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BY THE COURT:

DATE SIGNED: December 12, 2021

Electronically signed by Andrew J. Christenson
Circuit Court Judge

THIS IS A FINAL ORDER FOR THE PURPOSE OF APPEAL.

STATE OF WISCONSIN

CIRCUIT COURT

FOND DU LAC COUNTY

SAPUTO CHEESE USA, INC., and
DCI CHEESE, INC.,

Petitioners,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent,

and

CITY OF FOND DU LAC,

Intervenor.

**DECISION
AND ORDER**

INTRODUCTION

The Wisconsin Tax Appeals Commission (the “Commission”) affirmed the personal property assessments imposed on the Petitioners, Saputo Cheese USA, Inc., and DCI Cheese, Inc., (together the “Petitioners”), by the Wisconsin Department of Revenue (“DOR”) under Wis. Stat. § 70.11(27). The Petitioners request judicial review of the Commission’s decision under Wis. Stat. § 227.52. This Court has read the briefs, statutes, and applicable case law, and after examining the record, affirms the decision of the Commission.

According to the Petitioners, their clean-in-place equipment (“CIP equipment”) used to sanitize cheese-making vats in several of their plants from 2014 to 2018 is exempt

from personal property tax under Wis. Stat. § 70.11(27)(b). That exemption covers “machinery and specific processing equipment” that is “used exclusively and directly in the production process in manufacturing tangible personal property.”

The Petitioners also state that they are entitled to rely on guidance put forth by the DOR in its Wisconsin Property Assessment Manual (“Manual”) that addressed exempt CIP equipment for food processing for the years in question. Specifically, the Manual exempted “equipment used to clean food processing equipment between batches which is embedded within and part of the production machine.”

The DOR disagrees with the position of the Petitioners and states that the CIP equipment is subject to personal property tax because the CIP equipment does not fit the exemption for several reasons.

STANDARD OF REVIEW

Administrative decisions that affect the substantial interests of a person are subject to judicial review. Wis. Stat. § 227.52. The review is limited to the record. Wis. Stat. § 227.57(1). If there is substantial evidence to support the agency’s decision, it must be affirmed. *State ex. rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990); Wis. Stat. § 227.57. The test for substantial evidence is whether reasonable minds could arrive at the same conclusion reached by the agency after considering all the evidence of record and available inferences made from the record. *Milwaukee Symphony Orchestra, Inc., v. Wis. Dept. of Revenue*, 2010 WI 33, ¶ 31, 324 Wis. 2d 674. The agency determines the credibility and weight of the evidence, not the reviewing court. *Id.* The court will independently review an agency’s interpretation of a statute while giving “due

weight' to the experience, technical competence, and specialized knowledge of the administrative agency." *Tetra Tech EC, Inc., v. Wis. Dept. of Revenue*, 2018 WI 75, ¶ 108, 382 Wis. 2d 496, 512, 914 N.W.2d 21, 28-29. Where due weight deference is given, the court will sustain an agency's decision unless another alternative legal interpretation is more reasonable. *Id.*, ¶ 15; *Barron Elec. Co-op. v. PSC*, 212 Wis. 2d 752, 762-3, 569 N.W.2d 726 (Ct. App. 1997).

ANALYSIS

This judicial review of the Commission's decision leaves this Court with the following questions of law to address: first, does the text of Wis. Stat. § 70.11(27) exempt Petitioners' CIP equipment from personal property tax, and second, if not, did the Petitioners reasonably rely on the DOR Manual to conclude that the CIP equipment is exempt from personal property tax.

Statutory interpretation begins with the language of the statute. *State ex. rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. "[T]he purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect." *Id.*, ¶ 44. If this Court's statutory "analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning." *Id.*, ¶ 46. The test for whether a statute is ambiguous examines the language of the statute to determine whether the statutory language "reasonably gives rise to different meanings." *Id.*, ¶ 47.

First, this Court statutorily interprets Wis. Stat. § 70.11(27)(b), the language that provides a tax exemption for "[m]achinery and specific processing equipment . . . that are

used exclusively and directly in the production process in manufacturing tangible personal property.” Several of the exemption’s terms are further defined in Wis. Stat. § 70.11(27)(a). The “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.” Wis. Stat. § 70.11(27)(a)5. It can include “quality control activities” that take place during this time period but excludes “storage, machine repair and maintenance,” “plant housekeeping,” and other specified tasks. *Id.* In addition, “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.” Wis. Stat. § 70.11(27)(a)7.

Under the plain statutory language, the CIP equipment does not fall under the exemption. First, the CIP equipment is not used during the “production process,” which ends “with conveyance of the finished product to the place of first storage on the plant premises.” The CIP equipment mixes cleaning chemicals with water to create solutions that are used to clean the cheese-making vats. The CIP systems have separate tanks of various chemical solutions and water, which are piped into the vats after each batch of cheese has been manufactured. The CIP equipment does not operate while the cheese is being manufactured and has no direct involvement in the production process. In fact, if the CIP equipment were used directly in production, it would contaminate the cheese.

Second, the CIP equipment also does not qualify as “quality control activities” under Wis. Stat. § 70.11(27)(a)5, which must take place “during the time period” “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.” Because the cleaning cycle occurs after the manufacturing run is complete, it is not part of the production process.

Third, the CIP equipment does not qualify as it is not “used directly” in the production process. The CIP equipment is used to pipe cleansing water and chemical solutions in alternating cycles to clean the cheese-making vats between batches. The chemical solutions and water sanitize the manufacturing equipment by washing away residue and readying the production machinery for the next batch. The CIP equipment and cleansing solutions do not “cause a physical or chemical change in raw materials” because the residue left in the vats are not raw materials, but rather waste to clear away. The chemicals do not cause a movement in any raw materials, work in process, or finished products; rather, the CIP process’s cleaning chemicals cannot even be present alongside the raw materials, work in process, or finished products.

The Petitioners point to the decision in *Manitowoc Co., Inc., v. Sturgeon Bay*, 122 Wis. 2d 406 (Ct. App. 1984), for the definition of the term “used directly.” Namely, *Manitowoc* held that property was “used directly” if it met the “integrated plant” test instead of the “physical change” test. However, the text of Wis. Stat. § 70.11(27) was amended through legislation in 1991 to further define “used directly.” This Court will not apply old case law to statutory language subsequently amended by the legislature.

For all of these reasons, this Court will not diverge from the plain language of the statute, which does not qualify the CIP equipment for an exemption from personal property tax.

This Court next turns to the issue of whether the DOR has taken a position contrary to guidance provided in its Manual. The Manual, citing Wis. Stat. § 70.27(1)(a)6., reiterates that “‘specific processing equipment’ means containers for chemical action, mixing or temporary holding of work in process to ensure the uninterrupted flow of all or part of the production process, process piping, tools, implements and quality control equipment.” The Manual then lists some examples of exempt processing equipment, including “equipment used to clean food processing equipment between batches which is embedded within and part of the production machine.”

According to Wis. Stat. § 73.16(2)(a), the DOR is precluded from taking a position contrary to its written guidance. The DOR, as previously noted, contends that the CIP equipment at issue does not qualify for personal property tax exemption because it is not embedded within and part of the production machine.

It is true that the CIP equipment is used to clean food processing equipment, and it does so between batches. However, the CIP equipment is not “embedded within and part of the production machine.” In fact, it is neither “embedded within” nor “part of” the production machine. The CIP equipment is connected because it is physically attached to manufacturing equipment by piping, using a diverter plate or valve to direct chemicals to clean the production equipment. However, the CIP equipment is separate and distinctly identifiable. The CIP equipment has dedicated computers and multiple tanks for holding water and chemical solutions. Only one part of the CIP equipment—the showerhead-type devices—connects to the cheese-making vats to spray water and cleaning solutions into them. Only the showerhead devices, which are bundled with the overall CIP systems, are embedded in the production machinery. This is insufficient to

conclude that the CIP equipment as a whole is embedded within the production machinery.

While the CIP equipment used to clean the cheese-making vats likely plays a vital role in the cheese production, the CIP equipment is separate. Even if the CIP equipment was manufactured and purchased with the production machinery, the CIP equipment connects to, but is not reasonably considered to be “embedded within” the production machinery.

CONCLUSION

This Court will give “‘due weight’ to the experience, technical competence, and specialized knowledge of the administrative agency” to the Commission’s conclusions of law. *Tetra Tech, supra*, Wis. 2d 496, ¶ 108. The Commission administers and interprets Wisconsin tax laws. See Wis. Stat. § 73.01(4)(a). Therefore, this Court gives due weight to the Commission’s interpretation that the CIP equipment at issue does not qualify for personal property tax exemption and that the DOR has not taken a position contrary to its guidance.

This Court’s analysis leads it to make the same findings. Consequently, this Court affirms the Commission’s decision.