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APR 23 2026

Wisconsin Tax Appeals Commission

Drew Fox - Clerk

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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TEKTON, INC.,

DOCKET NO. 23-S-181

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**RULING AND ORDER**

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**JESSICA ROULETTE, COMMISSIONER:**

This case comes before the Commission for decision on Cross-Motions for Summary Judgment. The Petitioner, Tekton, Inc. ("Tekton"), appears by John Amash and Rick Najjar. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Mark Zimmer and Attorney Bridget Laurent. The parties filed a Joint Stipulation of Facts with six attached, stipulated exhibits. The Department has filed a Brief and Affidavit with an attached Exhibit Seven in support of its Motion, as well as a Response Brief and a Reply Brief. Petitioner has filed a Brief and Affidavit in support of its Motion for Summary Judgment, as well as a Response Brief, a Reply Brief, and an additional Affidavit. Finally, the Commission heard oral arguments on the Cross-Motions for Summary Judgment. For the reasons stated below, we grant the Department's Motion for Summary Judgment and deny Petitioner's Motion for Summary Judgment.

## STIPULATED FACTS

1. All facts relate to the Audit Period, October 1, 2018, through August 31, 2021, inclusive, unless otherwise noted. (Joint Stipulation of Facts ("JSOF"), introductory paragraph.)

2. Tekton is a corporation in the business of selling hand tools, was incorporated in the State of Michigan, and maintains headquarters in Grand Rapids, Michigan. (JSOF, ¶ 1.)

3. Tekton did not file Wisconsin sales and use tax returns during the Audit Period. (JSOF, ¶ 2.)

4. Tekton did not remit Wisconsin sales taxes or use taxes during the Audit Period. (JSOF, ¶ 3.)

5. Through its website, throughout the Audit Period, Tekton accepted orders from purchasers in any U.S. state and Canada, including Wisconsin. (JSOF, ¶ 14.)

6. Wisconsin resident retailers purchased products for resale by contacting Tekton in Grand Rapids, Michigan, by phone, email, or using other methods of data exchange. (JSOF, ¶ 15.)

7. When Wisconsin residents ordered products from Tekton during the Audit Period, Tekton shipped those goods into Wisconsin from its facility in Grand Rapids, Michigan, using a common carrier, such as UPS, FedEx, or the United States Postal Service. (JSOF, ¶ 16.)

8. Tekton had between 80 and 125 employees during the Audit Period. (JSOF, ¶ 17.)

9. Tekton was a privately owned Michigan corporation that did not have any ongoing operations, employees, real estate, or property based in Wisconsin during the Audit Period. Tekton's ongoing operations, employees, real estate, and property were all based in Michigan during the Audit Period. (JSOF, ¶ 18.)

10. During the Audit Period, Tekton engaged in substantial and non-isolated activities into Wisconsin by selling to Wisconsin residents and retailers within the meaning of the Wisconsin long-arm personal jurisdiction statute, Wis. Stat. § 801.05(1)(d). (JSOF, ¶ 19.)

11. Tekton did not direct any advertising aimed solely at Wisconsin residents during the Audit Period. (JSOF, ¶ 21.)

12. Tekton did not request any goods or services from the State of Wisconsin during the Audit Period. Tekton did not apply for or possess any license, permit, registration, or authorization issued by any government entity in Wisconsin during the Audit Period. Tekton did not commence any legal actions in Wisconsin during the Audit Period. (JSOF, ¶ 22.)

13. Tekton hired a Michigan subcontractor, Serv-U-Success, to perform in-store merchandising services in a number of states during the Audit Period, which work included setting or resetting Tekton products already in retailer inventory or shelves in a number of Meijer stores in Wisconsin. Tekton did not hire Serv-U-Success to perform these services exclusively in Wisconsin. (JSOF, ¶ 23.)

14. Tekton employees, representatives, or agents checked in physically on Wisconsin stores carrying Tekton products throughout the Audit Period for

approximately 5 days or fewer each year. Tekton employees had one meeting for approximately two hours in Janesville, Wisconsin, with a prospective multi-state retailer, Blain's Farm and Fleet (Blain's Supply, Inc.), that did not result in a business relationship. Blain's Farm and Fleet has retail locations in Iowa, Michigan, Illinois, and Wisconsin. The meeting was not intended to obtain Blain's Farm and Fleet's business in Wisconsin solely, but instead in all their locations. (JSOF, ¶ 24.)

15. During the Audit Period, Tekton held multiple federal trademark registrations, including for the mark "Tekton," for its goods and services. (JSOF, ¶ 25.)

16. For 2018, Tekton's total gross sales were approximately \$31,100,000.00. (JSOF, ¶ 12.)

17. For 2018, Tekton's sales to Wisconsin residents or companies were approximately \$580,000.00, which includes approximately \$29,000.00 in direct sales and \$551,000.00 for resale sold to Wisconsin retailers. (JSOF, ¶ 13.)

18. In the fourth quarter of 2018, Tekton spent \$9,501 on Tekton.com advertising for United States and Canada, which amount is equivalent to about 0.1% of Tekton's revenue for that period. (Tekton's Third Affidavit, filed December 8, 2025 ("Amash Aff."), ¶ 2a.)

19. For 2019, Tekton's total gross sales were approximately \$31,200,000.00. (JSOF, ¶ 12.)

20. For 2019, Tekton's sales to Wisconsin residents or companies were approximately \$400,000.00, which includes approximately \$73,000.00 in direct sales and \$327,000.00 for resale sold to Wisconsin retailers. (JSOF, ¶ 13.)

21. In 2019, Tekton spent \$10,567 on Tekton.com advertising for United States and Canada, which amount is equivalent to about 0.03% of Tekton's revenue for 2019. (Amash Aff., ¶ 2b.)

22. For 2020, Tekton's total gross sales were approximately \$41,200,000.00. (JSOF, ¶ 12.)

23. For 2020, Tekton's sales to Wisconsin residents or companies were approximately \$660,000.00, which includes approximately \$244,000.00 in direct sales and \$416,000.00 for resale sold to Wisconsin retailers. (JSOF, ¶ 13.)

24. In 2020, Tekton spent \$7,303 on Tekton.com advertising for United States and Canada, which amount is equivalent to about 0.02% of Tekton's revenue for 2020. (Amash Aff., ¶ 2c.)

25. For 2021, Tekton's total gross sales were approximately \$42,000,000.00. (JSOF, ¶ 12.)

26. For 2021, Tekton's sales to Wisconsin residents or companies were approximately \$640,000.00, which includes approximately \$423,000.00 in direct sales and \$217,000.00 for resale sold to Wisconsin retailers. (JSOF, ¶ 13.)

27. In 2021, Tekton spent \$12,841 on Tekton.com advertising for United States and Canada, which amount is equivalent to about 0.03% of Tekton's revenue for 2021. (Amash Aff., ¶ 2d.)

28. On or about September 1, 2021, Tekton began collecting and remitting Wisconsin sales and use tax for purchases made by Wisconsin residents, for periods beginning September 1, 2021. (JSOF, ¶ 4.)

29. On July 8, 2022, the Department issued a cover letter with an enclosed Nexus Questionnaire to Tekton. (JSOF, ¶ 5, Ex. 1.)

30. On August 22, 2022, the Department issued a follow-up letter to Tekton and enclosed an additional copy of the Nexus Questionnaire. (JSOF, ¶ 6, Ex. 2.)

31. On October 10, 2022, Tekton sent the Department a completed Nexus Questionnaire. (JSOF, ¶ 7, Ex. 3.)

32. On April 11, 2023, the Department issued a Notice of Estimated Tax Amount Due for the quarter ending December 31, 2018, in the amount of \$6,017.13, (JSOF, ¶ 8, Ex. 4, pp. 1 - 2.)

33. On April 11, 2023, the Department issued a Notice of Estimated Tax Amount Due for the quarter ending March 31, 2019, in the amount of \$5,889.90, (JSOF, ¶ 8, Ex. 4, pp. 3 - 4.)

34. On April 11, 2023, the Department issued a Notice of Estimated Tax Amount Due for the quarter ending June 30, 2019, in the amount of \$5,763.80, (JSOF, ¶ 8, Ex. 4, pp. 5 - 6.)

35. On April 11, 2023, the Department issued a Notice of Estimated Tax Amount Due for the quarter ending September 30, 2019, in the amount of \$5,617.70, (JSOF, ¶ 8, Ex. 4, pp. 7 - 8.)

36. On April 11, 2023, the Department issued a Notice of Estimated Tax Amount Due for the quarter ending December 31, 2019, in the amount of \$5,481.60, (JSOF, ¶ 8, Ex. 4, pp. 9 - 10.)

37. On April 11, 2023, the Department issued a Notice of Estimated Tax Amount Due for the quarter ending March 31, 2020, in the amount of \$5,348.46, (JSOF, ¶ 8, Ex. 4, pp. 11 - 12.)

38. On April 11, 2023, the Department issued a Notice of Estimated Tax Amount Due for the quarter ending June 30, 2020, in the amount of \$5,212.36, (JSOF, ¶ 8, Ex. 4, pp. 13 - 14.)

39. On April 11, 2023, the Department issued a Notice of Estimated Tax Amount Due for the quarter ending September 30, 2020, in the amount of \$5,073.30, (JSOF, ¶ 8, Ex. 4, pp. 15 - 16.)

40. On April 11, 2023, the Department issued a Notice of Estimated Tax Amount Due for the quarter ending December 31, 2020, in the amount of \$4,938.69, (JSOF, ¶ 8, Ex. 4, pp. 17 - 18.)

41. On April 11, 2023, the Department issued a Notice of Estimated Tax Amount Due for the quarter ending March 31, 2021, in the amount of \$4,808.50, (JSOF, ¶ 8, Ex. 4, pp. 19 - 20.)

42. On April 11, 2023, the Department issued a Notice of Estimated Tax Amount Due for the quarter ending June 30, 2021, in the amount of \$4,669.44, (JSOF, ¶ 8, Ex. 4, pp. 21 - 22.)

43. On April 11, 2023, the Department issued a Notice of Estimated Tax Amount Due for the month ending July 31, 2021, in the amount of \$1,555.51, (JSOF, ¶ 8, Ex. 4, pp. 23 - 24.)

44. On April 11, 2023, the Department issued a Notice of Estimated Tax Amount Due for the month ending August 31, 2021, in the amount of \$1,540.72, (JSOF, ¶ 8, Ex. 4, pp. 25 – 26.)

45. On June 9, 2023, Tekton sent a fifteen-page letter to the Department raising objections to April 11, 2023, Notices, which the Department accepted as a Petition for Redetermination for each of the April 11, 2023, Notices. (JSOF, ¶ 9, Ex. 5.)

46. On June 30, 2023, the Department issued a Notice of Action denying all of Tekton’s Petitions for Redetermination for the April 11, 2023, Notices. (JSOF, ¶ 10, Ex. 6.)

47. On September 5, 2023, the Commission accepted Tekton’s Petition for Review of the Department’s June 30, 2023, Notice of Action and assigned the matter Docket Number 23-S-181.<sup>1</sup> (Commission file.)

## INTRODUCTION

This case concerns the application of Wisconsin sales tax law to sales into Wisconsin made by a business based in Michigan, in the period of time immediately following the United States Supreme Court decision in *South Dakota v. Wayfair, Inc. et al.*, 138 S.Ct. 2080 (2018). The *Wayfair* decision examined the court’s prior decision in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) and made new holdings relating to issues central to this appeal.

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<sup>1</sup> The Commission file indicates that the Petition was sent to the Commission by certified mail in an envelope postmarked August 28, 2023, which means that the Commission considers the Petition to have been filed as of August 28, 2023. See Wis. Stat. § 73.01(5)(a).

Two statutory subsections and one administrative code section are central to the dispute in this appeal, and a brief sketch of the enactment and amendment of each follows.

The primary Wisconsin statute relating to sales by out of state businesses was changed during the Audit Period, with an effective date of December 16, 2018. The administrative code interpreting Wisconsin statutes relating to sales by out of state businesses made specific reference to the *Quill* decision as it related to nexus issues immediately prior to the Audit Period in this appeal. However, the relevant administrative code provision was superseded by an emergency rule which took effect on October 1, 2018, the first day of the Audit Period of this appeal. Ultimately, both the administrative code provision and emergency rule were repealed and removed from the administrative code, effective May 1, 2020, during the Audit Period of this appeal.<sup>2</sup>

### APPLICABLE LAW<sup>3</sup>

#### PERSONAL JURISDICTION

**Wis. Stat. § 801.05 Personal jurisdiction, grounds for generally.** A court of this state having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to s. 801.11 under any of the following circumstances: (1) LOCAL PRESENCE OR STATUS. In any action whether arising within or without this state, against a defendant who when the action is commenced:

...

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<sup>2</sup> The emergency rule was effective on October 1, 2018, and expired effective February 28, 2019. The previous version of Wis. Admin. Code TAX § 11.97 was then effective as of February 28, 2019, until its ultimate repeal and removal from the administrative code, effective May 1, 2020. See the explanatory chart at endnote i.

<sup>3</sup> The 2017-2018, 2019-2020, and 2021-2022 versions of the Wisconsin Statutes and the 2018 through 2022, inclusive, versions of the Wisconsin Administrative Code for the Department of Revenue are applicable to this appeal. The 2017-2018 language is set forth below, with a reference to endnote i's explanatory chart summarizing the applicable relevant sections throughout the Audit Period.

(d) is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise.

...

(9) TAXES OR ASSESSMENTS. In any action for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this state after July 1, 1960.

## PROCEDURAL STATUTE

**Wis. Stat. § 802.08 Summary judgment.**

...

(2) MOTION: . . . The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. . . .

## SUBSTANTIVE TAX STATUTES

**Wis. Stat. § 77.51 Definitions.** Except where the context requires otherwise, the definitions given in this section govern the construction of terms in this subchapter.

...

(13gm)<sup>4</sup>

...

(b)<sup>5</sup> If an out-of-state retailer's annual gross sales into this state exceed \$100,000 in the previous year or the retailer's annual number of separate sales transactions into this state is 200 or more in the previous year, the retailer shall register with the department and collect the taxes administered under s. 77.52 or 77.53 on sales sourced to this state under s. 77.522 for the entire current year.

...

(d)<sup>6</sup> All of the following apply for purposes of this subsection:

1. "Year" means the retailer's taxable year for federal income tax purposes.

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<sup>4</sup> This subsection took effect December 16, 2018.

<sup>5</sup> An explanatory chart is attached at endnote i, showing the statutory language during various date ranges of the Audit Period.

<sup>6</sup> An explanatory chart is attached at endnote i, showing the statutory language during various date ranges of the Audit Period.

2. The annual amounts described in this subsection include both taxable and nontaxable sales.

3. Each required periodic payment of a lease or license is a separate sales transaction.

4. Deposits made in advance of a sale are not sales transactions.

5. An out-of-state retailer's annual amounts include all sales into this state by the retailer on behalf of other persons and all sales into this state by another person on the retailer's behalf.

**Wis. Stat. § 77.52 Imposition of retail sales tax.**

(1)(a) For the privilege of selling, licensing, leasing or renting tangible personal property at retail a tax is imposed upon all retailers at the rate of 5 percent of the sales price from the sale, license, lease or rental of tangible personal property sold, licensed, leased or rented at retail in this state, as determined under s. 77.522.

...

(1b) All sales, licenses, leases, or rentals of tangible personal property or items, property, or goods under sub. (1)(b), (c), or (d) at retail in this state are subject to the tax imposed under sub. 1 unless an exemption in this subchapter applies.

**Wis. Stat. § 77.522 Sourcing.**

(1) GENERAL.

(a) In this section:

1. "Receive" means taking possession of tangible personal property or items or property under s. 77.52(1)(b) or (c); making first use of services, or taking possession or making first use of digital goods under s. 77.52(1)(d), whichever comes first. "Receive" does not include a shipping company taking possession of tangible personal property or items of property under s. 77.52(1)(b) or (c) on a purchaser's behalf.

...

(b) Except as provided in par. (c) and subs. (3), (4), and (5), the location of a sale is determined as follows:

1. If a purchaser receives the product at a seller's business location, the sale is sourced to that business location.

2. If a purchaser does not receive the product at a seller's business location, the sale is sourced to the location where the purchaser, or the purchaser's designated donee, receives the product, including the location indicated by the

instructions known to the seller for delivery to the purchaser or the purchaser's designated donee.

**Wis. Stat. § 77.53 Imposition of use tax.**

...

(3) Every retailer engaged in business in this state and making sales of tangible personal property, or items, property, or goods under s. 77.52(1)(b), (c), or (d), or taxable services that are sourced to this state under s. 77.522, shall, at the time of making the sales, collect the tax from the purchaser and give to the purchaser a receipt in the manner and form prescribed by the department.

**Wis. Stat. § 77.59 Deficiency and refund determinations.**

...

(9)(a) Except as provided in par. (b), if any person fails to file a return, the department shall make an estimate of the amount of the sales price of the person's sales, or, as the case may be, of the amount of the total purchase price of tangible personal property, or items, property, or goods under s. 77.52(1)(b), (c), or (d), or taxable service sold or purchased by the person, the sale by or the storage, use, or other consumption of which in this state is subject to sales or use tax. The estimate shall be made for the period in respect to which the person failed to make a return and shall be based upon any information which is in the department's possession or may come into its possession. Upon the basis of this estimate the department shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to 25 percent thereof. One or more such determinations may be made for one or for more than one period. When a business is discontinued a determination may be made at any time thereafter, within the periods specified in sub. (3), as to the liability arising out of that business.

## ADMINISTRATIVE CODE PROVISIONS

2018 Emergency Rule 1819:

SECTION 1. Tax 11.97 is repealed and recreated to read:

Tax 11.97<sup>7</sup> Out-of-state retailers.

(1) General. An out-of-state retailer that sells taxable products or services into Wisconsin is engaged in business in this state and shall register and collect Wisconsin sales or use tax if the retailer is subject to the state's jurisdiction, as limited by federal law. The United States Supreme Court has said that it will sustain a state tax if it applies to an activity with a substantial nexus with the taxing state, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services the state provides. Physical presence in the state is not necessary to create a substantial nexus.

...

(4) Nexus thresholds for small out-of-state retailers.

(a) An out-of-state retailer that sells taxable products or services into Wisconsin, but has no other activities described in s. 77.51(13g), Stats., shall register and collect Wisconsin sales or use tax if the retailer meets either of the following criteria in the previous year or current year:

1. The retailer's annual gross sales into Wisconsin exceed \$100,000.

2. The retailer's annual number of separate sales transactions into Wisconsin is 200 or more.

(b) For purposes of this subdivision, all of the following apply:

1. "Year" means the retailer's taxable year for federal income tax purposes.

2. The annual amounts include both taxable and nontaxable sales.

3. Each required periodic payment of a lease or license is a separate sales transaction.

4. Deposits made in advance are not sale transactions.

5. An out-of-state retailer's annual amounts include all sales into Wisconsin by:

a. The retailer on behalf of other persons.

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<sup>7</sup> The emergency rule was effective on October 1, 2018, and expired effective February 28, 2019. The previous version of Wis. Admin. Code TAX § 11.97 was then effective as of February 28, 2019, until its ultimate repeal and removal from the administrative code, effective May 1, 2020. See the explanatory chart at endnote i.

b. Another person on the retailer's behalf.

(c) If an out-of-state retailer's annual gross sales into Wisconsin exceeds \$100,000 in the previous year, or if the retailer's annual number of separate sales transactions into Wisconsin is 200 or more in the previous year, the retailer is required to register and collect Wisconsin sales and use tax for the entire current year.

...

(5) Registration. Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit, who makes sales for storage, use, or other consumption in this state, except as provided in sub. (3), shall apply for a use tax registration certificate.

...

SECTION 2. Effective Date. This rule shall take effect on October 1, 2018.

#### ANALYSIS

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 cross-filing of summary judgment motions citing undisputed facts leaves only questions of law to decide. *Healthcare Services Group, Inc. v. Wisconsin Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-086 (WTAC 2016).

The Department's assessments are presumed to be correct, and the burden is on the Petitioner to prove by clear and satisfactory evidence that the Department erred and in what respects. See *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rpt. (CCH) ¶ 202-401 (WTAC 1984).

As part of the parties' Joint Stipulation of Facts, Petitioner and Respondent stipulated that: "during the Audit Period, Tekton engaged in substantial and non-isolated

activities into Wisconsin by selling to Wisconsin residents and retailers within the meaning of the Wisconsin long-arm personal jurisdiction statute, Wis. Stat. § 801.05(1)(d).”<sup>8</sup> The parties have stipulated that the Commission has personal jurisdiction over Petitioner to decide this appeal.

Despite having stipulated to personal jurisdiction under Wisconsin’s long-arm jurisdiction statute, Petitioner has throughout this appeal continued to raise its objection to personal jurisdiction under Wis. Stat. § 801.05(9), as that subsection relates to Wis. Stat. §§ 77.51(13gm) and 77.52(1)(a) and (1b). Petitioner also argues that, by not stipulating that its activities constitute “purposeful availment” or are otherwise sufficient to meet the Due Process standard, it has preserved its objections to personal jurisdiction under the Due Process standard and Commerce Clause should there be an eventual appeal of the Commission’s ruling and order in this appeal.<sup>9</sup> The Commission will not opine as to whether the objection has been successfully preserved for the Circuit Court, since the Commission endeavors to decide the cases before it as precisely as possible, without unnecessary dicta.

In plain English, the core of Petitioner’s dispute with the Department in this appeal is the constitutionality of the Wisconsin statutes which require the collection and payment of sales and use taxes by a retailer selling tangible personal property in the year subsequent to which that retailer has made sales which can be sourced to Wisconsin in excess of \$100,000 aggregate sales in one year. The Commission is not empowered to

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<sup>8</sup> JSOF, ¶ 19.

<sup>9</sup> Petitioner’s Combined Motion for Summary Judgment and Brief in Support filed April 29, 2025 (“Petitioner’s Initial Brief”), p. 9.

determine the constitutionality of a Wisconsin statute on its face.<sup>10</sup> Petitioner has provided no evidence that the statutes at issue are unconstitutional as they have been applied to Petitioner. The Commission has developed the record for this appeal in as complete a manner as is practicable, so that a court of competent jurisdiction may consider the constitutional arguments put forth by Petitioner, if either party chooses to appeal its ruling and order in this matter.

Having determined that the Petitioner has stipulated to personal jurisdiction, and having determined that Petitioner has supplied no evidence or argument that the application of the Wisconsin statutes to Petitioner is unconstitutional in that application, the Commission turns to the question of whether the Petitioner has provided clear and satisfactory evidence that the Department erred in its determinations, and, if so, in what respects it has erred.

Petitioner argues that it is a Due Process violation for the Department to “make retroactive estimates that Tekton must pay out of its own pocket based on taxes that could have been collected from 2018 to 2021.”<sup>11</sup> The arguments put forth to support this argument all pertain to the facial constitutionality of Wis. Stat. § 77.59, which the Commission is not empowered to determine. The taxes assessed against Petitioner have not been assessed retroactively as that word is commonly used. The taxes were due, the Petitioner failed to collect and pay the taxes to the Department, and the Department seeks

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<sup>10</sup> *Russell Neumann v. Wisconsin Dep't. of Revenue*, TAC Docket No. I-6817 (June 30, 1980), citing *Kurz & Root Co. v. Wisconsin Dep't. of Revenue*, TAC Docket No. I-6297 (April 3, 1980) and *N. Jean Dorman v. Wisconsin Dep't. of Revenue*, 10 WTAC 111 and 112 (1976).

<sup>11</sup> Petitioner's Initial Brief, p. 10.

to collect the taxes at a time subsequent to the due date. This series of events does not transform the taxes into retroactive taxes. Were the Commission to construe the Department's action as an attempt to retroactively impose taxes on Petitioner, the Department's actions to collect unpaid taxes would all similarly be an imposition of retroactive taxes. The Commission declines to so construe the Department's actions in this appeal.

Petitioner makes a final argument that it is fundamentally unfair for a small, family-owned company to be presented with a bill for taxes which it did not collect from the purchaser at the time of each sale, and which Tekton would, should it pay the bill, be required to pay from its own pocket. In the final year of the audit period, Tekton had \$42 million in gross sales, of which approximately \$640,000 derived from sales sourced to Wisconsin. Annual sales of \$42 million, in addition to a minimum of 80 employees, place Tekton far outside the definition of "small business" set forth in Wis. Stat. § 227.485(2)(c).<sup>12</sup>

The Department does not have discretion to waive the sales tax amounts due under Wisconsin law. When the Wisconsin Legislature used the word "shall" in Wis. Stat. § 77.59(9)(a), it made it mandatory for the Department, where a person fails to file a return, to estimate the amount of sales subject to Wisconsin sales or use tax and then compute and determine the amount to be paid to the state, adding to the sum due a penalty equal to 25 percent of the amount due. The Commission has no authority to make

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<sup>12</sup> Wis. Stat. § 227.485(2)(c) provides: "'Small business' means a business entity, including its affiliates, which is independently owned and operated, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000."

orders based in equity and finds no basis to determine that the Department has made an error in applying Wis. Stat. § 77.59 to Petitioner's Wisconsin sales during the Audit Period.

Finally, Petitioner has not provided clear and satisfactory evidence that the specific determination of the Department in any of the Notices of Estimated Tax Due is in error. This paucity of evidence means that the Petitioner has not met its evidentiary burden and further requires the Commission to sustain the Department's determinations for the Audit Period.

#### CONCLUSIONS OF LAW

1. The Petitioner filed a timely Petition for Review in this matter, and the Commission has jurisdiction to hear this appeal.
2. The Petitioner failed to meet its burden of proof with clear and satisfactory evidence to overcome the presumption of correctness of the Department's assessment.
3. Wis. Stat. §§ 801.05(9), 77.51(13gm), 77.52(1)(a), 77.52(1b), and 77.59 are constitutional as they have been applied to Petitioner during the Audit Period.

**ORDER**

Based on the foregoing, the Commission orders as follows:

1. The Petitioner’s Motion for Summary Judgment is denied.
2. The Department’s Motion for Summary Judgment is granted,

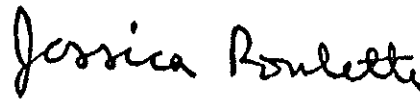
and its assessment is upheld.

Dated in Madison, Wisconsin, this 23<sup>rd</sup> day of April, 2026.

**WISCONSIN TAX APPEALS COMMISSION**



Elizabeth Kessler, Chair



Jessica Roulette, Commissioner



Kenneth P. Adler, Commissioner

**ATTACHMENT: NOTICE OF APPEAL INFORMATION**

Effective date range	10/1/18 - 12/15/18
Text of Wis. Stat. § 77.51(13gm)	Did not exist.
Text of Wis. Admin. Code § TAX 11.97	Tax 11.97 Out-of-state retailers. (1) General. An out-of-state retailer that sells taxable products or services into Wisconsin is engaged in business in this state and shall register and collect Wisconsin sales or use tax if the retailer is subject to the state’s jurisdiction, as limited by federal law. The United States Supreme Court has said that it will sustain a state tax if it applies to

	<p>an activity with a substantial nexus with the taxing state, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services the state provides. Physical presence in the state is not necessary to create a substantial nexus.</p> <p>...</p> <p>(4) Nexus thresholds for small out-of-state retailers.</p> <p>(a) An out-of-state retailer that sells taxable products or services into Wisconsin, but has no other activities described in s. 77.51(13g), Stats., shall register and collect Wisconsin sales or use tax if the retailer meets either of the following criteria in the previous year or current year:</p> <ol style="list-style-type: none"> <li>1. The retailer's annual gross sales into Wisconsin exceed \$100,000.</li> <li>2. The retailer's annual number of separate sales transactions into Wisconsin is 200 or more.</li> </ol> <p>(b) For purposes of this subdivision, all of the following apply:</p> <ol style="list-style-type: none"> <li>1. "Year" means the retailer's taxable year for federal income tax purposes.</li> <li>2. The annual amounts include both taxable and nontaxable sales.</li> <li>3. Each required periodic payment of a lease or license is a separate sales transaction.</li> <li>4. Deposits made in advance are not sale transactions.</li> <li>5. An out-of-state retailer's annual amounts include all sales into Wisconsin by: <ol style="list-style-type: none"> <li>a. The retailer on behalf of other persons.</li> <li>b. Another person on the retailer's behalf.</li> </ol> </li> </ol> <p>(c) If an out-of-state retailer's annual gross sales into Wisconsin exceeds \$100,000 in the previous year, or if the retailer's annual number of separate sales transactions into Wisconsin is 200 or more in the previous year, the retailer is required to register and collect Wisconsin sales and use tax for the entire current year.</p> <p>...</p> <p>(5) Registration. Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit, who makes sales for storage, use, or other consumption in this state, except as provided in sub. (3), shall apply for a use tax registration certificate.</p> <p>...</p>
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Effective date range	12/16/18 - 2/27/19
Text of Wis. Stat. § 77.51(13gm)	... (b) If an out-of-state retailer's annual gross sales into this state

	<p>exceed \$100,000 in the previous year or the retailer's annual number of separate sales transactions into this state is 200 or more in the previous year, the retailer shall register with the department and collect the taxes administered under s. 77.52 or 77.53 on sales sourced to this state under s. 77.522 for the entire current year.</p> <p>...</p> <p>(d) All of the following apply for purposes of this subsection:</p> <ol style="list-style-type: none"> <li>1. "Year" means the retailer's taxable year for federal income tax purposes.</li> <li>2. The annual amounts described in this subsection include both taxable and nontaxable sales.</li> <li>3. Each required periodic payment of a lease or license is a separate sales transaction.</li> <li>4. Deposits made in advance of a sale are not sales transactions.</li> <li>5. An out-of-state retailer's annual amounts include all sales into this state by the retailer on behalf of other persons and all sales into this state by another person on the retailer's behalf.</li> </ol>
<p>Text of Wis. Admin. Code § TAX 11.97</p>	<p>Tax 11.97 Out-of-state retailers.</p> <p>(1) General. An out-of-state retailer that sells taxable products or services into Wisconsin is engaged in business in this state and shall register and collect Wisconsin sales or use tax if the retailer is subject to the state's jurisdiction, as limited by federal law. The United States Supreme Court has said that it will sustain a state tax if it applies to an activity with a substantial nexus with the taxing state, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services the state provides. Physical presence in the state is not necessary to create a substantial nexus.</p> <p>...</p> <p>(4) Nexus thresholds for small out-of-state retailers.</p> <p>(a) An out-of-state retailer that sells taxable products or services into Wisconsin, but has no other activities described in s. 77.51(13g), Stats., shall register and collect Wisconsin sales or use tax if the retailer meets either of the following criteria in the previous year or current year:</p> <ol style="list-style-type: none"> <li>1. The retailer's annual gross sales into Wisconsin exceed \$100,000.</li> <li>2. The retailer's annual number of separate sales transactions into Wisconsin is 200 or more.</li> </ol> <p>(b) For purposes of this subdivision, all of the following apply:</p> <ol style="list-style-type: none"> <li>1. "Year" means the retailer's taxable year for federal income tax purposes.</li> </ol>

	<p>2. The annual amounts include both taxable and nontaxable sales.</p> <p>3. Each required periodic payment of a lease or license is a separate sales transaction.</p> <p>4. Deposits made in advance are not sale transactions.</p> <p>5. An out-of-state retailer's annual amounts include all sales into Wisconsin by:</p> <p style="padding-left: 40px;">a. The retailer on behalf of other persons.</p> <p style="padding-left: 40px;">b. Another person on the retailer's behalf.</p> <p>(c) If an out-of-state retailer's annual gross sales into Wisconsin exceeds \$100,000 in the previous year, or if the retailer's annual number of separate sales transactions into Wisconsin is 200 or more in the previous year, the retailer is required to register and collect Wisconsin sales and use tax for the entire current year.</p> <p>...</p> <p>(5) Registration. Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit, who makes sales for storage, use, or other consumption in this state, except as provided in sub. (3), shall apply for a use tax registration certificate.</p>
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Effective date range	2/28/19 - 2/19/21
Text of Wis. Stat. § 77.51(13gm)	<p>...</p> <p>(b) If an out-of-state retailer's annual gross sales into this state exceed \$100,000 in the previous year or the retailer's annual number of separate sales transactions into this state is 200 or more in the previous year, the retailer shall register with the department and collect the taxes administered under s. 77.52 or 77.53 on sales sourced to this state under s. 77.522 for the entire current year.</p> <p>...</p> <p>(d) All of the following apply for purposes of this subsection:</p> <p style="padding-left: 40px;">1. "Year" means the retailer's taxable year for federal income tax purposes.</p> <p style="padding-left: 40px;">2. The annual amounts described in this subsection include both taxable and nontaxable sales.</p> <p style="padding-left: 40px;">3. Each required periodic payment of a lease or license is a separate sales transaction.</p> <p style="padding-left: 40px;">4. Deposits made in advance of a sale are not sales transactions.</p> <p style="padding-left: 40px;">5. An out-of-state retailer's annual amounts include all sales into this state by the retailer on behalf of other persons</p>

	and all sales into this state by another person on the retailer's behalf.
Text of Wis. Admin. Code § TAX 11.97 (Superseded by creation of Wis. Stat. § 77.51(13gm))	<p>Tax 11.97 "Engaged in business" in Wisconsin.</p> <p>(1) GENERAL. (a) Out-of-state retailers shall register and collect a state's use tax if the retailer is subject to the state's jurisdiction. The United States supreme court has resolved certain jurisdictional questions by interpreting the due process clause of the 14<sup>th</sup> Amendment to the U.S. Constitution. The court has said due process requires that there be some definite link, some minimum connection between the state and the person, property, or transaction it seeks to tax. If this minimum connection, often called "nexus," is established, the out-of-state seller shall register and collect the state's use tax.</p> <p>Note: Retailers having nexus in Wisconsin for use tax purposes do not necessarily have nexus in Wisconsin for franchise or income tax purposes. Refer to s. Tax 2.82 for nexus standards with respect to franchise and income taxes.</p> <p>(b) Some United States supreme court decisions concerning nexus include:</p> <ol style="list-style-type: none"> <li>1. Nelson vs. Sears Roebuck &amp; Co., 312 U.S. 359 (1941).</li> <li>2. Nelson vs. Montgomery Ward &amp; Co., 312 U.S. 373 (1941).</li> <li>3. General Trading Co. vs. State Tax Commission of the State of Iowa, 322 U.S. 335 (1944).</li> <li>4. Miller Bros. Co. vs. Maryland, 347 U.S. 340 (1954).</li> <li>5. Scripto, Inc. vs. Carson, 362 U.S. 207 (1960).</li> <li>6. National Bellas Hess, Inc. vs. Illinois Department of Revenue, 386 U.S. 753 (1967).</li> <li>7. National Geographic Society vs. California Board of Equalization, 430 U.S. 551 (1977).</li> <li>8. Quill Corp. vs. North Dakota, 504 U.S. 298 (1992).</li> </ol> <p>(2) STATUTES. (a) Section 77.51 (13) (k), Stats., defines "retailer" to include any person deriving rentals from a lease of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., sourced to this state as provided under s. 77.522, Stats., and s. 77.51 (14) (j), Stats., defines a lease as a continuing sale.</p> <p>(b) Section 77.51 (13g), Stats., defines the term "retailer engaged in business in this state" and s. 77.51 (13h), Stats., provides an exception for foreign publishers.</p> <p>(c) Under s. 77.53 (5), Stats., the tax required to be collected by a use tax registrant is a debt owed by the registrant to this state, and s. 77.53 (7), Stats., provides the tax is to be stated separately from the list price of the goods sold.</p>

(3) ACTIVITIES WHICH IN THEMSELVES CREATE WISCONSIN "NEXUS." Unless otherwise limited by federal statute, a retailer engaged in business in Wisconsin who shall register includes the following:

(a) Any retailer owning any real property in this state.

(b) Any retailer leasing or renting out any tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., sourced to this state under s. 77.522, Stats.

(c) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, agent, or other person, an office, place of distribution, sales or sample room, or place, warehouse, or storage place, or other place of business in this state.

(d) Any retailer having any representative, including a manufacturer's representative, agent, salesperson, canvasser, or solicitor operating in Wisconsin under the authority of the retailer or its

subsidiary for the purpose of selling, delivering, or taking orders for any tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services.

(e) Any person servicing, repairing, or installing equipment or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., in Wisconsin.

(f) Any person delivering property, items, or goods into this state in company operated vehicles.

(g) Any person performing construction activities in this state.

(h) Any retailer selling tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services for storage, use, or other consumption in Wisconsin, unless otherwise limited by federal law.

(i) Any person who has an affiliate in Wisconsin, if the person is related to the affiliate and if the affiliate uses facilities or employees in Wisconsin to advertise, promote, or facilitate the establishment of or market for sales of items by the related person to purchasers in Wisconsin or for providing services to the related person's purchasers in Wisconsin, including accepting returns of

purchases or resolving customer complaints. For purposes of this paragraph, two persons are "related" if any of the following apply:

1. One person, or each person, is a corporation and one person and any person related to that person in a manner that would require a stock attribution from the corporation to the person or

from the person to the corporation under section 318 of the Internal Revenue Code owns directly, indirectly, beneficially, or constructively at least 50% of the corporation's outstanding stock value.

2. One person, or each person, is a partnership, estate, or trust and any partner or beneficiary; and the partnership, estate, or trust and its partners or beneficiaries; own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the profits, capital, stock, or value of the other person or both persons.

3. An individual stockholder and the members of the stockholder's family, as defined in section 318 of the Internal Revenue Code, owns directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of both persons' outstanding stock value.

**(4) ACTIVITIES WHICH IN THEMSELVES DO NOT CREATE "NEXUS."**

Activities which, in themselves, do not create nexus in this state, include:

(a) Advertising in newspapers published in or outside this state.

(b) Sending catalogues into this state from an out-of-state location if subsequent orders are shipped either by mail or common carrier to Wisconsin consumers.

(c) Receiving mail or telephone orders outside this state from consumers located in Wisconsin if such orders are shipped either by mail or common carrier into Wisconsin.

(d) Making cash or credit sales over-the-counter at an out-of-state location to Wisconsin consumers, when the goods are shipped by mail or common carrier by the retailer into this state,

or when possession of the goods is taken at the out-of-state location by the consumer.

(e) A foreign corporation obtaining a certificate of authority from the Wisconsin secretary of state to transact business in Wisconsin.

...

(6) REGISTRATION. Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit who makes sales for storage, use, or other consumption in this state, except as provided in sub. (5), shall apply for a use tax registration certificate. The registration form is titled "Application for Business Tax Registration," form BTR-101.

Note: Form BTR-101 may be obtained from any department of revenue office, or by writing or calling Wisconsin Department of

	<p>Revenue, P.O. Box 8902, Madison, WI 53708-8902, telephone (608) 266-2776.</p> <p>Note: Refer to s. Tax 11.002 for a description of use tax registration certificate requirements, how to apply for a use tax registration certificate and the 15-day time period within which the department is required to act on certificate applications.</p>
Effective date range	2/20/21 - 8/30/21
Text of Wis. Stat. § 77.51(13gm)	<p>(b) If an out-of-state retailer's annual gross sales into this state exceed \$100,000 in the previous calendar year, the retailer shall register with the department and collect the taxes administered under s. 77.52 or 77.53 on sales sourced to this state under s. 77.522 for the entire current calendar year.</p> <p>...</p> <p>(d) All of the following apply for purposes of this subsection:</p> <p>2. "Gross sales" includes both taxable and nontaxable sales.</p> <p>5. An out-of-state retailer's annual gross sales include all sales into this state by the retailer on behalf of other persons and all sales into this state by another person on the retailer's behalf.</p>
Text of Wis. Admin. Code § TAX 11.97	Did not exist.

WISCONSIN TAX APPEALS COMMISSION  
101 E Wilson St, 5<sup>th</sup> Floor  
Madison, Wisconsin 53703

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.