STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY

HEALTHCARE SERVICES GROUP, INC.,

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

Case No. 16-CV-1710

DECISION AND ORDER AFFIRMING THE TAX APPEALS COMMISSION

TABLE OF ABBREVIATED TERMS

Abbreviated Term	Full Term
HSG	Healthcare Service Group, the petitioner in this action
DOR	The Wisconsin Department of Revenue, respondent in the action
Manpower	*Manpower, Inc. v. Dep't of Revenue*, Wis. Tax Rep. (CCH) (WTAC Aug. 12, 2009).
TAC	The Wisconsin Tax Appeals Commission

INTRODUCTION

Petitioner HSG asks this Court to set reverse a decision of TAC upholding a tax assessment by DOR on HSG in the amount of $875,543.91. (Pet'r's Supp. Br. at 2.) Because HSG clearly provided laundry services, this Court affirms the decision of TAC.

BACKGROUND

HSG provides contract cleaning services to three thousand clients, sixty-six of which are Wisconsin nursing homes, retirement centers, and rehabilitation facilities. (Pet'r's Supp. Br. at 5 ¶ 1.) When a facility contracts with HSG, HSG generally hires the facility's former staff, (*id.* ¶ 3,) and undertakes all payroll responsibilities, (Pet'r's Supp. Br. at 10 ¶ 22). The account

manager for HSG is generally a former facility employee familiar with management needs, who then supervises the laborers. (*Id.*) A HSG district manager, who is a "native" HSG employee not directly hired from any facility, supervises eight to ten account managers. (*Id.* at 8 ¶ 14.)

Contracts between facilities and HSG are for "management, supervision and labor necessary to perform . . . laundry services on the premises of the Facility." (*Id.* ¶ 13.) HSG bills facilities separately for the various services, such as laundry, housekeeping, and janitorial, (*id.* at 10 ¶ 20,) ostensibly for the convenience of clients in their own accounting, (*id.* ¶ 21).

This case turns on how HSG's services are interpreted. HSG contends that its service is providing workers who, among other things, clean laundry at the facilities; analogous to prominent Wisconsin company Manpower, Inc. (*See* Pet'r's Supp. Br. at 24.) DOR contends that HSG provides direct laundry services, perhaps analogous to a company that would pick up soiled linens, clean them at their own facility, and drop off clean linens. (*See* Resp't's Br. at 14.)

ANALYSIS

The Court must first determine what level of deference is due TAC's decision. *E.g. Dep't of Revenue v. Orbitz, L.L.C.*, 2016 WI App 22, ¶ 10-11, 367 Wis. 2d 593, 877 N.W.2d 372. HSG argues that TAC is due no deference because its interpretation of the relevant statute has been so inconsistent so as to provide no real guidance. (Pet'r's Supp. Br. at 16-17 (citing *Orbitz*, 2016 WI App 22, ¶ 11).) DOR argues that the TAC routinely interprets the relevant statute, and thus qualifies for great deference. (Resp't's Br. at 8 (citing *Telemark Dev., Inc. v. Dep't of Revenue,*218 Wis. 2d 809, 820, 581 N.W.2d 585 (Ct. App. 1998).)

Ultimately, the parties' intense debate over standard of review is for naught. Even under a de novo standard of review, the Court finds for DOR.

I. HSG'S SERVICES FALL WITHIN THE PLAIN MEANING OF "LAUNDRY."

Wisconsin taxes certain enumerated services[1] at a 5% rate. Wis. Stat. § 77.52(2). Among those taxed services are "laundry, dry cleaning, pressing, and dyeing services," with exceptions for raw materials/goods destined for sale, cloth diapers, and use of self-service machines by consumers. *Id.* § 77.52(2)(a)6.

Tax statutes must be clear: any ambiguity or doubt is resolved in favor of the taxpayer. *Kearney & Trecker Corp. v. Dep't of Revenue*, 91 Wis. 2d 746, 753, 284 N.W.2d 61, 64 (1979). However, courts should not "search for doubt in an endeavor to defeat an obvious legislative intention." *Id.* A statute may be ambiguous in one setting, even if unambiguous in another. *Roehl v. American Family Mut. Ins. Co.*, 222 Wis. 2d 136, 145, 585 N.W.2d 893 (Ct. App. 1998) (applying this doctrine to Wisconsin's insurance code). Tax statutes are otherwise subject to the same rules of construction as any other statute: words are given their ordinary and accepted meaning, which may be done through use of a dictionary. *Id. See also Xerox Corp. v. Wis. Dep't of Revenue*, 2009 WI App 113, ¶ 63, 321 Wis. 2d 181, 772 N.W.2d 677.

DOR offers three definitions relevant to this decision, (Resp't's Br. at 14,) which HSG neither contests nor counters, (*see generally* Pet'r's Supp. Br.; Pet'r's Reply Br. at 7). Instead, HSG argues whether the facts of its business plan fit within the accepted definition. (Pet'r's Reply Br. at 7.) The relevant definitions are:

> The American Heritage Dictionary defines laundry as "soiled or laundered clothes and linens" and launder as "to wash (clothes, for example)" or "to wash, fold, and iron." The American Heritage Dictionary (5th ed. 2016). Likewise, Chapter 77 of the Wisconsin Statutes elsewhere defines "launder" as "to use water and detergent as the main process for cleaning apparel or household fabrics." Wis. Stat. § 77.996(7). As for service, the dictionary defines it simply as "work that is done for others as an occupation or business." The American Heritage Dictionary (5th ed. 2016).

[1] This is in contrast to the sales tax on goods, which applies to any good unless specifically excepted. Wis. Stat. § 77.52(1b).

(Rep't's Br. at 14.) The Court is persuaded that these definitions are proper for interpreting section 77.52(2)(a)6.

The reality of HSG's services fall within the definition of laundry. Though HSG's employees do more than just laundry, they nonetheless perform laundry services. HSG itself separates out billing for the laundry services it performs from other housekeeping services. (Pet'r's Supp. Br. at 10 ¶ 20.) Merely doing more than just laundry does not change the reality that HSG performs laundry services; by way of analogy, if a business engaged in both self-service and full-service laundry services, the business could not reasonably assert that its full-service laundry business is not subject to taxation simply because the self-service part of the business is not.

HSG attempts to analogize its case to *Manpower*, in which TAC held that temporary placed workers performing tasks otherwise taxable cannot be taxed. (Pet'r's Supp. Br. at 12 ¶ 29.) In that case, DOR was asserting that certain persons placed by Manpower to do information technology work should be taxed as information technology services. (*Id.* at 11-12 ¶ 26.) TAC rejected that conclusion because the relevant statute *could* include temporary help services that would otherwise be taxable, but the statute was not clear and express. (*Id.* at 12 ¶ 29.)

HSG's business model is readily distinguishable from that of Manpower. Manpower is a temporary help company pursuant to Wis. Stat. section 108.02(24m), which HSG is not. Further, HSG's model of hiring employees to clean client laundry for the duration of a contract is readily distinguishable from a temporary help company that places workers with a company for a short period of time to alleviate temporary staffing needs. The service HSG ultimately provides is the cleaning of laundry, not the provision of temporary help.

CONCLUSION

HSG ultimately provides laundry services to its clients, and thus falls within section 77.52(2)(a)6 no matter which level of deference is applied by this Court. The decision of TAC is thus affirmed.

IT IS HEREBY ORDERED:

The decision of TAC affirming DOR's assessment of sales/use taxes against HSG in the amount of $875,543.91 is hereby AFFIRMED.

SO ORDERED this 9 day of February, 2017, at Waukesha, Wisconsin.

THIS IS A FINAL ORDER FOR THE PURPOSES OF APPEAL.

BY THE COURT:

PATRICK C. HAUGHNEY
Circuit Court Judge