

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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MASTERS GALLERY FOODS, INC.,

DOCKET NO. 19-M-067

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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FINAL RULING AND ORDER

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**ELIZABETH KESSLER, CHAIR:**

This case has come before the Commission for decision on Cross-Motions for Summary Judgment. Petitioner, Masters Gallery Foods, Inc. (Masters Gallery), appears by Attorneys Don M. Millis, Sara Stellpflug Rapkin, Shawn E. Lovell, and Karla M. Nettleton, of Reinhart Boerner Van Deuren s.c., Madison, Wisconsin. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorneys William J. Richards and Kelly A. Altschul. Both parties have filed materials in support of their respective positions. In addition, the Cities of Green Bay, Neenah, and Sheboygan; the City of Wausau; and Wisconsin Manufacturers & Commerce, Inc., have filed amicus submissions.

Wisconsin Statute § 70.111(27) exempts machinery, tools, and patterns ("MTP") which are not used in manufacturing.

On September 8, 2020, the Commission ruled that machinery, tools, and patterns which are used at all in the manufacturing of cheese are therefore not exempt. The Order ruled that Petitioner's MTP listed in Exhibit D used, albeit not exclusively, in manufacturing, do not qualify for exemption. Likewise, the Commission ruled that any MTP listed in Exhibit E which are used at all in the manufacturing of cheese are also not exempt.

The parties have since applied the Commission's ruling to the MTP listed in the original Exhibit E but have not been able to agree on all MTP. The parties have presented Exhibit E, newly divided into Exhibits 1-4, and asked the Commission to rule on those items in Exhibit 4 to create a final ruling in this matter. What follows is the Commission's original Ruling modified only in its references to the original Exhibit E and the addition of Rulings regarding the revised Exhibit E in the Application of Law to Facts section, which begins on page 18<sup>1</sup>.

## FACTS

### *Jurisdictional Facts*

1. On July 11, 2018, the Department issued a Notice of Personal Property Tax Assessment for the 2018 tax year, assessing personal property tax on \$2,835,100.00 in personal property at the Masters Gallery location at issue in this appeal. (Stipulation of Facts ("Stip.") ¶ 1, Ex. A.)

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<sup>1</sup> For the sake of consistency, the Commission has also edited the previous decision to ensure that all references to MTP are plural.

2. On or about July 20, 2018, Masters Gallery timely filed an objection to the Manufacturing Personal Property Assessment with the Department, claiming property subject to personal property tax of \$1,339,241. (Stip. ¶ 2, Ex. B.)

3. On January 31, 2019, the State Board of Assessors sustained the Department's assessment. (Stip. ¶ 3, Ex. C.)

4. On March 29, 2019, Masters Gallery filed a timely Petition for Review with the Wisconsin Tax Appeals Commission. (Commission File.)

#### *Material Facts*

5. Masters Gallery is a business corporation incorporated under Chapter 180 of the Wisconsin Statutes, with its principal place of business in Plymouth, Wisconsin. (Stip. ¶ 5.)

6. Masters Gallery is a company specializing in the procurement, aging, and distribution of cheese to grocery chains, wholesalers, restaurants, and distributors with a full line of cheese and cheese-related products. (Stip. ¶ 6.)

7. During the period at issue, Masters Gallery was a manufacturer as defined by Wis. Stat. § 70.995. (Stip. ¶ 8.)

8. Masters Gallery's Plymouth location is a "manufacturing establishment" as that term is used in Wis. Stat. § 70.995. (Stip. ¶ 10.)

9. In 2018, Masters Gallery owned or leased items of personal property used at its Plymouth location and that were assessed by the Department (the "Personal Property at Issue"). (Stip. ¶ 9, Exs. D and E.)

10. The parties have entered into a separate Partial Settlement Agreement pertaining to a portion of Masters Gallery's personal property located at its Plymouth facility and included in the 2018 personal property assessment. The Personal Property at Issue in the case does not include the personal property that is the subject of the Partial Settlement Agreement. (Stip. ¶ 11.)

11. Pursuant to the parties' Stipulation, the items of Personal Property at Issue listed on Exhibit D are machines or tools that are used directly in the manufacturing process by Masters Gallery but do not qualify for the exemption under Wis. Stat. § 70.11(27) because they do not meet the exclusive use requirement of Wis. Stat. § 70.11(27)(b). Exhibit D also includes the portion of the 2018 assessment associated with each item listed in the exhibit. (Stip. ¶ 12.)

12. In our original decision in this matter, the parties stipulated that a number of items of Personal Property are machines or tools that are used by Masters Gallery at its Plymouth facility but do not qualify for the exemption under Wis. Stat. § 70.11(27) as they do not meet both the direct use requirement and the exclusive use requirement of Wis. Stat. § 70.11(27)(b). We ordered the parties to review them to determine whether or not they were used at all in manufacturing.

13. Over the course of the 16 months since our original decision, parties were able to agree that some of the items on that exhibit are not used in manufacturing, that some are used in manufacturing, though not directly and exclusively, and that several are used directly and exclusively in manufacturing. However, they were not able

to agree about all of the items originally listed as Ex. E. On December 9, 2021, we received Stipulation Regarding Exhibit E from the parties, dividing that property into four new exhibits, and requesting that the Commission issue a final order in this matter, specifically ruling on whether or not MTP listed in Ex. 4 were or were not used in manufacturing, though not directly and exclusively, and therefore exempt (or not) under Wis. Stat. § 70.111(27)(b).

14. Both Petitioner and Respondent have filed Motions for Summary Judgment as well as briefs and documents in support of their motions. Additionally, the Cities of Green Bay, Neenah, and Sheboygan; the City of Wausau; and Wisconsin Manufacturers & Commerce, Inc., filed amicus submissions in this matter. (Commission file.)

#### APPLICABLE LAW

This case turns on the interpretation of Wis. Stat. § 70.111(27), which took effect with the 2018 tax year.

Wis. Stat. § 70.111. Personal property exempted from taxation. The property described in this section is exempted from general property taxes:

(27) Machinery, tools, and patterns.

(a) In this subsection, "machinery" means a structure or assemblage of parts that transmits force, motion, or energy from one part to another in a predetermined way by electrical, mechanical, or chemical means. "Machinery" does not include a building.

(b) Beginning with the property tax assessments as of January 1, 2018, machinery, tools, and patterns, not including such items used in manufacturing. (emphasis added)

Wisconsin Statutes Chapter 70 provides context for this exemption: All property is taxable unless it is exempt. Wis. Stat. § 70.01. This includes manufacturing property, which is assessed according to Wis. Stat. § 70.995. In Wis. Stat. § 70.995(1)(a), "manufacturing property," is defined, in relevant part, as "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."

Over time, the legislature has added exemptions to the types of manufacturing property that are taxable. For example, Wis. Stat. § 70.11(27), provides an exemption for some manufacturing machinery and equipment:

Wis. Stat. § 70.11(27). Manufacturing machinery and specific processing equipment.

(b) Machinery and specific processing equipment; and repair parts, replacement machines, safety attachments and special foundations for that machinery and equipment; that are used exclusively and directly in the production process in manufacturing tangible personal property, regardless of their attachment to real property, but not including buildings. The exemption under this paragraph shall be strictly construed.

In Wis. Stat. § 70.11(27)(a), the legislature helpfully defines the key terms - machinery, production process, used directly, and used exclusively:

2. "Machinery" means a structure or assemblage of parts that transmits forces, motion or energy from one part to another in a predetermined way by electrical, mechanical or chemical means, but "machinery" does not include a building.

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.

7. "Used directly" means used so as to cause a physical or chemical change in raw materials or to cause a movement of raw materials, work in process or finished products.

8. "Used exclusively" means to the exclusion of all other uses except for other use not exceeding 5 percent of total use.

#### DECISION

The personal property exemption for machinery, tools, and patterns ("MTP") excludes such items from exemption when "used in manufacturing." Wis. Stat. § 70.111(27). This case turns on a purely legal issue, the interpretation of the phrase "used in manufacturing," which is not expressly defined in Chapter 70. Both parties have moved for summary judgment regarding the application of the Wis. Stat. § 70.111(27) exemption to Petitioner's MTP.

A motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2). The effect of simultaneous motions for summary judgment is an assertion that the facts presented are

not in dispute and only questions of law remain for determination. *Healthcare Services, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-085 (WTAC 2016). The parties have stipulated to the material facts, although, as noted herein, some details will require additional clarification.

In Wisconsin, personal property is presumed taxable. Wis. Stat. § 70.109. "Exemption from payment of taxes is an act of legislative grace; therefore, the party seeking the exemption bears the burden of proving entitlement." *United Rentals, Inc. v. City of Madison*, 2007 WI App 131, ¶ 13, 302 Wis. 2d 245, 733 N.W.2d 322.

When interpreting a statute, we assume that the legislature's intent is expressed in the statutory language. 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*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. "If the language is clear and unambiguous on its face, we must construe the statute in accordance with its ordinary meaning and may not resort to extrinsic aids." *Id.* If the language is unambiguous, we do not look to legislative history and related correspondence, such as that raised by amicus briefs. "[T]raditionally, 'resort to legislative history is not appropriate in the absence of a finding of ambiguity.'" *Id.* at ¶ 51. Similarly, we decline to consider arguments of trends in the law, looking only to the language of the statute applicable during the relevant period.

Context, though, is important to meaning. So, too, is the structure of the statute in which the operative language appears. Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in



relation to the language of surrounding or closely related statutes; and reasonably, to avoid absurd or unreasonable results. *Id.* at ¶ 46. Even though the term “used in manufacturing” is undefined in Wis. Stat. § 70.111(27), that lack of definition does not necessarily mean that the term is ambiguous. The parties assert different meanings for the phrase “used in manufacturing,” but disagreement over meaning does not create ambiguity. *Id.* at ¶ 47. In rejecting the proffered definitions from both sides, we find that the phrase is not ambiguous and has one clear and reasonable meaning.

The Department argues for an overly broad interpretation of “used in manufacturing.” Suggested meanings look to the definition of “manufacturing property” in Wis. Stat. § 70.995, which includes “all personal property owned or used by” an entity classified as a manufacturing business in Wisconsin.

We reject the Department’s suggestion that “used in manufacturing” means “owned by a manufacturer.” Mere ownership of the property by a manufacturer ignores the word “used.” If the legislature had meant for “used in manufacturing” to turn solely on ownership, it could easily have said “owned by a manufacturer.” The legislature has shown an ability to do so within Wis. Stat. § 70.111. Examples of “owned by” language can be seen in Wis. Stats. §§ 70.111(6) (“owned by the operator or owner of a farm”), 70.111(11) (“Natural cheese owned by the Wisconsin primary manufacturer”), and 70.111(24) (“owned and used by a motion picture theater”). Ownership by a manufacturer does not, by itself, cause a piece of personal property to be “used in manufacturing.”

We also reject the suggestion that "used in manufacturing" should be defined as "used by a manufacturer." While this suggestion is an improvement in that it considers use, for similar reasons to those explained above, this definition is also too broad. Moreover, had the legislature meant this, they could have simply said "used by a manufacturer" in the same manner as it has limited exemptions depending on the user in other provisions of Wis. Stat. § 70.111. Examples of "used by" language can be seen in Wis. Stats. §§ 70.111(3) ("used by commercial fishing boats..."); 70.111(14) ("used by a farmer"); and 70.111(25) ("used by a radio station").

We further note that this "used by a manufacturer" definition would mean that anything used in any way by an entity whose industry falls under a manufacturing SIC code listed in Wis. Stat. § 70.995 is "used in manufacturing." There is a significant difference between "used" and "used in manufacturing." Not everything owned or used by manufacturer is used in manufacturing, even though it may be assessed as "manufacturing property" under Wis. Stat. § 70.995. For example, a snowblower owned by a cheese manufacturer and used to clear exterior walkways is certainly not in any way "used in manufacturing" cheese.

An additional suggestion is that "used in manufacturing" means "located at the site" of the manufacturing activity. This position is grounded in the language of Wis. Stat. § 70.995, which explains that manufacturing property is subject to assessment by the Department "when located at the site of the activity." While we agree that MTP used in manufacturing activity must be located at the site of the activity, the MTP

exemption stresses a use requirement that cannot be ignored. Not everything located at the site is used in manufacturing, as the previous snowblower example illustrates.

A variation on all the interpretations rejected above is the suggestion that the phrase means both “owned by a manufacturer” and “used at the manufacturing location.” Again, “owned by” or “used by” are limitations employed in several other provisions of Wis. Stat. § 70.111 but are not present in Wis. Stat. § 70.111(27). We do not read words in where they have not been included in the statutory language. *Wisconsin Coach Lines v. Dep’t of Revenue*, Wis. Tax Rptr (CCH) ¶ 402-158 (WTAC 2017) (“We will not read into the statute language that the legislature did not put in .... One of the maxims of statutory construction is that courts should not add words to a statute to give it a certain meaning.” (citations omitted)). More importantly, this suggested interpretation considers who is using the MTP and where they are used, but it ignores the determining factor in the language of the exemption – the manner in which the MTP are used.

Finally, the Department, joined by the municipalities in their amicus submissions, suggests that manufacturers already have their exemption in Wis. Stat. § 70.11(27), so Wis. Stat. § 70.111(27) simply is not intended for manufacturers. However, Wis. Stat. § 70.111(27) does not reference Wis. Stat. § 70.11(27), nor does it say that it does not apply to manufacturers or to manufacturing personal property. It simply states that MTP are exempt unless they are used in manufacturing.<sup>2</sup>

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<sup>2</sup> We also note that the parties supporting the Department’s position argue the implications of budget planning and city revenues. Absent a finding of ambiguity, such information and argument are not properly before us for consideration.

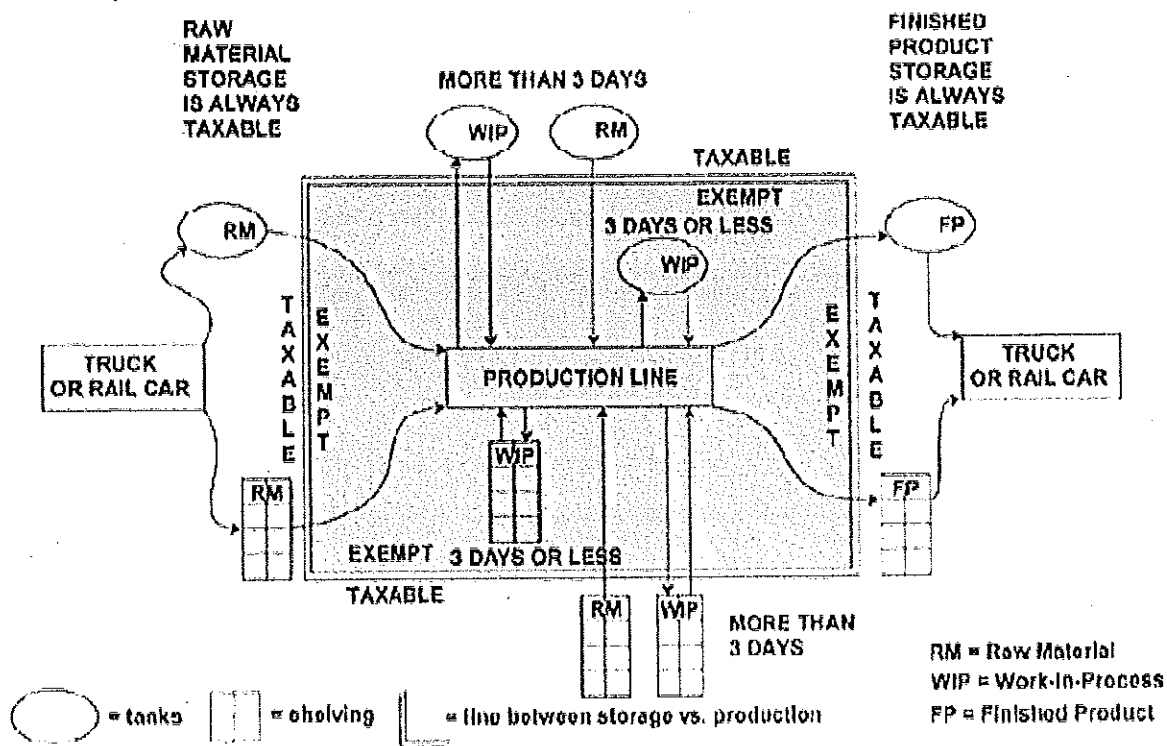
Petitioner, on the other hand, advocates for an extremely narrow definition of “used in manufacturing,” namely, that Wis. Stat. § 70.111(27) exempts all MTP that are not already exempt under Wis. Stat. § 70.11(27). In other words, the only MTP excluded from the MTP exemption are those which are already exempt under Wis. Stat. § 70.11(27). However, just as the legislature chose not to use the “owned by” or “used by” language in this section, they also chose not to reference Wis. Stat. § 70.11(27). The legislature could easily have worded Wis. Stat. § 70.111(27) to say, “unless already exempt under Wis. Stat. § 70.11(27),” but it did not.

Petitioner clings to Wis. Stat. § 70.11(27) by arguing various aspects of it individually. As noted, in order to claim the manufacturing exemption, personal property must be “used exclusively and directly in the production process.” One somewhat less narrow suggestion is that at least the non-exclusively used MTP (Exhibit D explicitly but also Exhibit E by inference) should be exempt. First, it defies logic to say that, if something is used in making cheese but is not used exclusively for that purpose, it is not used in making cheese. Nothing in the plain language of Wis. Stat. § 70.111(27) suggests that “non-exclusively” used machinery and tools should be exempt, and there is no reasonable reading of Wis. Stat. § 70.111(27) that can be understood to exempt property used in manufacturing, merely because it is also used for other purposes.

Although not specifically addressed by the parties, the same holds true for personal property used in manufacturing but not used directly. Our recent decision of *Saputo Cheese USA, Inc., v. Dep’t of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-408 (WTAC 2020)

demonstrates how cleaning equipment, for example, can be used in an important manner in the manufacturing process but still not be "used directly" to manufacture cheese.

As an aid to understanding the breadth of the manufacturing exemption of Wis. Stat. § 70.11(27), the Department has created a diagram, Drascic Aff. Ex. A ("Diagram"), which illustrates manufacturing activities.



The Diagram's shaded area represents the production process, a term defined in Wis. Stat. § 70.11(27). If manufacturing personal property is used directly and exclusively in the production process portrayed in the shaded portion of the exhibit, that personal property may be eligible for the manufacturing exemption under Wis. Stat. § 70.11(27).

Petitioner argues that "used in manufacturing" means used in the production process, represented by the shaded area of the Diagram, and used exclusively

and directly in that production process. This is just another way of saying "used in manufacturing" means exempt under Wis. Stat. § 70.11(27). Petitioner makes the leap to say that any MTP which do not qualify for the manufacturing exemption of Wis. Stat. § 70.11(27) are not "used in manufacturing" and, therefore, can be exempt under the MTP exemption of Wis. Stat. § 70.11(27).

Using the Diagram, Petitioner also suggests that all property used in activities outside the shaded area of the Diagram should be exempt under Wis. Stat. § 70.11(27), because it is either not used in the production process, or it is not used exclusively (Ex. D), or it is not used exclusively and not used directly (Ex. E). Again, the failure to meet one or more of the qualifications for exemption under Wis. Stat. § 70.11(27) is not the determining factor for exemption under Wis. Stat. § 70.11(27).

Petitioner's narrow interpretation of "used in manufacturing" would allow for an impermissibly broad exemption. Many items which do not qualify for the Wis. Stat. § 70.11(27) exemption are, nevertheless, used in manufacturing, perhaps not directly, perhaps not exclusively, or perhaps not within the production process. Because they are used in manufacturing, though, these types of MTP also do not qualify for exemption under Wis. Stat. 70.11(27).

By its plain language, the MTP exemption does not apply to personal property "used in manufacturing." To be exempt under Wis. Stat. § 70.11(27), MTP cannot be used in manufacturing at all. They cannot be used in the Diagram's shaded activities because the production process is certainly manufacturing. Also, MTP which are not used exclusively or not used directly in manufacturing, but are still used in some

fashion in manufacturing, are not exempt under Wis. Stat. § 70.111(27), because they are still being used in manufacturing to some extent.

The state, via the Department of Revenue, assesses manufacturing property under Wis. Stat. § 70.995. That statute's subject matter includes

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. (emphasis added)

Wis. Stat. § 70.995(1)(a).

The "activities mentioned" in the assessment statute are presented as a list of activities corresponding to various manufacturing SIC codes, one of which is the manufacture of "food and kindred products." Petitioner produces cheese and cheese-related products. Items used in the "activity," i.e. making cheese, are used in manufacturing.

This dovetails with Chapter 70's one definition of manufacturing. That definition is found in the Wis. Stat. § 70.11(27) manufacturing personal property exemption. We therefore adopt the definition of Wis. Stat. § 70.11(27)(a)3., which defines "manufacturing" as "engaging in an activity classified as manufacturing under s. 70.995."

In practical terms, the borders of "the activity" need to be defined. We agree with the logic of the beginning and end points defined in the production process. Manufacturing begins with conveyance of raw materials from plant inventory to a work point as described in the production process definition, and manufacturing ends with conveyance of the finished product to the place of first storage. We further note that, if

something is in the process of being manufactured, manufacturing is occurring regardless of the timing of completion. Any MTP used in relation to work in progress at any time after manufacturing has commenced and prior to completion are, therefore, also used in manufacturing.

### SUMMARY

Petitioner owns many types of MTP. Some of the MTP are used directly and exclusively in the production process of manufacturing and, therefore, are exempt under Wis. Stat. § 70.11(27). Such MTP are not at issue because they are clearly used in manufacturing, so they do not qualify for exemption under Wis. Stat. § 70.11(27).

Some of Petitioner's MTP are used directly in manufacturing (cheese production) but not used exclusively in manufacturing. These are the types of MTP shown in Exhibit D. We note that the parties concentrate on a distinction between exclusively and non-exclusively. They could make the same distinction between used directly and indirectly. Either is a red herring with respect to the applicability of Wis. Stat. § 70.11(27) because MTP used non-exclusively or used indirectly, but used in manufacturing in some lesser manner, are still "used in manufacturing" and are, therefore, not exempt under Wis. Stats. 70.11(27). The extent to which they are used in manufacturing is not relevant.

Petitioner also has MTP that are not used directly in manufacturing and are not used exclusively in manufacturing; those items are listed in Exhibit E. The Commission's original Order explained that, if an item is used occasionally but not exclusively in the manufacturing activity, it is, nevertheless, used in manufacturing.



Similarly, if it is used in the manufacturing activity, but not used directly, it is still used in manufacturing. In either case, it is excluded from the MTP exemption because it is used in manufacturing.

The final category of MTP consists of that MTP not used at all in manufacturing, although the items are used by a manufacturer at a manufacturing facility. It is important to note that not every activity a manufacturer engages in is manufacturing. Common non-manufacturing activities include administrative activities, HR, marketing, and groundskeeping. It is obvious, as noted earlier, that a snowblower used on the grounds of a cheese manufacturing facility is not used in the activity of manufacturing of cheese. Similarly, MTP such as the coffee machine in the breakroom or the copier in the HR office are not used to make cheese. Because this type of MTP is clearly not "used in manufacturing," such items are not excluded from the exemption, the identity of the owner or user notwithstanding.

#### CONCLUSIONS OF LAW

1. The term "used in manufacturing" in Wis. Stat. § 70.111(27) excludes from the exemption any machinery, tools, and patterns that are used in any way in manufacturing, which here means used at all in the production of cheese.
2. Petitioner's machinery, tools, or patterns listed in Exhibit D are not exempt under Wis. Stat. § 70.111(27), because they are used in manufacturing, even though not exclusively.

3. Petitioner's machinery, tools, or patterns listed in Exhibit E which are used in manufacturing, as defined as the "production process" but also including activities involving work in process, are not exempt under Wis. Stat. § 70.111(27).

#### APPLICATION OF LAW TO FACTS RULINGS ON SPECIFIC ITEMS OF MTP

The parties have applied the Commission's initial Ruling and have narrowed the number of items on which they still cannot agree as to whether the items are used in manufacturing cheese products. In lieu of a full evidentiary hearing, the parties have submitted details about each item in dispute and have requested we rule on each disputed item by applying our Ruling to the facts as submitted.

As noted above:

In practical terms, the borders of "the [manufacturing] activity" need to be defined. We agree with the logic of the beginning and end points defined in the production process. Manufacturing begins with conveyance of raw materials from plant inventory to a work point as described in the production process definition, and manufacturing ends with conveyance of the finished product to the place of first storage. We further note that, if something is in the process of being manufactured, manufacturing is occurring regardless of the timing of completion. Any MTP used in relation to work in progress at any time after manufacturing has commenced and prior to completion are, therefore, also used in manufacturing.

This Final Ruling and Order illustrates those borders more precisely. In the interest of providing guidance to both the Department of Revenue and other Wisconsin manufacturers, we include not only the items on which the Commission was asked to make a determination but also those to which the parties were able to agree.

Exhibit E is now subdivided into 4 sub-lists. Of the personal property items originally listed in Exhibit E, the parties agreed that those items now listed in Exhibit 1 are exempt under Wis. Stat. § 70.111(27). Those items are listed below, and we concur that they are not “used in manufacturing,” and are therefore exempt.

### Exhibit 1

Description	Location	Brief Description
MURRAY 8 HP SNOW THROW	Maintenance	Snow blower used for snow removal
3INSECT ELECTROCUTING UNT	Maintenance	Electric fly/insect killer - These items are used to trap and electrocute insects. These items are used in the maintenance area (not the production area).
CROSSCUTPAPER SHREDDER - PLANT	Plant Office	Shredder in plant office
SPEED QUEEN WASHER	Plant Office	Washer in plant office
Under Counter Refrigerator	Plant Office	
1 sngl & 1 dbl dr refrigerator	Plant Lunchroom	Standard refrigerator
Cub Cadet Spreader Sprayer	Maintenance	Spreader/sprayer that hooks to lawn tractor for maintenance
Cub Cadet Tank lawn tractor	Maintenance	Lawn tractor for maintenance
BIZHUB COLOR COPIER KONICA	Maintenance	Copier in maintenance
SHIPPING COPIER BIXHUB	Plant Office	Copier in shipping office
Bobcat 3650 Utility Vehicle	Maintenance	This is used by maintenance primarily for exterior maintenance like removing snow and transporting maintenance supplies like mulch, containers, etc.
BIZHUB C454E COLOR	Plant Office	Copier in plant office
Pneumatic Forklift 8000lb-2009	Warehouse	Outside forklift kept in the buildings and grounds shed. It is not pneumatic. For outdoor use to prevent cross contamination using the dry storage lift outdoor to remove equipment and scrap metal.

The parties also agreed on the status of items now listed as Exhibit 2. We agree with the parties that the items of personal property listed in Exhibit 2 are, at least to some extent, “used in manufacturing,” and are therefore not exempt under Wis. Stat. § 70.111(27).

### Exhibit 2

Description	Location	Brief Description
EQUIP FOR MACHINE SHOP	Maintenance	Equipment in the machine shop that is likely used on production equipment

1440 ENGINE LATHE	Maintenance	Lathe used in maintenance and used in part on production equipment
DRILL PRESS	Maintenance	Equipment in the machine shop that is likely used on production equipment
FIREFLY/LUMINESCENCE ANALYZER	Sanitation	Used to sanitize production equipment
CART-AUTO CUTTER HARPS	Production - Retail Shreds	Used to move product
HIGH FREQUENCY CHARGER	Production/Warehouse	Involved in charging forklifts, both used in manufacturing and not used in manufacturing
METAL CUT BAND SAW	Maintenance	Equipment in the machine shop that is likely used on production equipment
224 Garver Centrifuge	Quality Control	A centrifuge is a machine with a rapidly rotating container that applies centrifugal force to its contents, typically to separate fluids of different densities or liquids from solids. Used in the lab to test the fat in the cheese, both raw materials and finished goods.
Stanbury zip charger	Production/Warehouse	Involved in charging forklifts, both used in manufacturing and not used in manufacturing
Ultraprobe 3000-long Range Mod	Maintenance	A predictive tool used to check the ultrasonic noise levels on electric motors and high-speed components to monitor the condition of bearings, rotors, compressors etc. It is intended to catch potential component failures before catastrophic failure occurs.
Friction Welder - Rubber Belts	Maintenance	Equipment in the machine shop that is likely used on production equipment
20" Vertical Metal Cut Bandsaw	Maintenance	Equipment in the machine shop that is likely used on production equipment
3 Hawker Chargers	Production/Warehouse	Involved in charging forklifts, both used in manufacturing and not used in manufacturing
2 - PAC Check 650s	Quality Control	Quality control uses to analyze oxygen and carbon dioxide in packaging
EnerpacPress-50T HydraulicPres	Maintenance	Equipment in the machine shop that is likely used on production equipment
Hawker Charger	Production/Warehouse	Involved in charging forklifts batteries, both used in manufacturing and not used in manufacturing
Hydraulic Metal Shear	Maintenance	Equipment in the machine shop that is likely used on production equipment
DouglasScalePartsWasher-LaudRm	Shredding/Production	Used to clean and sanitize production equipment
Carney Battery Changer	Production/Warehouse	Involved in charging forklifts batteries, both used in manufacturing and not used in manufacturing
Batteries&Chargers-New Bat Rm	Warehouse	Involved in charging forklifts batteries, both used in manufacturing and not used in manufacturing
Surface Grinder 6x18	Maintenance	Equipment in the machine shop that is likely used on production equipment
Mill & Lathe - Maintenance	Maintenance	Equipment in the machine shop that is likely used on production equipment
6-Max Haul 36 Volt Batteries	Warehouse	Involved in charging forklifts batteries, both used in manufacturing and not used in manufacturing
7-CIB Max Haul 36V Batteries	Warehouse	Involved in charging forklifts batteries, both used in manufacturing and not used in manufacturing
6-CIB Max Haul Batteries	Warehouse	Involved in charging forklifts batteries, both used in manufacturing and not used in manufacturing
Conger Toyota Lift Truck	Warehouse	This is a mobile lift that is used outside of the facility for general use. It is not used in production/manufacturing.
3Ton OverheadCrane-Maintenance	Maintenance	Used by maintenance for general maintenance such as changing lightbulbs and building maintenance/cleaning.

A third category of MTP on which the parties were able to agree is that of personal property which is used exclusively and directly in manufacturing. These items,

listed in Exhibit 3, are four machines related to pallet-wrapping, which we accept are used exclusively and directly in manufacturing. These items are exempt under Wis. Stat. § 70.11(27). There is thus no need to analyze them under Wis. Stat. § 70.111(27).

The final list of items, Exhibit 4, is that which Petitioner and the Department could not agree. The majority of the items seem substantially similar to items of personal property listed either in Exhibit 1 or in Exhibit 2. We are hard pressed to understand why the parties were able to agree that some refrigerators in the plant office and/or plant lunchroom were exempt but were unable to agree about others. Nothing in the record distinguishes the two types of refrigerators, and as they are identified as being used in the office and lunchroom, we infer that they are available for the convenience of employees, not as an essential tool for keeping manufactured cheese or raw materials at a safe temperature. We find they are not used in manufacturing.

Additionally, the 18-foot fans are described as used to maintain temperature in the warehouse, which is only used for the storage of finished goods. As we have explained, manufacturing ends with conveyance of the finished product to the place of first storage. Fans which maintain temperature in the first place of storage of the finished goods are not used in manufacturing.

We also find that items used for general cleaning and maintenance of the plant are not “used in manufacturing.” This should not be interpreted as being in conflict with our 2020 decision in *Saputo Cheese USA, Inc., v. Dep’t of Revenue*, Wis. Tax Rptr. (CCH), which found that specialized “Clean in Place” (CIP) machinery is “used in manufacturing,” although not directly. There is a difference between MTP used to clean

floors throughout a facility and MTP specially designed to clean food production equipment between batches.

In contrast, the "Micro Master Dispenser" and the associated tank of sanitizing material are not located in the production area, and they are used on workers' boots. We presume based on those descriptions that these items are not used in the manufacturing of cheese, so we conclude that those two specialized pieces of cleaning equipment are not used in manufacturing.

There is some ambiguity introduced by the note associated with several of the listed forklifts, "Forklifts are not fully designated for any one area. Warehouse manager watches the hours on the lifts and moves them around accordingly." This suggests that at least some of the forklifts may be used in the production area, although not directly or exclusively in manufacturing. However, each of the "brief descriptions" of the forklifts below indicate that they are either used to transport raw materials before the production process begins or are used to transport finished goods after the production process is complete; therefore, they are not used in manufacturing.

Two final items in Exhibit 4 are a pair of thermal imaging cameras, described below as used "to monitor electrical panels to detect any overheating." We asked the parties to clarify how the electrical panels in question were used. Counsel for Petitioner indicated that these electrical panels are embedded in the walls of the manufacturing building and the thermal imaging cameras are used to detect overheating in the electrical system for the building, not in a specific piece of equipment. We find that monitoring equipment used in this way is not "used in manufacturing."

Employing the reasoning set forth in our initial Ruling reiterated above, we find that the following items from Exhibit 4 are not used in manufacturing and therefore are exempt under Wis. Stat. § 70.111(27):

**Exhibit 4 - Exempt under 70.111(27)  
because not used in manufacturing**

Description	Location	Brief Description	Used in Mfg?
FORKLIFT DEEP-REACH #11&12	Forklifts are not fully designated for any one area. Warehouse manager watches the hours on the lifts and moves them around accordingly.	Forklifts for picking pallets of finished goods from the racking to trucks for transport to customers	No
FORKLIFT TK 31,32,33,34	Forklifts are not fully designated for any one area. Warehouse manager watches the hours on the lifts and moves them around accordingly.	Forklifts for picking pallets of finished goods from the racking to trucks for transport to customers	No
FORKLIFT DEEP-REACH W/BATTERIES	Warehouse	Forklifts for picking pallets of finished goods from the racking to trucks for transport to customers	No
FORKLIFT DEEP-REACH W/BATTERY & LPORT	Forklifts are not fully designated for any one area. Warehouse manager watches the hours on the lifts and moves them around accordingly.	Forklifts for picking pallets of finished goods from the racking to trucks for transport to customers	No
COUNTER BALANCE 20,26,27	Warehouse	Forklifts for loading and unloading raw materials	No
WALKIE B	Dock	Automated dolly used to unload raw material from large trucks and move to raw material storage	No
COUNTER BALANCE BC	Dock	Forklift for loading and unloading raw materials from trailers	No
Pallet Load Inverter	Warehouse	Automated device that tips pallets loaded with finished produce to make it easier for the forklift to grab pallets and move to trucks for transport; also used for stacks of pallets	No
STERIL AIR APPLICATION SYSTEM	Sanitation	Sterilizer/Filtration system used to sterilize air. This item is not used in the production area.	No
Generac Emerg Generator	Production/Warehouse	Emergency backup generator for the entire plant	No
DUAL CYLINDER COMPACTOR	Production/Warehouse	Compactor used to compact trash/cardboard/etc.	No
2 REFRIGERATORS -PLANT LUNCHRM	Plant Office	Refrigerators in plant lunchroom	No
TEREX/MARKLIFT CH20	Warehouse	Used in the warehouse for general maintenance such as changing lightbulbs.	No
MICRO MASTER DISPENSER	Sanitation	Automated sanitizer located between the changing room and the production floor where it disinfects the booted feet of persons before they enter the production area	No
Genie boom lift 1998-used	Maintenance	Lifts are used by maintenance for general maintenance such as changing lightbulbs and building maintenance/cleaning.	No

Sweed banding grinder	Production - General	Chips waste material such as cardboard and plastic. This is used to reduce waste.	No
Skyjack3219elect scissors lift	Maintenance	Lifts are used by maintenance for general maintenance such as changing lightbulbs and building maintenance/cleaning.	No
Rider power scrubber mod 7300	Sanitation	This is used to clean floors throughout the facility.	No
6030 Vertical Cardboard Baler	Production - General	Used to collapse/compress cardboard or other bulk packaging materials to minimize waste.	No
5 Gal InternalTankFoamer -Sanit	Sanitation	Used to store liquid sanitizer/soap located between the changing room and the production floor where it feeds soap to the sanitizer that disinfects the booted feet of persons before they enter the production area.	No
36V Chrgr-7300 SitDownScrubber	Sanitation	This is used to clean floors throughout the facility	No
YARD JOCKEY ACTT42	Dock	Tractor for moving semi-trailers into the dock doors	No
T5 Floor Scrubber-Walk Behind	Sanitation	This is used to clean floors throughout the facility.	No
ScissorLift-Electric24-26'-Mnt	Maintenance	Lifts are used by maintenance for general maintenance such as changing lightbulbs and building maintenance/cleaning.	No
Vert Lift 20' ElecSelf Propled	Maintenance	Lifts are used by maintenance for general maintenance such as changing lightbulbs and building maintenance/cleaning.	No
Scissor Lift 19'-2016 Skyjack	Maintenance	Lifts are used by maintenance for general maintenance such as changing lightbulbs and building maintenance/cleaning.	No
2-6030VerticalBalers-FGCoolRmd	Warehouse	Bailer used to collapse cardboard in warehouse	No
2-Powerfoil18ftFans-FGCoolRmdl	Warehouse	These are used to maintain the temperature in the warehouse. The warehouse is only used for finished goods storage.	No
Thermal Imaging Camera	Maintenance	Thermal imaging cameras to monitor electrical panels to detect any overheating	No
Flir Thermal Imaging Camera	Maintenance	Thermal imaging cameras to monitor electrical panels to detect any overheating	No

In contrast, several of the MTP items in Exhibit 4 look remarkably like items listed in Ex. 2, which both parties agreed are used in manufacturing. For example, the "CIB 36V Battery 18 Cell" below is listed as being used to charge forklifts for use both in manufacturing and not in manufacturing. There are seven substantially similar battery and charger items with the same use listed in Ex. 2. Nothing in the record suggests that the battery listed in Exhibit 4 should be treated differently from those batteries. The batteries are not used directly but they perform a role in the manufacturing process as a component of the forklifts which are used in manufacturing.



We also find that the MTP used in quality control or in the pathogen lab are used in manufacturing, as are the insect electrocuting units located in and near the production area. Ensuring that cheese is free from insects, salmonella, and listeria is part of manufacturing cheese. This is further supported by the somewhat confusing note under Brief Description of the Market Forge Autoclave, which says that "equipment used in the Quality Control Lab . . . under the Stipulation Regarding Exhibit E is used in manufacturing." This note appears next to an item that the parties indicated, by placement in Exhibit 4, that they could not agree was used in manufacturing. However, we find that equipment used for quality control purposes is used in manufacturing. This is also why we find that equipment used to test packaging is used in manufacturing, as cheese is sold as a packaged item.

Employing our initial Ruling, we find the following items from Exhibit 4 are used in manufacturing and therefore are not exempt under Wis. Stat. § 70.111(27):

**Exhibit 4 - Not exempt under 70.111(27)  
because used in manufacturing**

Description	Location	Brief Description	Used in Mfg?
Sterile Gard Hood	Pathogen Lab	Used in pathogen lab to circulate air in the room where testing is done on finished product and in swabs taken from production equipment.	Yes
Instron Material Tester-PkgLab	Engineering	Used to test packaging materials before they are used	Yes
LeicaM80 StereoMicroscope-Film	Engineering	Used to test packaging materials before they are used	Yes
MARET FORGE AUTOCLAVE	Quality Control	Automatic steam pressure sterilizer that is used to sterilize equipment used in the Quality Control Lab. The equipment used in the Quality Control Lab in turn is used to test raw materials, finished product, etc. (see e.g., asset 2151) and under the Stipulation Regarding Exhibit E is used in manufacturing	Yes
W2110 Vidas System	Pathogen Lab	This is a testing system used in pathogen lab to test for listeria and salmonella in finished product and in swabs taken from production equipment.	Yes

Blender 80-400ml	Pathogen Lab	This is part of the testing system used in pathogen lab to test for listeria and salmonella in finished product and in swabs taken from production equipment.	Yes
Autoclave, Market Forge, STME	Pathogen Lab	Automatic steam pressure sterilizer that sterilizes test tubes that are used in the system that tests for listeria and salmonella in finished product and swabs taken from production equipment	Yes
CIB 36V Battery 18 Cell	Warehouse	Involved in charging forklifts batteries, both used in manufacturing and not used in manufacturing	Yes
7 INSECT ELECTROCUTING UNITS	Maintenance	Electric fly/insect killer - These items are used to trap and electrocute insects. These items are used to trap and electrocute insects. These items are used in and near the production area.	Yes

**ORDER**

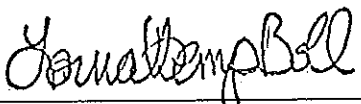
Each of the parties' Motions for Summary Judgment is granted in part and denied in part in accordance with the Rulings above. There being no issues remaining in dispute,

**IT IS ORDERED** that this matter is dismissed.

Dated at Madison, Wisconsin, this 28<sup>th</sup> day of January, 2022.

WISCONSIN TAX APPEALS COMMISSION

  
 \_\_\_\_\_  
 Elizabeth Kessler, Chair

  
 \_\_\_\_\_  
 Lorna Hemp Boll, Commissioner

  
 \_\_\_\_\_  
 Jessica Roulette, 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. Alternately, 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 Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, within 30 days of this decision if there has been no petition for rehearing or, within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service, or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

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

This notice is part of the decision and incorporated therein.