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STATE OF WISCONSIN
TAX APPEALS COMMISSION

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FILED Wisconsin Tax Appeals Commission
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Darlene Skolaski Deputy Clerk

A: GAGLIANO CO., INC.
P. O. Box 511382
Milwaukee, WI 53203,

DOCKET NOS. 00-M-04,
00-M-250, and 01-M-157

Petitioner,

vs.

DECISION AND ORDER

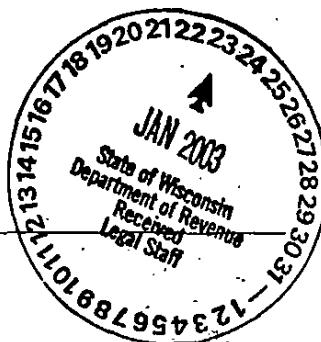
WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8907
Madison, WI 53708

Respondent.

THOMAS M. BOYKOFF, COMMISSIONER:

These cases come before the Commission for decision following a trial on January 29 and 30, 2002, in Madison, Wisconsin, and post-trial briefs by both parties. Petitioner ("Gagliano") is represented by Attorneys Joseph A. Pickart and Johanna J. London, with Attorneys Kristina E. Somers and Douglas A. Pessefall on briefs, of Michael Best & Friedrich, Milwaukee, Wisconsin. Respondent ("Department") is represented by Attorney Sheree Robertson.

Having considered the entire record, including the parties' briefs, the Commission finds, concludes, and orders as follows:



FINDINGS OF FACT

The following facts pertain to the period from January 1, 1999 to December 31, 2001 (the "period under review"), unless otherwise stated.

Jurisdictional Facts

January 1, 1999

1. Under date of February 26, 1999, Gagliano timely filed with the Department a letter requesting that its produce ripening activities be classified "manufacturing" and that its facility located at 300 N. Jefferson Street, Milwaukee, Wisconsin ("facility"), be classified "manufacturing property" on January 1, 1999, under Wis. Stat. § 70.995.

2. Under date of March 1, 1999, the Department wrote to Gagliano requesting additional information, which Gagliano provided in a letter dated March 6, 1999.

3. Under date of May 7, 1999, the Department denied Gagliano's requests.

4. Under date of July 6, 1999, Gagliano appealed the denial to the Department's State Board of Assessors by filing a "Form of Objection to Manufacturing Classification Decision" with attachments.

5. Under date of November 11, 1999, the State Board of Assessors upheld the Department's denial, whereupon Gagliano filed a timely appeal with the Commission. That appeal was assigned Docket No. 00-M-04.

January 1, 2000

6. Under date of February 29, 2000, Gagliano timely filed with the Department a letter requesting that its produce ripening activities be classified "manufacturing" and that its facility be classified "manufacturing property" on January 1, 2000, under § 70.995.

7. Under date of July 6, 2000, the Department denied Gagliano's requests.

8. Under date of July 28, 2000, Gagliano appealed the denial to the Department's State Board of Assessors by filing a "Form of Objection to Manufacturing Classification Decision" with attachments.

9. Under date of October 13, 2000, the State Board of Assessors upheld the denial, whereupon Gagliano filed a timely appeal with the Commission. That appeal was assigned Docket No. 00-M-250.

January 1, 2001

10. Under date of February 28, 2001, Gagliano timely filed with the Department a letter requesting that its produce ripening activities be classified "manufacturing" and that its facility be classified "manufacturing property" on January 1, 2001, under § 70.995.

11. Under date of March 2, 2001, the Department denied Gagliano's requests.

12. Under date of March 14, 2001, Gagliano appealed the denial to the Department's State Board of Assessors by filing a "Form of Objection to Manufacturing

Classification Decision" with attachments.

13. Under date of October 2, 2001, the State Board of Assessors upheld the Department's denial, whereupon Gagliano filed a timely appeal with the Commission. That appeal was assigned Docket No. 01-M-157.

Material Facts

Overview of Gagliano's Business

14. Gagliano is primarily engaged in the purchasing, ripening, storage, and sale¹ of fresh produce, including tomatoes, bananas, and avocados.

15. Gagliano's ripening activities occupy approximately 100,000 square feet of a 200,000 square foot building located at 300 N. Jefferson Street, at the corner of N. Jefferson and Buffalo Streets, in Milwaukee, Wisconsin. The remaining portion of the building is rented to and occupied by a printing company. Only the 100,000 square feet in which ripening occurs is at issue here.

16. At its facility, Gagliano ripens approximately 80% of all produce that is handled or processed there. Tomatoes constitute approximately 80 to 85% of such produce. About 5% of Gagliano's sales are generated by the ripening and sale of bananas and between 4 and 5% by the sale of avocados. Other produce Gagliano ripens includes kiwi fruit, pears, and other stone fruits. Produce not ripened, such as lettuce, is placed in one of the facility's five coolers.

17. Depending on the growing season, Gagliano purchases unripened

¹ The Department characterizes Gagliano's business as a wholesale business which purchases, repacks, and distributes produce. (Department's Brief, p.8.) The record demonstrates that Gagliano's activities are more than that, with its sophisticated ripening chambers and coolers.

tomatoes from Israel, Spain, Mexico, Holland, California, Florida, Tennessee, Arkansas, Pennsylvania, and Colorado. Unripened bananas are purchased from suppliers in Mexico, South America (including Chile), and other regions south of the U. S. border.

18. Gagliano sells its produce to chain warehouses (such as Kohl's, Roundy's, and Pick 'n Save), food service suppliers (such as Alliant and Sysco), and produce wholesalers. Gagliano does not sell its produce directly to consumers.

The Ripening Chambers

19. In 1997 or 1998, Gagliano installed in its facility 20 pressurized ripening chambers ("chambers"), which were state-of-the-art in pressurized ripening chamber technology. Each chamber is a self-contained, pressurized, 2-level unit made of insulated panels. The walls of the chambers are independent and separate from the walls of the facility's building. Gagliano uses the chambers exclusively to ripen *all* produce it receives in unripened condition.

20. Each chamber is equipped with ripening control equipment, including ceiling mounted discharge coils, duct systems with ventilating fans and dampers, air deflectors, refrigeration equipment, two pumping stations, heat exchangers, fans, lights, heaters, supports, curbing, racking, and specially designed doors.

21. Each chamber has a control panel which allows Gagliano to monitor and control the temperature, within one-tenth of one degree of a set point; the humidity; the levels of ethylene, carbon dioxide, and oxygen; and other atmospheric conditions within the chamber. Each control panel also identifies specific circuit faults

as they occur in a chamber and signals an alarm to ripening personnel to provide immediate repair.

22. Each control panel is connected to a central computer that monitors, records, and controls the performance of each ripening cycle, although the control panel in each chamber can operate independently. The central computer allows central programming and remote access. A 24-hour alarm system is attached to the central computer to signal Gagliano's ripening personnel by telephone if conditions in the chamber are not as programmed. Ripening personnel can remotely access the central computer to change or correct any condition within a chamber.

23. To accelerate or slow down the ripening process, Gagliano personnel may enter information in either the central computer or a control panel which will adjust operations of one or more chambers.

24. Each chamber is also connected to a central ethylene gassing station which supplies and controls the amount of ethylene gas pumped into it. Increased levels of ethylene gas in a chamber accelerates the ripening process, while decreased levels slow down the ripening process.

25. In addition to chambers, Gagliano also uses five coolers to store ripe produce. The coolers are used exclusively for storage and not to ripen produce.

"Traditional" Ripening Rooms

26. "Traditional" ripening rooms ("ripening rooms") are less sophisticated than chambers. They contain a cooler, a source of ethylene gas, and hooks for hanging bunched produce.

27. Ripening rooms cannot be used to manipulate and control the ripening process.

28. Instead of installing ripening rooms in its Milwaukee facility, Gagliano installed chambers to: reduce labor costs; reduce energy costs; reduce produce shrinkage; improve its ability to meet specific customer demands for produce quantity and quality; increase its overall profitability; and have uniformly ripened produce.

29. Installing chambers cost Gagliano \$2.5 million more than it would have paid for ripening rooms.

Gagliano's Ripening Procedures

Tomatoes

30. Gagliano purchases tomatoes from suppliers in Mexico, Holland, Israel, Spain, and the United States. Produce wholesalers who do not have sophisticated equipment comparable to Gagliano's generally do not purchase imported produce.

31. Gagliano's suppliers harvest tomatoes in the earliest stages of their development, when they are green and not fully ripened on vines. These tomatoes are commonly called "mature greens" in the produce business. If left on the vines, mature greens would ripen naturally without intervention of technology. Once harvested, however, they will only ripen properly if exposed to ethylene gas, without which they would either rot or ripen in a non-uniform manner and would be unmarketable or minimally marketable at all. Once mature greens are harvested, Gagliano's suppliers

purposely do not expose them to ethylene gas so the ripening process does not begin.

32. As harvested, mature greens are stone-hard to the touch, green in color, starchy in taste, "earthy" in aroma, and have not experienced the physiological changes necessary to ripen.

33. Upon receipt, Gagliano places boxes of mature greens in one of its chambers, and then enters a "ripening recipe" (i.e., computer programs) into its central computer which controls the atmosphere of the chamber. The computer enables the chamber to manipulate air flow, air pressure, gas levels (such as ethylene, oxygen, and carbon dioxide), temperature, and other factors necessary for the desired rate of ripening.

34. A chamber's ventilation system creates a negative air flow which forces air through tomato box openings. The forced air flow ensures that ethylene gas activates genetic responses in mature greens, to allow uniform ripening. Once ethylene gas triggers the ripening process, the process is irreversible.

35. Ripening recipes for any produce (including tomatoes) vary to cause ripening to meet Gagliano's customers' needs and specifications (e.g., timing, quality, and quantity). However, all recipes for various produce have the following characteristics *in common*: the pulp temperature of the produce is initially stabilized (e.g., to about 55° for tomatoes) prior to the introduction of a ripening agent (e.g., ethylene gas); the chamber's temperature and humidity is increased, with humidity levels sometimes exceeding 90%; ethylene gas is then introduced into the chamber at varying concentration levels to trigger ripening; the produce then generates its own

ethylene gas which, in turn, generates heat; the ethylene gas is vented; and the chamber's interior temperature is again stabilized to prevent produce from ripening prematurely.

36. Gagliano's chamber ripening process transforms mature greens into ripened, edible tomatoes which are soft and juicy (not stone-hard), orange or red (not green), sweet (not starchy), and pleasantly aromatic (not "earthy"). The ripening process changes the tomatoes' color, texture, taste, size, and weight, and makes them marketable. The tomato is commonly identified as a "ripe red" or "red ripened" tomato.

37. Gagliano ripens bananas, avocados, and other produce in the chambers in the same manner as tomatoes, to change the produce's physical and chemical composition, appearance, and marketability.

38. By altering the ripening recipe for a chamber, Gagliano can meet its customers' requirements, specifications, timing, quantity, and quality for produce.

ISSUE

During the period under review, was Gagliano's facility at 300 N. Jefferson Street, Milwaukee, Wisconsin, "manufacturing property" under Wis. Stat. §§ 70.995(1) and (2)?

CONCLUSION OF LAW

Gagliano's facility at 300 N. Jefferson Street, Milwaukee, Wisconsin, is "manufacturing property" under §§ 70.995(1) and (2).

APPLICABLE WISCONSIN STATUTES

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.

(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:

(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.

OPINION

A. Section 70.995(1)(a).

"Manufacturing property" is defined in part to include "all lands, buildings, structures and other real property used in manufacturing . . . processing . . . making or milling tangible personal property for profit. Manufacturing property also includes warehouses, storage facilities and office structures when . . . [their] predominant use . . . is in support of the manufacturing property, and all personal property . . . used in the [manufacturing] activity . . . when located at the site of the activity." Wis. Stat. § 70.995(1)(a). The parties do not agree upon whether Gagliano's property should be classified as "manufacturing property" under this general statute without further analysis. This analysis follows.

B. The SIC Manual.

Sections 70.995(1)(d) and (2) then provide that, to qualify as manufacturing, a process must be classified in one of 26² major group classifications, 21 of which are set forth in the Standard Industrial Classification Manual, 1987 edition, ["SIC Manual"] published by the U. S. Office of Management and Budget.

The Department asserts that Gagliano's ripening process is not included in the 26 enumerated categories in § 70.995(2)(a) through (z). This list includes 21

² The enumeration is set forth in § 70.995(2)(a) through (z).

activities which the SIC Manual classifies as "manufacturing", as well as 5 activities³ listed as nonmanufacturing in the SIC Manual but classified as manufacturing, nonetheless, for Wisconsin property tax purposes.

The Department asserts that, for property to be deemed manufacturing, it must be included in one of the major group classifications of the SIC Manual, and Gagliano's process is not included. Gagliano and the Department agree that Gagliano's process is not among the 26 categories in § 70.995(2) or, it seems, in the entire SIC Manual. Nor is the process identified as non-manufacturing in the statutes or in the SIC Manual.

Because Gagliano's process is not identified in § 70.995(2), asserts the Department, it is not manufacturing. Not so, responds Gagliano! Gagliano states — and the Commission agrees — that merely because its process is not so identified, it is not *ipso facto* a non-manufacturing process. In fact, except as provided in § 70.995(1)(d), § 70.995(2) provides a safe harbor for manufacturing classifications. The fact that a classification is not enumerated in § 70.995(2) does not necessarily mean the classification is not a manufacturing classification. Moreover, Gagliano states that its process was not developed until *after* the publication of the SIC Manual.⁴ Gagliano has proven this fact by the credible testimony of Richard J. Kollauf, its Chief Financial

³ "These 5 activities include mining, photofinishing laboratories, scrap metal processing, waste paper processing and hazardous waste [treatment] facilities." Department's Brief, p. 18.

⁴ This is similar to the situation in *Zip Sort*, where Zip Sort's activities were not included in the SIC Manual because they were not developed until at least 1990, after the manual's publication. Zip Sort applied a unique 11-digit barcode to pieces of mail to allow the U. S. Postal Service to machine sort, rather than hand sort, the mail, to expedite its delivery. See the Commission's decision in *Zip Sort, Inc., d/b/a Federal Mailing Systems v. Dep't of Revenue, Wis. Tax. Rptr. (CCH)¶ 400-466* (WTAC 1999).

Officer and General Counsel, and Dennis Kihlstadius, its expert witness.

C. The Wisconsin Property Assessment Manual.

As directed by § 73.03(2a), the Department has prepared, published, and distributed the Wisconsin Property Assessment Manual ["Assessment Manual"]. Its purpose is to "discuss and illustrate accepted assessment methods, techniques and practices with a view to more nearly uniform and more consistent assessments of property at the local level." *Id.* The Assessment Manual "is the primary document for defining assessment standards and practices in Wisconsin. *State ex rel. Campbell v. Township of Delavan*, 210 Wis. 2d 239, 258, 565 N.W. 2d 209 (Ct. App. 1997)." *Zip Sort, Inc. v. Dep't of Revenue*, 247 Wis. 2d 295, 303.

Chapter 10 of the Assessment Manual is titled "Manufacturing and Telephone Company Assessment" (revised 12/00)⁵, and the chapter's first major subheading is "Manufacturing Assessment." The Assessment Manual states, in part, that "S. 70.995, Stats., and [the] SIC Manual may not cover every type of business in existence. For those not mentioned in either place, definitions included in s. 70.995(1)(a) and (b), stats., shall be considered . . ." (Assessment Manual, p. 10-5.) "Thus, the assessment manual acknowledges that even where a business does not fit perfectly into a SIC manual category or other classification specifically enumerated in Wis. Stat. § 70.995(2), it may nevertheless qualify as manufacturing property under the general definitions . . ." in § 70.995(1). *Zip Sort, Inc., supra*, at 303.

⁵ The portion of ch. 10 in the record consists of pages 10-5 through 10-34 and is the "12/00" revision. The Department's brief (p. 19) refers to a "12/95" revision. The version contained in the record is referred to in this opinion.

The Assessment Manual (pp. 10-5 to 10-6) states that, in order to determine if a business qualifies as manufacturing under §§ 70.995(1)(a) and (b):

Three questions that should be asked to apply this criteria are (in order of priority):

1. Is the activity more similar to those specifically classified manufacturing by law and the SIC Manual, or more similar to those specifically classified nonmanufacturing by law and the SIC Manual?
2. Is the activity more closely aligned with the general description of producing, assembling, fabricating, making or milling by machinery and equipment of a new article with a different form, use and name from existing materials, or is it more aligned with the general activities involved with services as generally described in the SIC Manual, wholesale trade, retail trade, agriculture, or construction?
3. Does the activity produce products more for wholesalers, interplant transfer, to order for industrial users, or more for direct sale to domestic consumers?

Question 1: Are Gagliano's activities more similar to manufacturing or nonmanufacturing activities by statute and the SIC Manual?

Gagliano identifies its procedures as being similar to the SIC Manual's "Division D; Manufacturing; The Division as a Whole" (pp. 67-68). This provision states that manufacturing "includes establishments engaged in the mechanical or *chemical transformation* of materials or substances into new products The materials processed by manufacturing establishments include products of agriculture The new product . . . may be finished in the sense that it is ready for utilization or consumption The materials used . . . may be purchased directly from producers Manufacturing production is usually carried on for the wholesale market . . . rather than

for direct sale to the domestic consumer." (SIC Manual, p. 67; emphasis added.)

Gagliano asserts that its facilities are engaged in the chemical transformation of materials or substances into new products. In its ripening chambers, Gagliano uses ethylene gas, humidity levels, and temperature to transform unripened tomatoes, bananas, and avocados into ripened tomatoes, bananas, and avocados. Gagliano purchases these products directly from growers, and then processes these "products of agriculture" into a "new product" ready for sale to the wholesale market. (SIC Manual, p. 67.)

Gagliano also asserts that the Department has already examined its ripening activities and concluded⁶ that Gagliano is a "manufacturer in manufacturing tangible personal property" under Wis. Stat. § 77.54(6)(a), a sales and use tax statute. The Department has also concluded for sales and use tax, using the factors which define "manufacturing" under § 77.54(6m) for purposes of § 77.54(6)(a), that Gagliano's ripening activities involve the production by machinery (ripening chambers and computers) of a new article (edible, ripe produce) with a different form (for example, processing tomatoes from stone-hard, green, starchy tasting, earthy in aroma, to ripened, edible, soft, juicy, orange or red, sweet tasting, pleasantly aromatic tomatoes), with a different use (edible and commercially saleable), with a different name (ripened, edible produce), by a process popularly regarded as manufacturing (recognized as such by legal entities in Indiana, Ohio, Missouri, and New York).

⁶December 16, 1999 Department Correspondence/Memorandum, from Janet Reimann to Sean Smith, titled "Technical Inquiry — Ripening Rooms" ("December 16, 1999 memorandum").

In Division D, a statement reads: "[t]here are numerous borderline cases between manufacturing and other divisions of the classification system . . ." (SIC Manual, p. 67.) Also in Division D, under the subheading "Wholesale and Retail Trade," the statement reads: "The breaking of bulk and redistribution in smaller lots, including packaging or bottling products, such as liquors or chemicals, is also classified as Wholesale or Retail Trade." (SIC Manual, p. 68.)

Predictably, the Department points to a nonmanufacturing category, "Division F; Wholesale Trade", which includes, as an example of nonmanufacturing, "Fresh Fruits and Vegetables" (category 5148) which is described as "Establishments primarily engaged in the wholesale distribution of fresh fruits and vegetables" and provides the example of "Banana ripening for the trade -- wholesale." (SIC Manual, p. 307.) The Department characterizes Gagliano's activities as "the wholesale distribution of fruits and vegetables . . . [in which] ripening activity is part of its wholesale distribution of fruits and vegetables and those activities help [Gagliano] to meet market demand." (Department's Brief, p. 20.)

The Department points out that § 70.995(1)(d) provides that "activities not classified as manufacturing" in the SIC Manual are not manufacturing activities except as provided in § 70.995(2). The Department claims that Gagliano's ripening process is described as Wholesale Trade — Nondurable Goods (Major Group 5), specifically as Industry No. 5146 — Fresh Fruits and Vegetables. The SIC Manual describes Industry No. 5146 as follows:

Establishments primarily engaged in the wholesale distribution of fresh fruits and vegetables.

 Banana ripening for trade — wholesale

 Fruits, fresh — wholesale

 Potatoes, fresh — wholesale

 Vegetables, fresh — wholesale

Id. at 307.

Gagliano is clearly not "primarily engaged in the wholesale distribution of fresh fruits and vegetables." The reference to banana ripening in the context of the overall description and other examples appears to refer to passive ripening of bananas as they are in storage, not the sophisticated process employed by Gagliano.

The Department has also vigorously argued that it does not consider sales and use tax matters in making manufacturing/nonmanufacturing determinations. Therefore, it requests that the Commission not consider such matters, especially its December 16, 1999 memorandum. The Commission agrees with the Department that, simply because an entity has been determined to be a manufacturer for sales and use tax purposes, an entity does not *automatically* qualify as a manufacturer for property tax classification purposes.

The Commission would be remiss, however, in totally ignoring the memorandum's analysis of the factors leading up to the conclusion reached in the memorandum. This is especially so when, as here, language characterizing manufacturing in the Assessment Manual's Question 2 (below) is *identical* to language in § 77.54(6m)intro: production "by machinery . . . of a new article with a different form, use and name from existing materials . . ."

After weighing the above factors, we conclude that Gagliano's activities are more similar to the manufacturing classification described in "Division D; Manufacturing; The Division as a Whole" than to the nonmanufacturing category in "Division F; Wholesale Trade." Gagliano's activities are more than merely the acquiring, repackaging, and distributing of fruits and vegetables. Its sophisticated ripening chambers and related computers are major factors in the chemical transformation of raw produce to the new products of mature, marketable produce.

The Commission's conclusion is based on the SIC Manual and the question in the Assessment Manual. We believe that the manufacturing conclusion stands alone, and does not automatically follow from conclusions in the Department's December 16, 1999 memorandum. That memorandum, however, does strengthen the basis of our conclusion.

Question 2: Are Gagliano's activities more closely aligned with producing by machinery of a new article with a different form, use and name from existing materials, or are they more aligned with services, wholesale trade, retail trade, agriculture or construction?

As discussed above, Gagliano's activities are more closely aligned to manufacturing than to nonmanufacturing. The activities produce (by applying ethylene gas and controlling temperature and humidity) by machinery (ripening chambers and related computers) a new article (edible, ripe produce) with a different form (for example, processing tomatoes from stone-hard, green, starchy tasting, earthy in aroma to ripened, edible, soft, juicy, orange or red, sweet tasting, pleasantly aromatic

tomatoes), with a different use (edible and commercially saleable), and with a different name (ripened, edible produce) from existing materials (unripened tomatoes, ethylene gas, humidity, temperature). These activities are less aligned with nonmanufacturing services, and are far more complex than the mere wholesale distribution of produce.

Question 3: Do Gagliano's activities produce products more for wholesalers, interplant transfers to order for industrial uses or more for direct sale to domestic consumers?

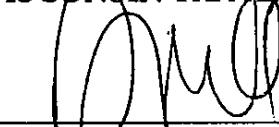
Gagliano sells its produce to chain warehouses (such as Kohl's, Roundy's, and Pick 'n Save), food service providers (such as Alliant and Sysco), and produce wholesalers. Gagliano does not sell its produce to domestic consumers.

ORDER

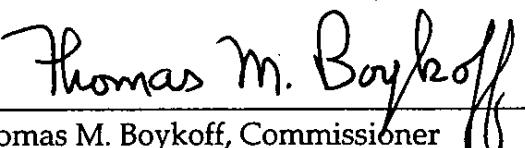
The Department's denials of petitioner's applications for "manufacturing property" status under Wis. Stat. §§ 70.995(1) and (2) are reversed.

Dated at Madison, Wisconsin, this 22nd day of January, 2003.

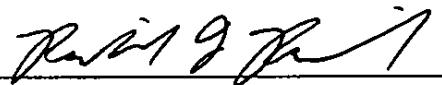
WISCONSIN TAX APPEALS COMMISSION



Don M. Millis, Commission Chairperson



Thomas M. Boykoff, Commissioner



Richard F. Raemisch, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"