two manufacturing property.

As to the second issue, the Department's contention is again based upon its determination that, if an office, warehouse, or storage facility predominantly supports manufacturing property but all or a majority of the supported manufacturing property is located outside the state of Wisconsin, that property cannot be category two manufacturing property. As discussed above, Wis. Stat. § 70.995(1)(a) does not limit by location the manufacturing property that the category two property may predominantly support.

We have determined that the facility in Racine consists almost entirely of both category one and category two manufacturing property. Here, there is no significant separate and distinct non-manufacturing use of the Petitioner's Racine location, and no separate and distinct analysis is necessary.

Finally, the Department makes much of the fact that the Petitioner's Annual Report (Form 10-K) for the SEC for the fiscal year ending March 31, 2014, described the Racine facility as "[t]he Company's world headquarters, including general offices, and

laboratory, experimental and tooling facilities . . .” In the report, the Racine facility is categorized as "Corporate Headquarters" and the primary use is referred to as "Headquarters & Technology center" rather than manufacturing. In our view, that characterization is accurate, but that does not mean that the facility is not “manufacturing property” under the meaning of Wis. Stat. § 70.995(1)(a). Again, because we find that the Petitioner’s global headquarters located at the Racine facility predominantly supported the manufacturing property of the Petitioner, wherever located, most of the facility qualifies as category two manufacturing property under Wis. Stat. § 70.995(1)(a).

The Petitioner raises constitutional issues, claiming that drawing a distinction between instate and out-of-state manufacturing property when determining whether supporting property qualified as category two manufacturing property would violate the Commerce Clause and Equal Protection Clause of the United States Constitution. Petitioner claims that, under the Department’s interpretation of the statute, “the Department is penalizing Modine (and presumably will penalize all other taxpayers that have chosen to establish their headquarters in Wisconsin) for extending its property footprint into other states. In effect, the Department treats manufacturers owning property only within the state much differently than it treats manufacturers that also own property outside the state. . . . The dormant Commerce Clause ‘prohibits economic protectionism’ - that is, ‘regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.’” (Pet. Brief, p. 13, citing *Northwest Airlines, Inc. v. Dep’t of Revenue*, 293 Wis. 2d 202, 217, 717 N.W.2d 280 (2006)). Having determined that, under the plain meaning of Wis. Stat. § 70.995(1)(a), category two

manufacturing property can support manufacturing property both inside and outside of Wisconsin, we do not need to address these constitutional claims. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (“As one sufficient ground for support of the judgment has been declared, there is no need to discuss the others urged”); see also *State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (“[C]ases should be decided on the narrowest possible ground.”).

CONCLUSIONS OF LAW

1. The Petitioner’s Racine facility consists of property properly categorized as manufacturing property under the first sentence of Wis. Stat. § 70.995(1)(a) and as warehouses, storage facilities, and office structures whose predominant use is in support of the company’s manufacturing property under the definition of manufacturing property in the second sentence, first clause of Wis. Stat. § 70.995(1)(a), notwithstanding that most of the supported manufacturing property is located outside Wisconsin.

2. Because the Petitioner’s property consists of manufacturing property as defined in Wis. Stat. § 70.995(1)(a), the Petitioner’s property is properly classified as manufacturing property.

ORDER

Based on the foregoing, the Commission orders as follows:

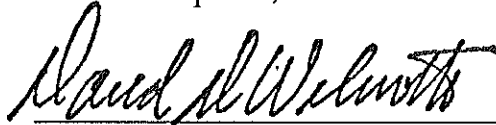
1. The Petitioner’s Motion for Summary Judgment is granted.
2. The Department’s Motion for Summary Judgment is denied.
3. The Department’s action on the Petitioner’s Petition for Redetermination is reversed.

Dated at Madison, Wisconsin, this 3rd day of January, 2018.

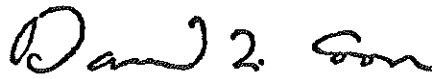
WISCONSIN TAX APPEALS COMMISSION



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 either in-person, by certified mail, or by courier, and served upon the other party (which usually is the Department of Revenue) 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.