

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH III

WAUPACA COUNTY

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Arty's, LLC,

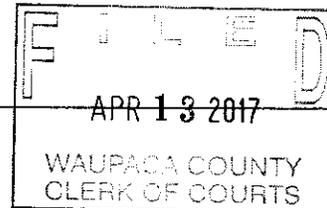
Petitioner,

-vs-

Case No. 16 CV 166

Wisconsin Department of Revenue,

Respondent.



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DECISION

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Petitioner seeks review of the ruling and order of the Wisconsin Tax Appeals Commission (TAC) dated May 19, 2016, in Docket No. 14-L-178.

The case was presented to the TAC by both parties on motion for summary judgment. The parties did not stipulate to the facts however, the TAC concluded the material facts were not in dispute and involved only questions of law.

While this court is satisfied material issues of fact are not in sufficient dispute to prevent this review, the court notes the petitioner, in its argument, references non-taxation of bitters. This court was unable to find anywhere in the record which supports this claim although the court may have missed the same in the record.

The petitioner is a licensed Wisconsin rectifier of intoxicating liquors, purchasing distilled spirits from Yahara Bay Distillers, Inc., mixing them with soda, water, and flavoring ingredients, and bottling in a seven (7) ounce glass bottle.

The petitioner primarily contended in its summary judgment motion that the liquor tax on each bottle could be collected only on the 1.2 ounces of distilled spirits placed in each seven ounce bottle and not upon the contents as a whole. The respondent contended in its summary judgment motion the tax applied to the entire 7 ounce content of the bottle.

The TAC denied the petitioner's motion for summary judgment and granted the respondent's motion for summary judgment finding that this is a case of statutory interpretation. The TAC further found no ambiguity in the statutes so its analysis simply applied the language of the statutes to the facts of this case.

After review of the record, this court is satisfied the decision of the TAC is correct and will affirm its findings.

## DISCUSSION

The parties are in disagreement as to the proper standard of review to apply in this case. I am satisfied that due weight deference should be applied.

The Legislature has delegated to the Commission enforcement of the State's tax laws. The Commission has experience in the area. While it has not developed expertise that necessarily places it in a better position than the court to interpret the statute, this court will sustain the Commission's statutory interpretation provided it is not contrary to the clear meaning of the statute and no more reasonable interpretation exists.

"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. Kulal v. Circuit Court for Dane County, 271 Wis. 2d 633, 681 N.W. 2d 110 (quoting Seider v. O'Connell, 236 Wis. 2d 211, 612 N.W. 2d 659 (2004)).

Section 139.03(2m), Stats., imposes an occupational tax of 85.86 cents per liter on intoxicating liquor. Section 139.01(3), Stats., defines "'Intoxicating Liquors' as all ardent spirituous, distilled or vinous liquors, liquids, or compounds, whether medicated proprietary, patented, or not, and by whatever name called, containing one-half of one percent or more alcohol by volume, which are fit for beverage purposes, but does not include fermented malt beverages."

Since petitioner's cocktails meet the definition of "intoxicating liquor", they are subject to the occupational tax. Here the language is clear, therefore there is no need for construction of the statute.

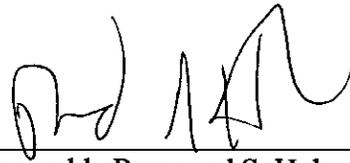
Petitioner's argument that the tax was fixed at the time of sale from Yahara to petitioner is without merit. Petitioner is a rectifier and no tax is imposed at the time of delivery to a rectifier from a distiller.

Petitioner's arguments based upon Federal law are not persuasive since the Federal law is based upon the proof gallon (alcohol by volume). In contrast, Wisconsin taxing theme is an occupational tax based on liters sold. As long as the product is fit for beverage purposes and contains one-half of one percent or more alcohol by volume, it is subject to the occupational tax.

Petitioner's reference to the 1979 opinion of the Attorney General has no persuasive value to this court since it discusses a factual situation based upon a law which no longer exists in Wisconsin. Today there is only one tax rate for intoxicating liquor.

The petitioner finally argues that as applied the tax would be unconstitutional. While briefed by both parties, I am satisfied the issue has not been appropriately developed on summary judgment. Therefore, I am directing the issue be remanded to the Commission if petitioner wishes to pursue the issue.

Dated this 12<sup>th</sup> day of April, 2017.

A handwritten signature in black ink, appearing to read 'R. Huber', written above a horizontal line.

Honorable Raymond S. Huber,  
Circuit Court Judge, Waupaca County