

FILED

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STATE OF WISCONSIN
TAX APPEALS COMMISSION

Wisconsin Tax Appeals Commission
Drew Fox - Clerk

MARINETTE MARINE CORP.

DOCKET NOS. 23-MR-154
& 24-MR-094

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

ELIZABETH KESSLER, COMMISSIONER:

This matter comes before the Commission on cross-motions for summary judgment filed by Petitioner, Marinette Marine Corporation, and Respondent, the Wisconsin Department of Revenue. The Petitioner contends that a portion of its property known as Building 31 should be exempt from taxation as a waste treatment facility, or in the alternative, that it should be exempt from taxation as machinery and equipment; the Department disagrees, arguing that it is correctly classified as a manufacturing facility. On its own authority, the Commission also considers whether or not this petition for review rises to the level of being frivolous or groundless such that we shall add additional damages.

The Petitioner was represented by Attorneys Andrew S. Oettinger and Emma J. Jewell of Godfrey & Kahn, S.C., Milwaukee, Wisconsin. The Respondent was represented by Attorney Nicole I. Pellerin of the Wisconsin Department of Revenue,

Madison, Wisconsin. The parties stipulated to the material facts. Each party also submitted briefs and documents in support of their legal arguments and in critique of the other party's.

Jurisdictional Facts

1. Marinette Marine Corporation ("MMC") is a Wisconsin corporation headquartered in Marinette, Wisconsin. MMC is in the shipbuilding business and constructs large military vessels for the U.S. Navy. (Joint Stipulation of Facts ("JSOF") ¶¶ 1, 2.)

2. MMC owns a shipyard in Marinette, Wisconsin. Specifically, MMC owns the following manufacturing real estate parcels and improvements located in Marinette, Wisconsin:

- a. 1600 Ely Street, Marinette, Wisconsin, 54143
State ID 81-38-251-R000010874
("Building 31")
- b. 1600 Ely Street, Marinette, Wisconsin, 54143
State ID 81-38-251-R000010894
("Buildings 34 and 35") (JSOF ¶4.)

3. On June 13, 2022, the Wisconsin Department of Revenue ("Department") issued a 2022 Notice of Real Property Assessment in which it assessed the full value of the parcel containing Building 31 at \$17,863,900. (JSOF ¶ 9.)

4. On June 15, 2023, the Wisconsin Department of Revenue ("Department") issued a 2023 Notice of Real Property Assessment in which it assessed the full value of the parcel containing Building 31 at \$17,880,800. (JSOF ¶ 14.)

5. For tax year 2022 and tax year 2023 MMC timely filed the required

forms PA-132 with the State Board of Assessors, objecting to both the classification of the parcel and the assessed value.¹ (JSOF ¶¶ 10, 15.)

6. On March 29, 2023, the State Board of Assessors issued a Notice of Determination in which it sustained the 2022 assessment. (JSOF ¶ 12.)

7. On May 31, 2023, MMC timely filed a petition for review of the 2022 assessment with the Tax Appeals Commission. (Commission file.)

8. On January 22, 2024, the State Board of Assessors issued a Notice of Determination in which it sustained the 2023 assessment. (JSOF ¶ 17.)

9. On March 22, 2024, MMC timely filed a petition for review of the 2023 assessment with the Tax Appeals Commission. (Commission file.)

Evidentiary Facts

10. As part of the shipbuilding process, MMC blasts, paints, and constructs vessels. (JSOF ¶ 5.)

11. Building 31 contains MMCs blasting and painting operations. (JSOF ¶ 6.)

12. Building 31 was constructed in 2012 to serve as a dedicated paint facility. (JSOF ¶ 20.)

13. Building 31 includes: six bays (two for prep, two for blasting, and two for painting); an equipment room; a mechanical room; an electrical room; a paint mixing and storage room; a room for blasting and painting small parts; and an office,

¹ This decision addresses only the classification issue. Petitioner's objection to the Department's assessed value of the property has not been addressed and is not decided here.

breakroom, restrooms, and locker room for employees. (JSOF ¶ 21.)

14. The only manufacturing activities occurring in Building 31 are blasting and painting-related. (JSOF ¶ 24.)

15. MMC's blasting and painting operations emit pollutants including hazardous air pollutants and volatile organic compounds. (JSOF ¶ 25.)

16. The air pollution generated by the blasting and painting process requires abatement. (JSOF ¶ 26.)

17. To control emissions and pollution, as well as control the immediate environment to facilitate painting, MMC contains its blasting and painting operations in Building 31. (JSOF ¶ 27.)

18. Building 31 is subject to state and federal laws and regulations for air pollution control. (JSOF ¶ 28.)

19. The Wisconsin Department of Natural Resources ("DNR"), acting pursuant to the authority delegated to it by the U.S. Environmental Protection Agency ("EPA"), has issued permits to MMC to conduct abrasive blasting and operate paint booths for large vessel shipbuilding and repair. (JSOF ¶ 29.)

20. To comply with specific permit conditions for abatement and control, MMC paints its ships in an enclosure. (JSOF ¶ 33.)

21. MMC would not be able to comply with specified DNR requirements if its paint operations were outside and not in Building 31. (JSOF ¶ 34.)

22. Building 31 was designed to include, and does include, special, customized ventilation, dust removal, and filtration equipment. (Joint Statement of

Additional Facts "JSOAF" ¶ 1.)

23. Building 31 is a structural steel building with a concrete foundation.

(JSOAF ¶ 2.)

24. Building 31's steel walls are supported by an insulation system with [a] vapor barrier liner. The insulation system has an R-19 value and WMP-50 vapor barrier. (JSOAF ¶ 3.)

25. When at full production, blasting and painting activity in Building 31 occurs 20 hours per day, Monday through Thursday, and 12 hours per day, Friday through Sunday. (JSOAF ¶ 4.)

26. When at full production, air pollution abatement in Building 31 occurs 24 hours per day, 7 days per week. (JSOAF ¶ 5.)

APPLICABLE LAW

Wis. Stat. § 70.109 Presumption of taxability.

Exemptions under this chapter shall be strictly construed in every instance with a presumption that the property in question is taxable, and the burden of proof is on the person who claims the exemption.

Wis. Stat. § 70.11 Property exempted from taxation.

(21) TREATMENT PLANT AND POLLUTION ABATEMENT EQUIPMENT.

(ab) In this subsection:

1. "Air contaminants" has the meaning given in s. 285.01 (1).

2. "Industrial waste" means waste resulting from any process of industry, trade, or business, or the development of any natural resource, that has no monetary or market value, except as provided in subd.

3. b., and that would otherwise be considered superfluous, discarded, or fugitive material. "Industrial waste" does not include other wastes, as

defined in s. 281.01 (7).

3. "Used exclusively" means to the exclusion of all other uses except any of the following:

a. For other use not exceeding 5 percent of total use.

(am) All property purchased or constructed as a waste treatment facility used exclusively and directly to remove, store, or cause a physical or chemical change in industrial waste or air contaminants for the purpose of abating or eliminating pollution of surface waters, the air, or waters of the state if that property is not used to grow agricultural products for sale and, if the property's owner is taxed under ch. 76, if the property is approved by the department of revenue. The department of natural resources and department of health services shall make recommendations upon request to the department of revenue regarding such property. All property purchased or upon which construction began prior to July 31, 1975, shall be subject to s. 70.11 (21), 1973 stats.

Wis. Stat. § 70.11(27) Manufacturing Machinery and Specific Processing Equipment.

(a) In this subsection:

1. "Building" means any structure used for sheltering people, machinery, animals or plants; storing property; or working, office, parking, sales or display space.

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.

(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.

Wis. Stat. § 73.01(4) Tax Appeals Commission. Powers and Duties Defined.

(am) Whenever it appears to the commission or, in respect to hearings conducted by one commissioner, to that commissioner that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in those proceedings is frivolous or groundless, the commission or commissioner may assess the taxpayer an amount not to exceed \$1,000 at the same time that the deficiency is assessed. Those damages shall be paid upon notice from the department of revenue and shall be collected as a part of the tax.

Wis. Admin. Code § TA 1.63 Frivolous Appeals.

...

(2) In order to assess damages, the commission or commissioner must find one or more of the following:

...

(c) The petitioner or petitioner's representative knew, or should have known, that the appeal was without reasonable basis in law or equity or could not be supported by a good faith argument for an extension, modification or reversal of existing law.

SUMMARY JUDGMENT STANDARD

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 party moving for summary judgment has the burden "to establish the absence of a genuine, that is, disputed, issue as to any material fact." *Kraemer Bros., Inc. v. United States Fire Ins. Co.*, 89 Wis. 2d 555, 565, 278 N.W.2d 857 (1979). "Summary judgment is only appropriate if there are no genuine issues of material fact, and the moving party, having established a prima facie case, is entitled to judgment as a matter of law. Summary judgment materials, including pleadings, depositions, answers to interrogatories, and admissions on file are viewed in the light most favorable to the nonmoving party." *AccuWeb, Inc. v. Foley & Lardner*, 2008 WI 24, 308 Wis. 2d 258, 746 N.W.2d 447 (internal citations omitted).

ANALYSIS

Assessments made by the Department are presumed to be correct, and the burden is on each petitioner to prove by clear and satisfactory evidence in what respects

the Department erred in its determination. *Edwin J. Puissant, Jr. v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984); Wis. Stat. § 77.59(1).

The burden is on MMC to prove that it is entitled to exemption from the payment of taxes. In addition to bearing the general burden of overcoming the presumption of correctness granted to the Department, the applicable standard for exemption from taxation is specifically laid out in Wis. Stat. § 70.109, "Exemptions under this chapter shall be strictly construed in every instance with a presumption that the property in question is taxable, and the burden of proof is on the person who claims the exemption." To be entitled to a tax exemption, the taxpayer must fall within the exact terms of the exemption statute. *Wausau Paper Mills Co. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-375 (Cir. Ct. 1998). The statute must be given a strict but reasonable construction in favor of taxation. *Wauwatosa Avenue United Methodist Church v. City of Wauwatosa*, 2009 WI App 171, 321 Wis. 2d 796, 776 N.W.2d 280. The Wisconsin Court of Appeals also explained the principle in more detail:

Exemption from payment of taxes is an act of legislative grace; therefore the party seeking the exemption bears the burden of proving entitlement. Tax exemptions are to be strictly construed in every instance.... The presumption of taxability is motivated by the public interest to stem the erosion of municipal tax bases. Tax exemptions are only allowed to the extent the plain language of a statute permits. For tax exemptions to be valid they must be clear and express, and not extended by implication. In construing tax exemptions, we apply a strict but reasonable construction. We resolve any doubts regarding the exemption in favor of taxability. *United Rentals, Inc. v. City of Madison*, 2007 WI App 131, 302 Wis. 2d 245, 733 N.W.2d 322, 325. (Internal citations omitted. Hereinafter *United Rentals*.)

Is Building 31 a Waste Treatment Facility?

MMC argues first that Building 31 is a waste treatment facility used exclusively and directly to abate air pollution and therefore is exempt from taxation under Wis. Stat. § 70.11(21). In order to determine if Building 31 qualifies for an exemption under this statutory subsection, three statutory elements must be satisfied. First, the property must be purchased or constructed as a waste treatment facility. Second, the property must be used exclusively to “remove, store, or cause a physical or chemical change in . . . air contaminants for the purpose of abating or eliminating pollution of . . . the air . . . of the state.” Third, the property must be used directly to “remove, store, or cause a physical or chemical change in . . . air contaminants for the purpose of abating or eliminating pollution of . . . the air . . . of the state.”

Petitioner stipulated that Building 31 was constructed in 2012 to serve as a dedicated paint facility. It contains six bays: two for prep, two for blasting (a process similar to sanding wood, according to the Department), and two for painting. Building 31 also includes special, customized ventilation, dust removal, and filtration equipment, but the presence of these does not alter the fact that it was constructed to serve as a dedicated paint facility, not a waste treatment facility, failing the first element of Wis. Stat. § 70.11(21)(am).

The second element of Wis. Stat. § 70.11(21)(am) requires that the facility be used exclusively to “remove, store, or cause a physical or chemical change in...air contaminants for the purpose of abating or eliminating pollution of...the air...of the state.” When at full production, blasting and painting activity in Building 31 occurs 20

hours per day, Monday through Thursday, and 12 hours per day Friday through Sunday. Petitioner points out that the air pollution abatement systems in Building 31 operate 24 hours per day, which may be true, but does not negate that Building 31 is actively in use as the site of MMC's manufacturing work of preparing, blasting, and painting vessel components for between 12-20 hours per day, seven days per week, when at full production.

In MMC's Opening Summary Judgment Brief as to Tax Exempt Status of Building 31, ("MMC Opening Brief"), Petitioner additionally explains that "over 97% of the total volume of Building 31 is dedicated to painting, blasting, and resulting containment capture and air treatment." MMC's own words include painting, blasting, containment capture, and air treatment within that 97% usage of the building, even as they argue with the Department over how much space is dedicated to various other uses. Whether only 3% of more than 5% of the building is used for employee facilities is so minor as to be irrelevant when compared to the building's use in the work of preparing, blasting, and painting vessels and vessel components for the U.S. Navy. Preparing, blasting, and painting vessels and vessel components for the U.S. Navy is obviously not an incidental or comparatively inconsequential use of Building 31, nor an incidental deviation from the building's primary purpose, nor is that work an incidental byproduct of MMC's containment and filtration of hazardous air pollutants and volatile organic compounds. There is no possible understanding of how Building 31 is used that could be considered "exclusively used to remove, store, or cause a physical or chemical change in air contaminants." MMC fails to meet the second element of Wis. Stat. § 70.11(21)(am).

The third element of Wis. Stat. § 70.11(21)(am) is that the property is used directly to, “remove, store, or cause a physical or chemical change in...air contaminants for the purpose of abating or eliminating pollution of...the air...of the state....” This is the one element of the statute MMC arguably meets. MMC would not be able to comply with specified DNR requirements if its paint operations were outside and not in Building 31. The building was built for the purpose of being a dedicated paint facility, which includes special, customized ventilation, dust removal, and filtration equipment. The steel walls are supported by an insulation system with a vapor barrier liner. The insulation system has an R-19 value and WMP-50 vapor barrier. The Commission understands these construction elements to be intrinsic to the parcel’s improvements. In other words, Building 31, including its special, customized ventilation, dust removal, and filtration equipment, was built to prep and paint, and to prevent the dust and paint from contaminating the outside air, so the building is used directly to remove and store air contaminants caused by its blasting and painting processes, for the purposes of abating air pollution.

However, in order to qualify for tax exempt status under Wis. Stat. § 70.11(21), MMC would need to meet all three statutory requirements, not just one. Building 31 would need to have been purchased or constructed as a waste treatment facility and be used exclusively and directly to abate air pollution. That is not the case. MMC fails to meet all of the requirements, therefore we find that it does not qualify for exemption from taxation under Wis. Stat. § 70.11(21).

Is Building 31 Manufacturing Machinery?

MMC argues in the alternative that Building 31 qualifies for tax exempt status under Wis. Stat. § 70.11(27)(b), which exempts from taxation certain manufacturing machinery. This exemption requires that such machinery and equipment “are used exclusively and directly in the production process in manufacturing tangible personal property,” and specifically excludes buildings. In addition, this subsection of the statute ends with language reinforcing the exacting standards the Commission is to enforce: “The exemption under this paragraph shall be strictly construed.” Given the already strict construction required under Wis. Stat. § 70.109 and *United Rentals*, this is exceptionally strong language.

MMC argues it meets the first element of § 70.11(27)(b), because the statutory definition of machinery is “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,” and that Building 31 is a structure that electrically and mechanically expels pollutants from the air. Building 31 is, indeed, a structure, and the building itself does some of the work of air pollution abatement by physically preventing the pollutants from openly floating out into the air in Marinette, Wisconsin. Building 31 is an important part of the infrastructure holding in place the other special, customized ventilation, dust removal, and filtration equipment that is used to control air pollution created by the work done inside of Building 31. The structure of Building 31, however, is a building.

MMC stipulated to the fact that Building 31 is a structural steel building with a concrete foundation. Building 31 also clearly meets the statutory definition of building under Wis. Stat. § 70.11(27)(a)(1), “any structure used for sheltering people, machinery, animals or plants; storing property; or working, office, parking, sales or display space.” Building 31 is a structure used for sheltering people and machinery: the people who prep, blast and paint vessels and the machinery they use for those purposes. Building 31 is used for mixing and storing paint. Building 31 is also quite clearly used for working. MMC workers prep, blast, and paint vessels for the U.S. Navy in Building 31. These are fatal flaws to MMC’s claim for exemption from taxation under Wis. Stat. § 70.11(27)(b).

While finding that Building 31 is a building is sufficient to find MMC does not qualify for tax exemption under Wis. Stat. § 70.11(27)(b), we nonetheless review the remaining statutory requirements. If it were machinery, would such machinery qualify as being used exclusively and directly in the production process?

The statute defines the terms “used exclusively,” “used directly,” and “production process.” The most salient elements here are “used directly in the production process.” In order to be considered “used directly in the production process” machinery must be “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). MMC produces vessels for the U.S. Navy. The building itself does not cause a physical or chemical change to the raw materials used to produce vessels for the U.S. Navy, nor does the building cause movement of the raw materials, work in process,

or finished product. Even if the air pollution containment, specialized ventilation, and air filtration features of Building 31 could be meaningfully distinguished from the building itself, they also cause no physical or chemical changes to the raw materials, nor do they cause movement of the raw materials, work in process, or finished product.

As the Commission has noted in previous decisions, something used in manufacturing, however crucial to the process, is not necessarily used directly in the production process. In *Kindred Family LP v. Wisconsin Dept. of Revenue* and *Prent Corp. v. Wisconsin Dept. of Revenue* (related cases decided together) Wis. Tax Rptr. ¶ 20250930182 (CCH) (May 18, 2022), the Commission found that a temperature and humidity-controlled cleanroom was not “used directly” in the production process. The cleanroom created conditions that were necessary for the physical and chemical changes to the raw material to take place as desired in the production process but did not directly cause such changes. Similarly, the Commission found that machinery used to clean the production vats used for cheese manufacturing, between batches of cheese, also failed the “used directly” in the production process test. *Saputo Cheese v. Wisconsin Dept. of Revenue* Wis. Tax Rptr. (CCH) ¶ 401-408 (Aug. 4, 2020), *aff’d* 2023 WI App. 32 (unpublished). In both cases, the machinery did not cause a physical or chemical change in the raw material. The machinery in *Saputo* was essential to the safe production of the product, but it did not cause a physical or chemical change in the raw material and thus it did not qualify for an exemption under Wis. Stat. § 70.11(27). In *Kindred/Prent*, the cleanroom created essential conditions for the production process to successfully take place but did not cause a physical or chemical change in the raw material. Here the air quality conditions created

by the special, customized ventilation, dust removal, and filtration equipment in Building 31 may be essential to the paint process and to public safety, but those are not the same as causing a physical or chemical change to the vessels or vessel components being blasted or painted.

Wis. Stat. § 70.11(27) is a very specific tax exemption statute. No part of the plain language of Wis. Stat. § 70.11(27) applies to Building 31.

Was this appeal frivolous or groundless?

The Commission has rarely found appeals frivolous or groundless, and more rarely still applied the sanctions available to us under Wis. Stat. § 73.01(4)(am) and Wis. Admin. Code § TA 1.63(2)(c). We will not do so lightly. We particularly hesitate here because many of the cases that come before us arise from legitimate differences in interpretation of the law, and we do not want to discourage future petitioners from pressing the Department to thoughtfully consider its positions and defend them with intellectual rigor. However, the degree to which this petition is groundless compels us to consider the question.

Wis. Stat. § 73.01(4)(am) reads, in relevant part, "Whenever it appears to the commission...that the taxpayer's position in those proceedings is frivolous or groundless, the commission...may assess the taxpayer an amount not to exceed \$1,000 at the same time that the deficiency is assessed." This is limited by Wis. Admin. Code § TA 1.63(2)(c), which requires that "petitioner's representative knew, or should have known, that the appeal was without reasonable basis in law or equity or could not be supported by a good faith argument for an extension, modification or reversal of existing law."

The Commission has previously found appeals to be frivolous or groundless primarily in the context of what are ordinarily described as tax protester cases. In such cases, petitioners argue that the state lacks authority to tax their income. The law in that area is clear and well settled, and it is rare that such a claim is not frivolous or groundless. (*Rieth v. Dep't of Revenue*, Wis. Tax Rptr. (CCH), ¶400-783 (WTAC 2004); *Betow v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶202-032 (WTAC 1982); *Watts v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶402-599 (WTAC 2025); and others.)

We have also found appeals to be frivolous or groundless and have applied sanctions when there were strong indications that petitioners or their representatives engaged in appeals primarily for delay. In one recent case, Petitioner's representative repeatedly indicated that he would provide information to the Department in support of his position but did not do so even after many extensions of time and orders by the Commission. (*R.H. Cos. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶402-558 (WTAC 2023)).

In discussing tax exemptions, the Court of Appeals has stated, "Exemptions are only allowed to the extent the plain language of a statute permits. For tax exemptions to be valid they must be clear and express, and not extended by implication." (*United Rentals*, 325). We expect attorneys to be familiar with this principle, or at a minimum to have read about it in the language framing tax the exemption statutes, Wis. Stat. § 70.109, as they search for exemptions which might apply to their clients. This is the first time the Commission was able to identify in which we have found a petition filed by licensed counsel, not a *pro se* litigant or non-attorney agent, to be frivolous or groundless.

The plain meaning of Wis. Stat. § 70.11(21)(am) is clear from the first sentence. In order to qualify, the property is to be purchased or constructed as a waste processing facility and used exclusively and directly as a waste processing facility. The taxpayer's property was constructed as a blasting and painting facility for an industrial manufacturer and is used as such for between 12-20 hours per day, 7 days per week. Any claim that it is something other than an industrial painting facility, let alone a waste processing facility, is both frivolous and groundless.

The plain meaning of Wis. Stat. § 70.11(27)(b) is also clear; furthermore, each relevant term is defined in Wis. Stat. § 70.11(27)(a) to ensure further clarity. The statute exempts machinery used exclusively and directly in the production process; it explicitly does not include buildings and is specifically to be strictly construed. Taxpayer's property is a building. The building was constructed as a blasting and painting facility and such work is done by taxpayer's employees within the building for between 12-20 hours per day, 7 days per week. The building itself is not used in the production process, much less exclusively or directly in the production process. This claim is also both frivolous and groundless.

To impose sanctions, the Commission must also find that "petitioner's representative knew, or should have known, that the appeal was without reasonable basis in law or equity or could not be supported by a good faith argument for an extension, modification or reversal of existing law." Wis. Admin. Code § TA 1.63(2)(c).

This is a challenging standard for the Commission as we lack equitable power as well as the power to extend, modify, or reverse existing law. We must imagine

ourselves in the position of a reviewing court and attempt to discern whether or not MMC could have a reasonable basis to believe that even if they lost at the Commission, they might succeed in having the Commission's decision reversed based on equity or law. Is there a good faith argument that MMC could make to extend or modify either tax exemption? Is there another basis on which the substance of this decision could be reversed?

We do not believe so. We find that the unambiguous groundlessness of Petitioner's claims meets that standard. Petitioner's counsel knew or should have known that the appeal was without reasonable basis in tax exemption law. Petitioner's counsel knew or should have known that the appeal was without reasonable basis in equity. Petitioner's counsel knew or should have known that the appeal could not be supported by a good faith argument for an extension, modification or reversal of existing tax exemption law.

Accordingly, we find that Petitioner's position was frivolous or groundless under Wis. Stat. § 73.01(4)(am).

CONCLUSIONS OF LAW

1. Marinette Marine Corp.'s Building 31 is not a waste treatment facility and therefore is not eligible for tax exemption under Wis. Stat. § 70.11(21).
2. Marinette Marine Corp.'s Building 31 is not machinery used exclusively and directly in the production process in manufacturing tangible personal property and therefore is not eligible for tax exemption under Wis. Stat. § 70.11(27).

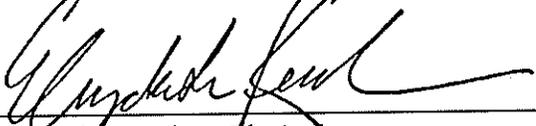
3. Marinette Marine Corp.'s position in these proceedings was both frivolous and groundless, and Petitioner is subject to a \$1,000.00 sanction pursuant to Wis. Stat. § 73.01(4)(am).

ORDER

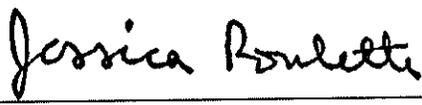
The Petitioner's Motion for Summary Judgment is denied. The Department's Motion for Summary Judgment is granted. Petitioner is ordered to pay a \$1,000.00 sanction to the Department for Petitioner's frivolous and groundless claim.

Dated at Madison, Wisconsin, this 18th day of February, 2026.

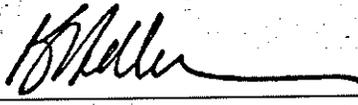
WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Chair



Jessica Roulette, Commissioner



Kenneth Adler, Commissioner