

STATE OF WISCONSIN
TAX APPEALS COMMISSION

XEROX CORPORATION
100 Clinton Avenue South
Rochester, NY 14644,

DOCKET NOS. 02-M-66
and 02-M-67

Petitioner,

vs.

DECISION AND ORDER

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

Respondent,

vs.

CITY OF MILWAUKEE
800 City Hall
200 E. Wells Street
Milwaukee, WI 53202-3551

CITY OF LACROSSE
Legal Department, City Hall
400 La Crosse Street
La Crosse, WI 54601-3396,

Intervenors.

JENNIFER E. NASHOLD, CHAIRPERSON:¹

The above-entitled matters came before the Commission for a hearing on

¹ The Commissioner authoring this decision is different than the Commissioner who presided over the hearing, who has since resigned. Because these cases do not require the Commission to weigh credibility or competing testimony (see Petitioner's Brief at p. 37 and Reply Brief at p. 2), reassignment of the cases does not pose any fact-finding issues.

November 3 and 4, 2003. Petitioner, Xerox Corporation, appeared by Attorneys Timothy C. Frautschi and Maureen A. McGinnity, of Foley & Lardner, LLP. Respondent, Wisconsin Department of Revenue ("Department"), appeared by Attorney Veronica Folstad. Intervenor, City of Milwaukee, appeared by Deputy City Attorneys Linda Uliss Burke and Dawn M. Boland. Intervenor, City of La Crosse, appeared by Deputy City Attorney Peter B. Kiskan. All parties filed post-trial briefs.

Having considered the entire record before it, the Commission finds, concludes, and orders as follows:

FINDINGS OF FACT

Milwaukee Assessment and Refund

1. Petitioner timely filed its City of Milwaukee ("Milwaukee") property tax return for the year 2001 on February 28, 2001. On Schedule D-1 of the return, covering "Exempt Computer Equipment and Software," petitioner initially reported items with a total installed cost of \$17,449,720. On Schedule D-2 of the return, covering taxable "Faxes, Copiers and Telephone Systems, and Computerized Equipment," petitioner initially reported items with a total installed cost of \$8,215,907.

2. On May 4, 2001, Milwaukee issued to petitioner a Notice of Personal Property Assessment, reclassifying as taxable the property petitioner reported as exempt computer equipment.

3. Petitioner timely objected to the assessment by filing an "Objection of Personal Property Assessment" with Milwaukee on May 18, 2001 and by filing a "Property Owner's Objection to Change in Reported Exempt Computers" with the State

Board of Assessors on July 3, 2001.

4. On August 17, 2001, petitioner filed an amended 2001 Milwaukee personal property tax return and an amended equipment list. In Schedule D-1 of its amended return, petitioner reported exempt items with a total installed cost of \$13,293,577. On Schedule D-2 of its amended return, petitioner reported taxable assets with a total installed cost of \$6,304,104.

5. In October of 2001, the Milwaukee Board of Assessors determined that the property petitioner reported on its amended return as exempt computer equipment was properly classified as copiers and denied the exemption in its entirety. Petitioner paid the tax as assessed by Milwaukee, appealed the Milwaukee Board of Assessors' determination, and filed a claim for refund.

6. On April 16, 2002, the State Board of Assessors issued a Notice of Determination granting petitioner's appeal in part and reducing the full value assessment of petitioner's taxable personal property from \$11,287,700 to \$6,060,500.

7. On May 14, 2002, the Milwaukee Board of Review allowed the exemption in part, consistent with the State Board of Assessors' determination, and issued a refund to petitioner in the amount of \$148,064.

La Crosse Assessment and Refund

8. Petitioner timely filed its City of La Crosse ("La Crosse") property tax return for the year 2001 on February 28, 2001. On Schedule D-1, covering "Exempt Computer Equipment and Software," petitioner initially reported items with a total installed cost of \$575,912. On Schedule D-2, covering taxable "Faxes, Copiers and

Telephone Systems, and Computerized Equipment," petitioner initially reported items with a total installed cost of \$457,478.

9. La Crosse reclassified as taxable faxes, copiers, and telephone systems all of the property petitioner reported as exempt computer equipment.

10. Petitioner timely objected to the La Crosse classification by filing a "Property Owner's Objection to Change in Reported Exempt Computers" with the State Board of Assessors on July 3, 2001.

11. On October 24, 2001, La Crosse adjusted petitioner's return based on petitioner's request for reconsideration. La Crosse exempted two pieces of equipment with a total installed cost of \$46,249 but did not reclassify other equipment petitioner claimed was exempt. Petitioner paid the tax assessed by La Crosse, appealed the assessor's determination, and filed a claim for refund.

12. On March 12, 2002, the State Board of Assessors issued a Notice of Determination granting petitioner's appeal in part and reducing the full value assessment of petitioner's taxable personal property for 2001 from \$620,718 to \$379,200.

13. On April 11, 2002, La Crosse granted petitioner's refund claim in part, in accordance with the State Board of Assessors' determination, and issued a refund to petitioner in the amount of \$7,245.

Other Facts for Both the Milwaukee and La Crosse Assessments

14. The State Board of Assessors based its determinations of petitioner's objections to both the Milwaukee and La Crosse assessments on the following conclusions:

"[1]. A device that has the *capability* to produce copies of a document independently or in a 'stand alone' setting, without relying on a computer to execute the operation remains functionally, a copier. The fact that some of these devices have multifunction capability and can be networked to perform other functions does not alter the fact that they are also copiers and are specifically excluded under Sec. 70.11(39).

[2.] A [d]evice[] networked to a computer system that can produce copies of an electronic document may qualify as an electronic peripheral if it cannot function as a stand-alone device."

(Exhibit 1, p. 2; Exhibit 3, p. 3.)

15. On May 9, 2002, petitioner timely filed with the Commission petitions for review from the State Board of Assessors' determinations with respect to both the Milwaukee and La Crosse assessments. The cases thereafter were consolidated.

16. On December 23, 2002, the Commission granted the motions of Milwaukee and La Crosse to intervene, subject to certain conditions.

17. On August 29, 2003, the Commission bifurcated the issues in these dockets and scheduled for hearing the issues of whether the subject property is exempt from property tax.

18. At the hearing, petitioner presented the testimony of two qualified experts in the computer and document processing industry, Dr. Peter Crean and John Springer, both of whom work for petitioner. Petitioner also presented testimony of Michael D. Larson, who is employed by petitioner as Manager, Tax Policies and Programs. The Department presented the testimony of three witnesses, all of whom are employed by the Department.

Description of the Equipment at Issue

19. The property which remains at issue ("the property" or "the equipment") is set forth in Exhibit A, Tabs 12, 15, 16, and 17, and all of the items in Exhibit B, Tabs 6 and 7.² The property, which petitioner refers to as multifunction devices or "MFDs," is manufactured by petitioner and consists of Document Centres and Document WorkCentres.

20. Document Centres are large pieces of equipment that stand on the floor with either physically separate scanners and printers connected by a cable, or scanners and printers integrated in a single housing. Document WorkCentres are smaller, less robust, desktop devices in which the printer, scanner, and fax components are preconfigured as part of a single unit without the option of adding peripherals.

21. Petitioner leases the items at issue to a large number of lessees located in Milwaukee and La Crosse, Wisconsin.

DC and ST Document Centres

22. There are two types of Document Centres at issue in this case, differentiated by the method of data input. For Document Centres with the suffix DC in the model number ("DC Document Centres"), the only method of data input is to scan documents, *i.e.*, convert a tangible document to electronic form. The DC Document Centres are designed so that a user wishing to make a copy of a document must walk up to the equipment and physically place the document to be copied on or in the machine. The equipment scans the document and the user presses a button to select the

² Exhibit B, Tabs 6 and 7, are included in Exhibit A, Tabs 12, 15, 16, and 17.

copies to be produced. DC Document Centres are not designed to be linked to a computer network.

23. Document Centre systems identified with the suffix ST ("ST Document Centres") are designed to make copies of a document by either walking up to the machine and physically scanning the original in the same manner as the DC Document Centres, or, in the alternative, the user can electronically input data to be copied through a connection to either a personal computer or via a computer linked to a local area computer network.

24. Once data has been inputted into Document Centres either electronically or by scanning, the DC and ST Document Centres function the same with respect to manipulating and printing the data.

25. The main components of an ST Document Centre are as follows:

(a) Scanner. In some models, the scanner is a physically separate device connected to the Main Controller and printer by a cable connection, and in other models it is integrated with the Main Controller and printer in a single housing.

(b) Main Controller. Mr. Springer testified that the Main Controller is an onboard computer consisting of a multifunction system board that provides memory management for digital image storage capability, a Main Controller Unit, and, in some models, a hard disk drive. The Main Controller uses the same random access memory (RAM) as other computers.

(c) Network Controller. Mr. Springer testified that the Network Controller is a second, independent onboard computer consisting of either a Motorola

PowerPC or Intel main control board, a PowerPC 100 megahertz processor, standard memory, a floppy disc drive, and a hard disk drive.

(d) Printer/Copier.³

(e) Various optional accessories, such as a finisher that provides stapling capability, a duplex unit that allows two-sided printing, and a high-capacity paper feeder.

26. DC Document Centres have the same components as ST Document Centres, except they do not have the Network Controller installed and therefore cannot be connected to a personal computer or a computer network. DC Document Centres are designed to make it easy to upgrade a DC model to an ST by installing the Network Controller. An ST model functions as a DC if the computer interface cable between the Network Controller and the Main Controller is disconnected.

27. Petitioner categorizes its DC and ST Document Centres in the following "families of computers" to denote different product features. Within each family, the primary difference between model numbers is speed, with the last two digits of the model number indicating the number of pages per minute that model prints.

(a) Models 220 and 230 are characterized by split components with a physically separate scanner connected to a printer/copier via a cable. The brochure for Models 220 and 230 of the DC Document Centres describes this equipment as digital copiers. A brochure further states:

³ Petitioner's experts refer to this component as a "printer." Because one of the questions in this case is whether the equipment consists of printers or copiers, the Commission refers to this component as a "printer/copier" rather than a printer.

The 230DC's innovative use of *digital technology* streamlines the document copying process, providing incredible ease of use, exceptional standard features, greatly enhanced image quality, and minimum paper handling for maximum reliability. Its *modular design* allows you to add optional features and capabilities as your needs dictate. You can do more with your documents, in less time, with less frustration. *You are more productive because your copier is more productive.*

As with the entire line of Xerox Document Centre products, it's the combination of digital technology and innovative Xerox design that makes the 230DC *one of the most productive copiers in its class.*

(Exhibit A, Tab 12.)

A brochure for the 220 and 230 ST models state: "The 230 and 220ST are true digital copiers" (Exhibit A, Tab 12).

(b) Models 240, 255, and 265, in which the scanner is integrated with the Main Controller and printer in a single unit. They have more capabilities than the 220/230 and 332/340 families.

(c) The brochures for DC Document Centre Models 220, 230, 240, 255, and 265 refer to the items as "DIGITAL COPIER[S]."

(d) Models 332 and 340 are similar to models 220 and 230 but have an upgraded Main Controller that has better memory management and includes an onboard image disk drive used for scanned images. The heading on the brochure describes these units as "DIGITAL COPIER[S]/SYSTEM[S]."

(e) Model 420 is similar to Model 230 but uses upgraded software.

(f) Models 432 and 440 are the second generation of models 332/340 and use upgraded software.

(g) Models 460 and 470 are the next generation of the Model 265.

(h) The heading on the brochure for models 420, 432, 440, 460, and 470 describes the item as a "DIGITAL COPIER AND SYSTEM."

28. The physical appearance of the Document Centres is generally consistent with what has become a standard appearance of a copier, *i.e.*, a flip-up cover, various bins for different paper sizes, touch pad controls, and sorting bins.

29. The different models of the DC and ST Document Centres all function in essentially the same way.

30. The Main Controllers can manipulate data to change the desired output without any influence of a personal computer. When a document is scanned into either a DC or ST model Document Centre, the scanned data is stored in the memory of the Main Controller in the Document Centre.

31. The Main Controller can manipulate the stored data in various ways. For example, if the **booklet** command on the control panel of the Document Centre is selected, the stored data is manipulated by the Main Controller to re-order the pages in booklet format. If the **auto-orientation** command is selected, the stored data is manipulated by the Main Controller to print appropriately on the page even though the orientation of the paper is different from the orientation of the original document. If the **annotation** command is selected, the stored data is manipulated by the Main Controller to add the date, page number or a short message by using the full alphabetic keyboard on the control panel. If the **multi-up** command is selected on models with that feature, the stored data is manipulated by the Main Controller to combine multiple images on a

single sheet of paper.

32. Mr. Springer testified that The DC and ST Document Centres would not be able to perform any of the functions listed in Finding 31 without the Main Controller because such data manipulation and storage requires a computer and extensive computer programming.

33. Advanced models of petitioner's Document Centres also have scan to file and/or scan to e-mail capabilities. With this feature, the Main Controller receives scanned data and creates and stores TIF or PDF files. The Network Controller then transfers those TIF or PDF files either to a networked personal computer, or, in the case of the 400 series, via e-mail to a user outside the network, using the internet. The 400 series Document Centres have their own e-mail addresses. The Network Controller allows access via either the internet or intranet to a directory of names, e-mail addresses, and other contact information. The Network Controller then sends the file to the recipient's e-mail server, which sends it to the recipient's e-mail mailbox to be retrieved.

34. The Intel Network Controller onboard the Model 470ST Document Centre can run operating systems and software packages such as Microsoft Windows, which can be installed on the hard disk drive of the Network Controller. By adding an off-the shelf-video card and connecting a standard mouse, keyboard, and monitor to the Network Controller, this Document Centre has all the same components as a personal home computer.

35. With Microsoft Windows installed on the Model 470ST Document

Centre, the Document Centre can also be used for basic word processing functions.

36. The Intel Network Controller onboard the 470ST Documents Centre is also capable of "surfing" the internet.

WorkCentres

37. Petitioner's Document WorkCentres, like its Document Centres, have scanners, a Main Controller, and printers/copiers. Document WorkCentres perform similarly to Document Centres in terms of their basic function of scanning input, processing the data via the Main Controller, and delivering output through the printer/copier. Some Document WorkCentres can be connected to an outside network computer to allow electronic input between the Main Controller and the network computer.

38. The cover of the brochure for the WorkCentre 545 contains only the following description: "The low-cost, multifunction business Fax that lets you print, copy and scan with laser quality and speed." (Exhibit A, Tab 17.) Inside the brochure, set apart in the margin, highlighted in red with larger font, it further states: "At last, a compact, multifunction Fax system that gives you professional office productivity at a personal price." (Exhibit A, Tab 17.)

39. The WorkCentre Pro 635 is advertised on the cover of its brochure as "An affordable fax system that brings superior fax capabilities to your business and much more. . . . everyone in your office can take advantage of the full-featured fax that provides solutions to most business needs." (Exhibit A, Tab 17.)

40. WorkCentre Pro 645 is described on the cover of its brochure as "A

powerful fax system that delivers exceptional productivity now. . . . From sending and receiving thousands of faxes every month to fast scanning, printing and copying, this is one full-featured system designed to meet the needs of demanding businesses. . . ."

(Exhibit A, Tab 17.)

41. WorkCentre Pro 657 is described in bold font on the cover of its brochure as follows: "A high-performance fax system that features the newest technology to handle the most demanding workloads". Underneath this description, in large font, appears the following: "Today's busy workgroups need a high-speed way to keep up with thousands of faxes every month The Document WorkCentre Pro 657 gives you the fastest, most advanced fax transmission technologies available." (Exhibit A, Tab 17.)

42. WorkCentre Pro 665 is described on the cover of its brochure, in relevant part:

Economical and expandable, the multifunction productivity solution for mid-sized workgroups with moderate-to-heavy fax traffic. The WorkCentre Pro 665 features the fastest, most efficient fax performance available, thanks to a 33.6Kbps modem and JBIG compression, plus 12-ppm, 600x600dpi printing in an affordable workgroups solution . . . Available network printing and faxing, as well as optional Fax-to-E-mail capability, deliver even more productivity to every desktop.

(Exhibit A, Tab 17.)

43. WorkCentre Pro 765 is described on the cover of its brochure, in relevant part:

Dual-line faxing, fast printing and scanning, and big capacity for workgroups with heavy fax traffic as well as PC print-copy-scan-

PC fax requirements. With dual 33.6 Kbps modems and built-in JBIG compression, 12-ppm printing and 1-second scanning, and 700-page memory, the WorkCentre Pro 765 meets the multifunction productivity demands of workgroups of 16-25 users. . . .

(Exhibit A, Tab 17.)

44. The "Market Code Description" for WorkCentres 545, 635, 645, and 657 describes the items using the suffix "Fax."

45. Petitioner's experts testified that within the document processing industry, the term "copier" refers to a machine that uses a process whereby an original document is placed on a glass or fed through a document feeder, the image is projected through a series of mirrors and lenses onto a drum or photoreceptor surface, and that projected image is then transferred onto paper without any conversion or manipulation of the image. Copies are made by taking pictures of the original document. Such copiers are also referred to in the document processing industry as optical copiers, analog copiers, or photocopiers. These copiers are not connected to or operated by computers and do not use electronics for image processing at any stage of the copying.

46. Petitioner's experts testified that within the document processing industry, the term "digital copier" refers to a device that uses electronic processing to improve the image the photoreceptor sees, thereby producing sharper color images than optical copiers. In a digital copier, a document is scanned by a raster scanner, which "rasterizes" the data, *i.e.*, converts it to a pixel-by-pixel description of the lightness and darkness across a page and then to digital 1's and 0's. The raster scanner is directly connected to a raster printer which prints the scanned data the same way it is

received, without any manipulation.

47. Petitioner's experts testified that under these definitions of copier and digital copier in Findings 45 and 46, the MFDs are not copiers or digital copiers, notwithstanding the use of those terms in petitioner's marketing materials.

48. Petitioner's experts testified that, in contrast to the copying described in Findings 45 and 46, the equipment here does not create copies but, rather, prints fresh, unique images from digital representations. When data is input, either by scanning or electronic transmission, the image is first rasterized. The rasterized data is sent to the Main Controller, which manipulates that data, and then to a laser printer/copier to print the desired output as requested from the control panel.

49. Petitioner's experts testified that in contrast to the process of copying described in Findings 45 and 46, the printers in the equipment at issue are operated and controlled by the on-board controllers, namely, the Main Controllers.

50. The fax function for the Document WorkCentres is provided by a physical card that is embedded in the Main Controller. Mr. Springer testified that because the fax card is controlled and operated by a computer, the Main Controller, the fax component is an electronic peripheral. (Tr. III, pp. 56-60.) He further testified that the WorkCentres are MFDs with fax capabilities; they are not fax machines. (Tr. III, pp. 56-60.)

CONCLUSION OF LAW

Petitioner did not meet its burden of establishing that the Department erroneously categorized the property at issue as nonexempt copiers and fax machines,

rather than as exempt computers, servers, electronic peripheral equipment, and/or printers under Wis. Stat. § 70.11(39).

OPINION

Petitioner argues that its multifunction devices are exempt from property taxes under Wisconsin Stat. § 70.11(39). This statute provides, in relevant part:

70.11 Property exempted from taxation. The property described in this section is exempted from general property taxes . . . Property exempted from general property taxes is:

* * *

(39) COMPUTERS. . . mainframe computers, minicomputers, personal computers, networked personal computers, servers, terminals, monitors, disk drives, electronic peripheral equipment, tape drives, printers, basic operational programs, systems software, and prewritten software. The exemption under this subsection does not apply to custom software, fax machines, copiers, equipment with embedded computerized components or telephone systems. . . .⁴

Specifically, petitioner asserts that “its multifunction devices are exempt ‘computers,’ ‘servers,’ ‘printers’ and ‘electronic peripheral equipment.’” (Petitioner’s Brief at 29, § II.)⁵ The Department defends the grounds asserted for the assessment, namely, that the Document Centres are copiers and the WorkCentres are faxes, both of which are taxable under the statute.

Under Wisconsin law, tax exemptions are a matter of legislative grace and

⁴ 2001 Act 16 sec. 2108s created Wis. Stat. § 70.11(39m), which provides that as of January 1, 2003, a personal property tax exemption applies to “cash registers and fax machines, excluding fax machines that are also copiers.”

⁵ While petitioner’s argument is somewhat unclear, the Commission does not construe it to mean that each device *is* a computer, server, printer or electronic peripheral equipment. Rather, the Commission construes petitioner’s argument to be that each device *is comprised* of these items.

not of right. *Fall River Canning Co. v. Dep't of Taxation*, 3 Wis. 2d 632, 637, 89 N.W.2d 203 (1958); *Janesville Community Day Care v. Spoden*, 126 Wis. 2d 231, 233, 376 N.W.2d 78 (Ct. App. 1985). Because taxation is the rule and exemption is the exception, tax exemption statutes are to be strictly construed against granting an exemption. *Pabst Brewing Co. v. Milwaukee*, 125 Wis. 2d 437, 445, 373 N.W.2d 680, 684 (Ct. App. 1985). "An exemption from taxation must be clear and express. All presumptions are against it, and it should not be extended by implication." *Wrase v. City of Neenah*, 220 Wis. 2d 166, 171, 582 N.W. 2d 457 (1998).

Furthermore, assessments made by the Department are presumed to be correct, and the burden is upon the petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶202-401 (WTAC July 5, 1984).

Relying on *H. Samuels Co. v. Dep't of Revenue*, 70 Wis. 2d 1076, 1085, 236 N.W.2d 250 (1975), petitioner argues that because Wis. Stat. § 70.11 does not define the relevant terms contained in Wis. Stat. § 70.11(39), the Commission should use the definitions provided by industry experts conversant with the subject matter. Petitioner argues that the Department did not contradict the testimony of petitioner's experts that the property at issue fell within the experts' definitions of computers, servers, printers, and electronic peripheral equipment and did not fall within the experts' definition of copier or fax machine. Therefore, petitioner asserts, it is entitled to the exemption.

The question in *H. Samuels* was whether a taxpayer's operation constituted "manufacturing," defined at that time by Wis. Stat. § 77.51(27) as "the production by

machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing." 70 Wis. 2d. at 1084. The Court held that the phrase "process popularly regarded as manufacturing" "can only be applied with reference to the opinions of those conversant with the subject matter involved." *Id.* at 1085-1086. The Court further rejected the Department's contention that the phrase should be applied "according to the view of the operation taken by the 'man on the street,'" stating that "no effort was made to show how the 'man on the street' views the taxpayer's operation", and that "rational decisions could not be reached using such an approach to determine whether or not an enterprise constituted manufacturing within the definition of sec. 77.51(27), Stats." *Id.* at 1086.

The Commission does not read *H. Samuels* to stand for the broad proposition that whenever a term is not defined by statute, resort to an expert's testimony is necessary. Indeed, such an interpretation would contradict the rule of statutory construction set forth in Wis. Stat. § 990.01(1), which requires: "All words and phrases shall be construed according to common and approved usage; but technical words and phrases and others that have a peculiar meaning in the law shall be construed according to such meaning."

Thus, the initial inquiry is whether the relevant statutory terms — mainframe computers, minicomputers, personal computers, networked personal computers, servers, electronic peripheral equipment, fax machines, and copiers — are "technical words" or "words that have a peculiar meaning in the law;" such that "common and approved" usage is insufficient in interpreting them. It is evident that the

disputed terms are not legal terms of art. Moreover, these terms are not "technical words" which require an expert's interpretation. The terms at issue are not understood only or primarily by those well-versed in computer technology; rather, they are within the common lexicon, familiar to most people. Indeed, with abbreviations such as "fax machine" rather than the proper "facsimile" machine, the statute has much more of a colloquial than technical tone. Because the statutory language is not technical, the Commission follows the general rule of interpreting the language according to common and approved usage and is not bound by definitions provided by petitioner's experts or the experts' views of which statutory terms best describe the property.

The purpose of a statutory interpretation is to determine what a statute means so that it may be given its full, proper, and intended effect. *Mared Industries, Inc. v. Mansfield*, 2005 WI 5, ¶ 10, __ Wis. 2d __, 690 N.W. 2d 835. We begin with the statute's language. *Id.* If the meaning is plain, we ordinarily stop the inquiry. *Id.* Further, we consider the language "in the context in which it is used; not in isolation but as part of a whole; in relation to the language or surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results. . . ." *Id.* (citation omitted). Resort to the dictionary as indicative of common and approved usage is appropriate. *State v. Wisconsin Telephone Co.*, 91 Wis. 2d 702 (1979).

Petitioner did not meet its burden of establishing that the property at issue was comprised of the exempted equipment described in Wis. Stat. § 70.11(39) rather than the statutorily nonexempt items, as determined by the Department.

The Department maintains that all of the Document Centres, including

both the DC and ST models, were properly assessed as nonexempt copiers and that the WorkCentres were properly assessed as fax machines. (Resp. Brief at 17-18).⁶ The Department relies primarily on petitioner's marketing materials and on dictionary definitions for the term copier. While the materials sometimes employ terms such as "system," "document services," "printer", and "scanner," the unmistakable overall effect, both in terms of the equipment's description and appearance, is to convey that the Document Centres are copiers. As shown in the marketing materials, the physical appearance of the Document Centres is generally consistent with the standard appearance of copiers, *i.e.*, a flip-up cover, various bins for different paper sizes, touch pad controls, and sorting bins.

The brochure for Models 220 and 230 and Model 265 of the DC Document Centres describes this equipment as "digital copier[s]." Models 332 and 340 are advertised as "Digital copier[s]/System[s]." Model 420, Models 432/440, and Models 460/470 are advertised as "Digital copier[s] and system[s]." One of the brochures for the 230 DC model repeatedly refers to the item as a "copier" and to its function of "copying."

Similarly, the marketing literature demonstrates that the description and physical appearance of the WorkCentres are consistent with those of fax machines. WorkCentre 545 is described as a "low-cost, multifunction business Fax" and a

⁶ The Intervenors appear to take the same approach as the Department, although they mention in their proposed Conclusions of Law that some or all of the equipment might also be considered equipment embedded with computerized components (City of Milwaukee's Brief at p. 3; City of La Crosse's Brief at p. 3). Since neither the Department nor the Intervenors provide any argument in support of this assertion, the Commission does not consider it.

"compact, multifunction Fax system." The WorkCentre Pro 635 is advertised as "An affordable fax system" and a "full-featured fax," and WorkCentre Pro 645 as "A powerful fax system." WorkCentre Pro 657 is advertised as "A high-performance fax system" and "a high-speed way to keep up with thousands of faxes every month" that provides "the fastest, most advanced fax transmission technologies available." WorkCentre Pro 665 boasts the "fastest, most efficient fax performance available." WorkCentre Pro 765 advertises "Dual-line faxing, fast printing and scanning, and big capacity for workgroups with heavy fax traffic as well as PC print-copy-scan-PC fax requirements." The "Market Code Description" for WorkCentres 545, 635, 645, and 657 contains the suffix "Fax" after the model number.

Petitioner argues that the equipments' description in its marketing literature is not controlling, that the terms are not used in a "technical or engineering sense," and that the word "copier" is a "misnomer" designed to capitalize on petitioner's longstanding reputation as "the copy company" and to communicate to customers who tend to use the word "copy" in a generic sense. Because we have already determined that the statutory terms may be defined according to common usage rather than as technical terms, we rely on common and approved usage, not on "engineering" definitions. In determining common and approved usage, petitioner's advertising materials, the equipment's appearance, the customers' understanding of the terms, and dictionary definitions are all relevant.

The Department provides two dictionary definitions of "copier:" (1) "An office machine that makes copies of printed or graphic material;" The American

Heritage Dictionary of the English Language, (3d ed.) and (2) "a duplicating machine." Webster's New World Dictionary, (2d College ed.) Under these definitions, the Department correctly categorized the Document Centres as copiers. Although some of the equipment has the capability of being operated by an external computer, thereby functioning at that time more like a printer, petitioner does not argue that the ability to be operated by external computers makes the devices printers.

Rather, petitioner contends that these dictionary definitions are so broad that they cover printers. The Commission disagrees. While printers *produce* printed or graphic material, they do not "make[] copies of printed or graphic material." The noun "copy" is defined as: "[1]. A reproduction or imitation of an original: DUPLICATE. [2] A specimen or example of a printed text or picture. [3.] Material, as a manuscript, to be set in type. [4.] Suitable source material, as for journalism." Webster's II New College Dictionary (2001). Of these definitions, the first is most relevant to the equipment under review — a duplicate or reproduction or imitation of an original. The output of a printer is not considered a "copy," because that output is typically considered the original rather than a reproduction or imitation of the original. Similarly, one does not usually characterize the production of a document via a printer as "copying" it; rather, the process is characterized as "printing" it, which implies that the document is an original rather than a copy.

Nor does a printer copy "printed or graphic material," as that phrase suggests something tangible, physical, and actual rather than the images that appear on a computer screen. The second definition of copier, "a duplicating machine," also

suggests that the duplicate is made from an original document. The printed version of images on a computer screen is not typically considered a "duplicate" of those images.

Petitioner provides several dictionary definitions of "printer." The relevant definitions are those that pertain specifically to computers. The first definition, from American Heritage Dictionary, (3d ed. 1989), states, "3. *Computer Science*. The part of a system that produces printed matter." The second definition states, "'b) in computers, a device that produces information in printed or typewritten form.'" (Pet. Reply Brief, at p. 6, citing Webster's New World Dictionary [edition not provided]), The third definition, from Webster's New World Dictionary of Computer Terms (7th ed. 1999), defines printer as "a computer peripheral designed to print computer-generated text or graphics on paper or other physical media."

Petitioner contends that these definitions apply to its equipment, and that the dictionary definitions of copier and printer make the two terms nearly synonymous. (Pet. Reply Brief, at pp. 5-6). However, a distinction may be discerned from the dictionary definitions. Indeed, a distinction *must* be discerned, as both words are used in Wis. Stat. § 70.11(39), with copiers being nonexempt from property taxes and printers being exempt. We conclude that it is petitioner's overly broad interpretation of the dictionary definitions of "copier" and "printer" which obliterates the distinction between the words, not the dictionary definitions themselves. These definitions of "copier" and "printer" indicate that a copier is a piece of equipment that makes a copy of an original, whereas a printer is part of a system that produces an original document from computer-generated images. When the equipment at issue is reproducing a hard copy

of a document rather than reproducing the images on a computer, it is not creating an original but is acting as a copier.

Based on the foregoing, petitioner has failed to establish that the Department was required to classify the Document Centres as exempt printers rather than as nonexempt copiers.

Petitioner also asserts that all of the equipment, including its WorkCentres, is exempt because it consists of "computers/servers (the Main Controller and Network Controller), and electronic peripheral devices (including printers, scanners, and fax components)".⁷ (Pet. Brief, at p. 27.) With regard to petitioner's assertion that the equipment consists of exempt "computers," we note that while the title of § 70.11(39) is "COMPUTERS," the actual language of the statute does not exempt "computers" generally, but rather, specific types of computers; namely, "mainframe computers," "minicomputers, "personal computers," or "networked personal computers." Wis. Stat. § 70.11(39). Therefore, the question is not whether the equipment falls within a general definition of computers, but whether it consists of one or more of the computers described in the statute. *See* Wis. Stat. § 990.001(6); *State v. Black*, 188 Wis. 2d 639, 651, 526 N.W.2d 132 (1994) (basic rule of statutory construction provides that title of statutory subsection, while helpful in discerning legislative intent, is not part of statute and cannot prevail over its language). Neither petitioner nor the Department has provided definitions of these statutory phrases. Nor do petitioner's

⁷ As stated in Footnote 4, fax machines did not become exempt until 2003, outside the period of review in these cases.

briefs specifically assert that the equipment consists of "mainframe computers," "minicomputers," "personal computers," or "networked personal computers."

The Department does not explicitly dispute that the Main Controller contained in all of the equipment or the Network Controller contained in the ST Document Centre Models are some type of "computer." However, to be exempt under § 70.11(39), it is not sufficient to demonstrate that the equipment *contains* a statutorily exempted item; rather, it must be shown that the equipment *is* an exempted item. Thus, if the MFD is a copier or a fax machine, the fact that it may contain some exempt item such as a server, one of the enumerated computers, or some other exempt device does not make the MFD as a whole exempt. Because the Commission concludes that the Department properly classified the Document Centres as copiers and the WorkCentres as fax machines, that classification does not change because the copiers or fax machines are technologically enhanced with exempt devices.

Accordingly, petitioner has not established that the MFDs qualify as one of the statutorily exempt computers, servers, printers or electronic peripheral equipment under § 70.11(39).

Petitioner also argues that, under the computer exemption guidelines contained in the Department's Wisconsin Property Assessment Manual, its MFDs are exempt "all-in-one devices that include exempt electronic peripheral devices (i.e., the scanner, printer and fax component) that are connected to and operated by a computer (i.e., the Main Controller and/or Network Controller.)" (Pet. Brief, at p. 27.)

The Department's Assessment Manual may be relied upon as an

authoritative aid in interpreting Wisconsin's property taxation statutes. *See, e.g., Ahrens v. Town of Fulton*, 2000 WI App 268, ¶ 23, 240 Wis. 2d 124, 621 N.W.2d 643; *TDS Realestate Inv. Corp. v. Madison*, 151 Wis. 2d 530, 540-41, 445 N.W. 2d 53 (Ct. App. 1989); Wis. Stat. § 73.03(2a). The 1999 Assessment Manual included a classification of equipment called "'All-in-one' printer/scanner/fax/copier," which it described as a "combination device that includes an exempt device." The comments to the 1999 computer exemption guidelines regarding this "all-in-one" category states, "Electronic Peripheral Equipment - Exempt provided the device is connected to and operated by a computer." (Exhibit K, Exhibit 12). The 2003 guidelines classify such devices as "Taxable," explaining in the comments section, "If this equipment can *only* operate using a computer, it is exempt as an electronic peripheral." (Exhibit 10). The 1999 and 2003 guidelines pertaining to all-in-one devices are the same in substance.

Neither party disputes that to be considered exempt electronic peripheral equipment, an "all-in-one" device must be connected to and operated by a computer; if it can function without being connected to and operated by a computer, it is not exempt. The question in this case is whether that computer must be an external computer, as argued by the Department, or whether the computer (assuming the Main Controller and Network Controller are computers) may be housed in the same unit as the electronic peripheral equipment, as argued by petitioner.

Petitioner has failed to rebut the Department's position that the computer must be an external computer for the all-in-one device to be considered exempt electronic peripheral equipment under the guidelines. The equipment being analyzed

in this case consists of entire pieces of equipment — Document Centres or WorkCentres — not particular components within those pieces of equipment. Therefore, the question is whether the item as a whole (which includes the Main Controller and, in the ST Document Centres, the Network Controller) is electronic peripheral equipment, not whether a certain component within those devices is an electronic peripheral. Unless the item as a whole is connected to and operated by a computer, it is not electronic peripheral equipment. Neither the Document Centre nor the WorkCentre as a whole must be operated by a computer. They are therefore not exempt all-in-one devices under the statute or the Department's guidelines.

Furthermore, the Commission notes that the Department's expert, Mr. Greg Landretti, who helped draft the guidelines pertaining to all-in-one devices, testified that the requirement that the device be connected to a "computer" refers to those computers enumerated in the statute — *i.e.*, mainframe computers, mini-computers, personal computers, and networked personal computers. The Commission concludes that this is a reasonable interpretation of § 70.11(39). As noted earlier, petitioner does not argue that either the Mainframe Controller or Network Controller is one of the computers specifically enumerated in § 70.11(39). Thus, even if *components* within the equipment (rather than the equipment as a whole) could be considered electronic peripheral equipment, petitioner has not shown that being operated by *any* type of computer would suffice under the statute. Nor has petitioner demonstrated that the items it refers to as electronic peripherals are connected to one of the computers enumerated in § 70.11(39).

In view of the foregoing, petitioner has failed to rebut the presumption of correctness associated with the assessments in these cases and has failed to establish that § 70.11(39) contains a "clear and express" exemption for petitioner's equipment. *Wrase*, 220 Wis. 2d at 171.

Therefore,

IT IS ORDERED

That the State Board of Assessors' Notices of Determination are affirmed.

Dated at Madison, Wisconsin, this 17th day of February, 2005.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"