

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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AMERITECH PUBLISHING, INC.(P-II),

DOCKET NO. 01-I-227(P-II)

Petitioner,

vs.

**RULING AND ORDER  
ON MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT (PHASE II)**

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**DAVID C. SWANSON, COMMISSIONER:**

This matter comes before the Commission on a Stipulation of Facts filed by the parties on November 1, 2005 (the "Stipulation" or "stipulated facts"). The Commission divided the issues to be decided in this matter into three phases and issued its first decision in its Ruling and Order dated August 22, 2006 (the "Phase I Ruling"). On April 20, 2007, petitioner, Ameritech Publishing, Inc. ("petitioner" or "API"), filed a Motion for Partial Summary Judgment on the second issue to be decided in this matter (the "Phase II Motion"). Attorneys Margaret M. Derus and Kristina E. Somers of Reinhart Boerner Van Deuren S.C. represent petitioner and have filed a notice of motion, motion, brief with appendix, Affidavit of Michael J. Barry dated January 13, 2006 (the "Barry Affidavit"),<sup>1</sup> and reply brief in support of the Phase II Motion. Attorney Mark S. Zimmer represents respondent, the Wisconsin Department of Revenue (the "Department" or "respondent") and has filed a brief in opposition to the Phase II Motion.

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<sup>1</sup> The Barry Affidavit is admitted into evidence and made a part of the record in this case.

In this Ruling and Order (the “Phase II Ruling”), the Commission, acting pursuant to Wis. Stat. § 73.01(4)(em)2, decides the second issue raised in this matter. Having considered the stipulated facts, the parties’ briefs, affidavit and exhibits in support of and in opposition to the motion, the Commission finds, concludes, rules, and orders as follows:

### FINDINGS OF FACT

Paragraphs 1 through 41 of these findings of fact recite stipulated facts, including those previously adopted by the Commission in its Phase I Ruling.<sup>2</sup> Additional findings of facts for this Phase II Ruling are included in ¶¶ 42 through 44, below.

1. API is a Delaware corporation, with its principal place of business for the years at issue (1994-1997, inclusive, the “years at issue” or “period at issue”)<sup>3</sup> in Troy, Michigan.

2. During the period at issue, API was engaged in business both within and outside of the State of Wisconsin, and, pursuant to Wis. Stat. § 71.25(5), was subject to the income and franchise tax and allocation and apportionment provisions of Chapter 71 of the Wisconsin Statutes. API had offices in Michigan, Indiana, Ohio and Wisconsin, and was subject to taxation in those states. During 1997, API also had an office in Illinois.

3. API timely filed a Form 4 Wisconsin Corporation Franchise/Income Tax Return for each of the taxable years ending December 31, 1994

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<sup>2</sup> As stated in the Phase I Ruling, the Commission has made certain nonsubstantive changes to the stipulated facts included herein.

<sup>3</sup> Unless stated otherwise, all facts relate to the years at issue, 1994-1997.

through December 31, 1996, inclusive. Those original returns were filed using an apportionment method that sourced sales revenue based on the geographic distribution of Yellow Pages directories. This was the same apportionment method API had utilized in prior years.

4. On or about December 19, 1998, and within the time allowed under Wis. Stat. § 71.75, API filed a Form 4X Amended Wisconsin Corporation Franchise/Income Tax Return for each of the taxable years ended December 31, 1994 through December 31, 1996, inclusive.

5. API's basis for filing amended returns was to amend the computation of the sales factor of the apportionment formula. API filed the 1994-1996 amended returns using an apportionment method that sourced receipts from the sale of advertising services based on the cost of performing those services, under Wis. Stat. § 71.25(9)(d) ("cost of performance method").

6. API timely filed a Form 4 Wisconsin Corporation Franchise/Income Tax Return for the taxable year ended December 31, 1997. API used the cost of performance method in this return to apportion its income from the sale of advertising services.

7. The Department timely issued a Notice of Field Audit Action, dated December 13, 2000, notifying API of a denial in full of its claims for refund of franchise taxes and assessing additional franchise taxes for the years at issue.

8. In the Notice of Field Audit Action, the Department denied API's use of the cost of performance method in determining API's Wisconsin income for the years at issue.

9. By letter dated February 5, 2001, API timely filed a petition for redetermination of the Field Audit Action with the Department.

10. By Notice dated November 2, 2001, the Department denied the petition for redetermination, and API timely filed a petition for review with the Commission on December 27, 2001.

11. During the years at issue, API solicited advertisements from subscribers and businesses for placement of advertising in telephone directories. It offered a variety of advertising services to be included in Yellow Pages, White Pages, and Internet Yellow Pages (*i.e.*, [www.SMARTpages.com](http://www.SMARTpages.com)) directories (collectively, “directories”).

12. On its original and amended Federal and Wisconsin corporation income tax returns, API classified its business under the Standard Industrial Classification Manual of 1987 as industry number 7310, Business Services: Advertising.

13. During the years at issue, API had sales offices to solicit local advertising in Indiana, Michigan, Ohio and Wisconsin. During 1997, API also had a sales office in Illinois for national accounts. Its Wisconsin sales offices were located in Appleton, Brookfield, Eau Claire, Green Bay and Madison.

14. During the years at issue, the API sales representative at API's Wisconsin locations solicited advertising orders from current and prospective customers of API. They solicited current advertisers to either renew an existing advertisement or to purchase additional or expanded advertisements. These solicitations were performed in person, by telephone and/or through written correspondence. During the years at issue, API also had sales representatives in its call center operations in other states. These

representatives were generally responsible for soliciting current advertisers to renew or expand their advertisements. These call center solicitations were made by telephone communications.

15. During the years 1994-1996, API's only national account sales office was in Troy, Michigan. During 1997, API had national account sales offices in Troy, Michigan and Chicago, Illinois. API solicited national advertising and consummated advertising service agreements through its national sales offices in Michigan and Illinois. The national sales offices solicited national advertisements from organizations that had operations throughout the United States, including Wisconsin.

16. During the years at issue, API had a national account order office in Brookfield, Wisconsin. This office was responsible for receiving and verifying the accuracy of orders and billing for national accounts.

17. During the years at issue, API had production support centers in Michigan and Ohio for receiving orders, billing and verifying the accuracy of local advertisements and accounts.

18. During the years at issue, API had a graphics center in Michigan that performed the labor for the layout and pagination of directories.

19. As part of its advertising service, API entered into agreements with its customers to provide advertising and listings to be inserted in specified directories. API's customers did not purchase space and had no right to determine placement of their ads on any given page of a directory (except that customers could purchase space specifically designated for covers). A sample copy of an API advertising order is attached to and incorporated into the Stipulation as Exhibit L thereto (herein, the "API

advertising order”).

20. Yellow Pages directories are designed to provide access to information about the advertisers contained therein. Yellow Pages advertising consists of category-based advertising in many formats (such as display, leader ads, and coupons) and image and reach advertising (such as covers, spines, and tabs).

21. White Pages advertising primarily consists of enhancements to telephone listings with bold or feature type or by adding a customer’s logo.

22. Online advertising consists of Internet Yellow Pages for business advertising in various formats.

23. API generated advertising revenue generally in two ways: (a) local advertising and (b) national account advertising. Local advertising consisted of local accounts for business generally within Wisconsin. Such advertising was solicited by sales staff located in Indiana, Michigan, Ohio and Wisconsin. National account advertising consisted of advertising for businesses with locations in Wisconsin and at least several other states. During 1994-1996, national advertising activities by API were conducted out of its Michigan location, and, during 1997, out of its Michigan and Illinois locations, either through API’s employees or Certified Marketing Representatives (“CMR’s”), who are independent contractors who place the advertising on behalf of the advertisers.

24. API estimates that the percentage of its revenues derived from each general revenue source was as follows during the years at issue:

	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
Yellow Pages Advertising	89.86%	88.66%	88.71%	91.90%
White Pages Advertising	3.06%	4.39%	5.69%	5.64%
Interest and Other Financial Revenue	7.09%	6.94%	5.60%	2.46%
Total	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>

25. The revenue received by API from its advertising customers was generated by API sales representatives (either employees or independent contractors) who were responsible for contacting customers for placement of directory advertising for upcoming directory issues.

26. The advertising revenues received by API from advertisers in the Yellow Pages directories were based in part on the circulation of the Yellow Pages directories to telephone subscribers in Wisconsin.

27. Wisconsin Bell, Inc. (trade name Ameritech Wisconsin, and referred to herein as "WBI"), provides telecommunications services to its customer subscribers in Wisconsin. Wisconsin Administrative Code § PSC 165.055 requires WBI to provide a White Pages directory to subscribers as part of its telecommunications services. WBI's tariffs also provide for a primary listing in the White Pages as part of the telephone service at no additional charge to the subscriber.

28. A White Pages directory is an alphabetical list of customers, users, and others for whom directory listings are provided. According to WBI's tariffs filed

with the Public Service Commission of Wisconsin, White Pages directories are designed solely for the purpose of informing calling parties of the telephone numbers of customers and others listed therein.

29. A Yellow Pages directory is an alphabetically arranged listing of businesses that offer products and services to the general public, and advertising is placed within each product and service listing by advertisers who offer that product or service. The Yellow Pages directory includes various types of advertising formats including bold and/or contrasting color typeset, display ads, coupons, and so forth.

30. Yellow Pages and White Pages directories (collectively “directories”) are updated annually, rendering the prior edition obsolete. Internet Yellow Pages are updated periodically.

31. Directories are distributed free of charge to WBI subscribers and other Wisconsin residents and businesses in the directory coverage area. Except for certain directories in the Milwaukee area, all of the Wisconsin directories distributed were “integrated” (*i.e.*, bound together as a single volume).

32. A small number of directories are purchased by individuals or businesses that are generally located outside of the directory coverage area. During 1995-1997, API may have sold a small number of directories to other Wisconsin purchasers.

33. Substantially all of the directories for the Wisconsin directory coverage area were distributed in the state of Wisconsin.

34. API entered into agreements with WBI related to directory services (the “WBI agreements”). In the WBI agreements, API agreed to publish and deliver both



White Pages and Yellow Pages directories on behalf of WBI.

35. As part of the WBI agreements, WBI granted API the right to solicit advertising in Yellow Pages directories. For this exclusive right, API paid an annual royalty fee to WBI.

36. API did not itself print or manufacture telephone directories during the years at issue.

37. API entered into an agreement with R.R. Donnelly & Sons Company on behalf of WBI, to print and bind telephone directories (the "Donnelly Agreement"). A copy of the Donnelly Agreement is attached to and incorporated into the Stipulation as Exhibit S thereto.

38. API entered into agreements with Product Development Corporation ("PDC") to distribute and deliver telephone directories. These agreements are attached and incorporated into the Stipulation as Exhibits M and N thereto (collectively herein, the "PDC Agreements").

39. For the years at issue, API represents that it incurred the following categories of costs outside of Wisconsin in generating advertising revenues: (a) national sales commissions paid to CMR's; (b) compensation including benefits paid to employees for services performed outside of Wisconsin; (c) other selling costs; (d) production costs paid to R. R. Donnelly & Sons Company pursuant to the Donnelly Agreement; (e) the cost of distribution and delivery paid to PDC pursuant to the PDC Agreements; and (f) other direct costs.

40. For the years at issue, API represents that it incurred the following categories of costs within Wisconsin in generating advertising revenues: (a)

compensation including benefits paid to employees for services performed in Wisconsin; (b) other selling costs; (c) certain costs of distribution and delivery of directories in Wisconsin; and (d) other direct costs.

41. Department employees discussed issues related to this matter via internal Department correspondence, including their varying opinions regarding the proper treatment of the income at issue under applicable statutes. At certain times, some Department personnel agreed with API's interpretation of Wis. Stat. § 71.25. (Stip., Exhibits T through DD.)<sup>4</sup>

42. During the period at issue, Michael J. Barry was API's Assistant Treasurer and Director of Competitive Strategy. (Barry Aff., ¶ 3.)

43. The services of API's sales representatives, CMR's, graphics center and production support centers are a significant component of API's costs and are, therefore, reflected in the monthly advertising fees charged to advertising customers. (Barry Aff., ¶ 9.)

44. API's charges for its advertising services are based on the specifics of the marketplace and are not based solely on the population of the directory's market area. Within a given directory, various types of advertisements and features carry varying prices; however, there are no pricing differences between the headings. (Barry Aff., ¶ 10.)

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<sup>4</sup> The Commission admits these exhibits into evidence and makes them a part of the record in this case, but finds that they provide little assistance in resolving the legal question at hand.

## APPLICABLE WISCONSIN STATUTES<sup>5</sup>

**71.25 Situs of income; allocation and apportionment.** For purposes of determining the situs of income under this section:

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**(5) Corporations engaged in business both within and without the state.** (a) Apportionable income. Except as provided in sub. (6), corporations engaged in business both within and without this state are subject to apportionment. . . . Apportionable income includes all income or loss of corporations, other than nonapportionable income as specified in par. (b), including, but not limited to, income, gain or loss from the following sources:

1. Sale of inventory.

\* \* \*

4. Commissions.

5. Sale of real property or tangible personal property used in the production of business income.

\* \* \*

20. Personal services performed by employees of the corporation.

\* \* \*

**(6) Allocation and separate accounting and apportionment formula.** Corporations engaged in business within and without the state shall be taxed only on such income as is derived from business transacted and property located within the state. The amount of such income attributable to Wisconsin may be determined by an allocation and separate accounting thereof, when the business of such corporation within the state is not an integral part of a unitary business, but the department of revenue may permit an allocation and separate accounting in any case in which it is satisfied that the use of such method will properly reflect the income taxable by this state. In all cases in which allocation and separate accounting is not permissible, the determination shall be made in the following manner: for all businesses except financial organizations, telecommunications companies, pipeline companies, public utilities, railroads, sleeping car companies, car line companies and corporations or associations that are subject to a tax on unrelated business income under s. 71.26(1)(a) there shall first be deducted from the total net income of the taxpayer the part thereof (less

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<sup>5</sup> All references herein to the Wisconsin Statutes are to the versions in effect during the years at issue. *See also*, Wis. Admin. Code § Tax 2.39(6).

related expenses, if any) that follows the situs of the property or the residence of the recipient. The remaining net income shall be apportioned to Wisconsin by use of an apportionment fraction composed of a sales factor under sub. (9) representing 50% of the fraction, a property factor under sub. (7) representing 25% of the fraction and a payroll factor under sub. (8) representing 25% of the fraction.

\* \* \*

**(9) Sales factor.** For purposes of sub. (5):

(a) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period. For sales of tangible personal property, the numerator of the sales factor is the sales of the taxpayer during the tax period under par.

(b) 1. and 2. plus 50% of the sales of the taxpayer during the tax period under pars. (b) 2m. and 3. and (c).

\* \* \*

(d) Sales, other than sales of tangible personal property, are in this state if the income-producing activity is performed in this state. If the income-producing activity is performed both in and outside this state the sales shall be divided between those states having jurisdiction to tax such business in proportion to the direct costs of performance incurred in each such state in rendering this service. Services performed in states which do not have jurisdiction to tax the business shall be deemed to have been performed in the state to which compensation is allocated by sub. (8).

(e) Sales defined. In this subsection, "sales" includes, but is not limited to, the following items related to the production of business income:

1. Gross receipts from the sale of inventory.

\* \* \*

5. Gross receipts from personal and other services.

### ISSUE INVOLVED

Does API's performance of directory advertising services for advertisements placed in Wisconsin telephone directories constitute the performance of income-producing activities in Wisconsin?

## OPINION

A state may only tax that part of a corporation's income that is fairly attributable to its income-producing activities in the state, thus requiring the apportionment or allocation of income among the states where a multistate business operates. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977). There is no dispute that API operates within and without Wisconsin, and that it is subject to apportionment.

For corporations that engaged in business both inside and outside of Wisconsin during the years at issue, Wis. Stat. § 71.25(6) contained a three-factor apportionment formula related to the taxpayer's sales, payroll, and property. Each of these factors is a component of the formula (50% sales, 25% payroll, and 25% property) and is expressed as a fraction. The numerator of each fraction is the Wisconsin portion of the value, while the denominator represents the total value in all jurisdictions. The resulting percentage represents the taxing percentage on the taxpayer's business activity in Wisconsin. The present case is concerned with the amount of API's Wisconsin directories advertising revenue that is includable in the numerator of the 50% sales factor fraction.

The Commission divided this case into three separate phases. In the Phase I Ruling, the Commission granted partial summary judgment to API and held that API's sale of directories advertising was the sale of a service, not the sale of tangible personal property. In this Phase II Ruling, the Commission decides whether the sale was performed within Wisconsin or both within and without the State of Wisconsin. API would be permitted to use the cost of performance method of allocation for the

revenue at issue under Wis. Stat. § 71.25(9)(d) only if the sale was performed both inside and outside of Wisconsin. If API is correct, it would be entitled to claim the refunds it seeks for the years at issue, with the amounts of those refunds to be decided in Phase III of this litigation.

### **A. Partial Summary Judgment**

Summary judgment will be granted if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Wis. Stat. § 802.08(2). In this case, the parties have stipulated to the relevant facts and agree that partial summary judgment is appropriate with respect to the issue at hand.

API moved for partial summary judgment, arguing that its performance of directory advertising services for advertisements placed in Wisconsin telephone directories constitutes the performance of income-producing activities both within and outside of Wisconsin. The Department argues that the income-producing activities of API in question are performed entirely within Wisconsin. There is no genuine issue as to any material fact regarding this issue, and, as discussed herein, the Commission holds that the Department is entitled to partial summary judgment on this issue as a matter of law.

### **B. Standard of Statutory Interpretation**

This case requires the Commission to interpret Wis. Stat. § 71.25 as applied to the facts at issue. Statutory interpretation “begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.” *State ex rel. Kalal v. Circuit Court*, 271 Wis. 2d 633, 663, 681 N.W.2d 110 (2004). “Statutory language is given its common, ordinary, and accepted meaning, except that technical or

specially-defined words or phrases are given their technical or special definitional meaning.” *Id.* Context and structure are also important factors, and construction should strive to avoid absurd or unreasonable results. *Id.* When a statute is clear and unambiguous, the statute must be interpreted on the basis of its plain meaning. *Id.*; *Turner v. Gene Dencker Buick-Pontiac, Inc.*, 240 Wis. 2d 385, 393-394, 623 N.W.2d 151 (Ct. App. 2000).

**C. Wis. Stat. § 71.25(9)(d) and *The Hearst Corp. v. Wisconsin Dep’t of Revenue***

Wis. Stat. § 71.25(9)(d) defines the sales factor for sales of services for purposes of apportionment. According to Section 71.25(9)(d), “Sales, other than sales of tangible personal property, are in this state if the income-producing activity is performed in this state.” Wis. Stat. § 71.25(9)(d).

In *The Hearst Corporation v. Wis. Dep’t of Revenue*, Wis. Tax Rptr (CCH) ¶ 203-149 (WTAC May 15, 1990) (“*Hearst*”), the Commission considered the same question of statutory interpretation under Section 71.25(9)(d) at issue here in a case that involved very similar facts. In that case, the petitioner, The Hearst Corporation (“*Hearst*”), operated a television station in Milwaukee, WISN-TV (“*WISN*”). One of several issues brought before the Commission was whether the revenue *Hearst* received from the sale of national advertising time on *WISN* was “properly includable in the numerator of the sales factor of its Wisconsin apportionment formula.” *Hearst*, Issue #5.

Like *API*, *WISN* generated advertising revenue in Wisconsin from both local advertising and national advertising. Local advertising was solicited by a sales staff located in Milwaukee. National advertising was placed by national sales representatives located outside Wisconsin who generated business from national

advertisers and advertising agencies located primarily in New York, Chicago and Los Angeles. National advertising commercials were all produced independently of WISN and were transmitted to WISN by satellite feed or by courier. WISN incurred costs to broadcast these commercials, and also paid national sales commissions for such commercials.

The Commission found that “the network and national advertising revenues are based upon the showing or broadcasting thereof. Without broadcasting there is no income.” The Commission further found that “advertisers choose spots based upon the demographic profile of the audience viewing the particular programming during which the spots occur or are available, and that the advertisers are buying the spots due to the programming and its demographic makeup.” In its findings of fact, the Commission concluded “the income producing activity is the actual broadcasting of the programming desired by the advertiser and the commercial spots during that programming and, thus, is in Wisconsin.”

On these facts, the Commission held: “The national advertising income is a result of the income-producing activity of broadcasting in Wisconsin, and, thus, the income is includable in full in the sales factor numerator.” *Id.* Without further explanation, the Commission then adopted “the specific reasoning” outlined in the Department’s brief and affirmed the assessment at issue with respect to national advertising revenue. *Id.*, Order, Opinion, Issue #5.

Concurring in this part of the Commission’s decision, Commissioner Bartley directly addressed the issue at hand:

Again taxpayer argues that because some of the costs of securing national advertising were incurred outside



Wisconsin, some of the advertising revenues should be excluded from the numerator of the sales factor and a cost of performance fraction should be used to determine the advertising revenues to be included as Wisconsin sales.

Again the argument is based on the flawed premise that the income-producing activity occurs partially outside Wisconsin. And for the same conceptual reasons as I expressed with respect to the network compensation, the income-producing activity occurs entirely in Wisconsin. It is in Wisconsin that the advertisements are aired and where the services promised are performed. Accordingly, there is no reason to get into cost-of-performance sales apportionment.

*Id.* (Comm'r Bartley, concurring in part and dissenting in part, Part III).

As in *Hearst*, the issue at hand is where was the "income-producing activity" performed? If it was performed in Wisconsin, then the Department is correct. If it was performed both within and without Wisconsin, then API is correct.

In support of its case, API offers arguments that are very similar to the arguments advanced by the taxpayer in *Hearst*. API emphasizes that most of the employees and independent contractors (CMR'S) who solicit, create, develop, design, assemble and produce the advertisements at issue are located outside of Wisconsin. API also distinguishes *Hearst* by arguing that the taxpayer in that case did not create or develop any advertising; instead, the advertisements were transmitted to WISN by satellite or courier.

The Department persuasively notes that "What matters to the advertisers . . . is getting the Directories, with their advertising, in front of the people at whom that particular Directory is aimed." (Dep't Brief, p. 18.) According to the sample API advertising order, if API failed to include an advertiser's ad in the proper directory, the advertiser would receive a full refund, regardless of any services provided by API

employees and CMR'S in arranging, creating, developing, designing, assembling and producing the advertisement. (Stip., Ex. L.)

API also stresses the fact that it did not print or distribute the directories, but instead contracted with R. R. Donnelly & Sons Co. and PDC for those services. But the Donnelly Agreement gives API complete control over the content of the directories; R. R. Donnelly merely printed them. Similarly, API contracted with PDC to distribute the directories to users in Wisconsin according to a pre-set schedule, not at random times or in other locations.

*Hearst* is on point, and consistency requires a ruling for the Department on this issue. Although the Commission is not required to follow its own prior rulings, it will adhere to its own precedents unless a party has shown that a departure is justified,<sup>6</sup> and API has not met that burden. The service in question, advertising, was provided when the desired audience received the directories, and virtually all members of that audience were located in Wisconsin. Thus, the service, or income-producing activity, was performed in Wisconsin.

#### **D. Other Jurisdictions**

Courts in other states have considered similar issues related to advertising revenues under their own income tax statutes, and generally have concluded that advertising or broadcasting services are performed where the advertisements or broadcasts are displayed or transmitted. *See, State Dep't of Revenue v. Northern TV, Inc.,*

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<sup>6</sup> "Departing from precedent is justified in a number of circumstances, including where the following situations are present: (1) changes or developments in the law have undermined the rationale behind a decision; (2) there is a showing that the precedent has become detrimental to coherence and consistency in the law; (3) the prior decision is unsound in principle or unworkable in practice; or (4) reliance interests are implicated." *City of Green Bay v. Wis. Dep't of Revenue and Green Bay Packaging, Inc.*, Docket

670 P.2d 367 (Alaska 1983) (access to audiences within the state was the “source” of taxpayer’s revenues from broadcasting); *Metromedia, Inc. v. Dir., Div. of Tax’n*, 3 N.J. Tax 397, *rev’d*, 455 A.2d 561, *rev’d*, 478 A.2d 742 (N.J. 1984) (situs of income-producing activity is location of broadcasting station and its audience, not location of advertisers or their agents); *Mountain States Advertising, Inc. v. Bureau of Revenue*, 552 P.2d 233 (N.M. Ct. App. 1976) (revenue from billboard advertising apportioned entirely to state where billboards were located). While these cases involve statutes that are easily distinguishable from those at issue in this case, the facts and reasoning discussed therein provide additional support for the Commission’s interpretation of Wis. Stat. § 71.25(9)(d) in *Hearst* and in this case.

#### **E. Conclusion**

Based on the facts and applicable law, the Commission concludes that API’s performance of its directory advertising services for advertisements placed in Wisconsin telephone directories constitutes the performance of income-producing activities in Wisconsin.

#### **IT IS ORDERED**

1. Partial summary judgment in this Phase II Ruling is granted to respondent, on the basis that petitioner’s performance of its directory advertising services for advertisements placed in Wisconsin telephone directories constitutes the performance of income-producing activities in Wisconsin.

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No. 06-M-146 (WTAC Dec. 21, 2007), *citing Johnson Controls, Inc. v. Employers Ins. of Wausau*, 264 Wis.2d 60, 118-119, 665 N.W.2d 257 (2003).

2. The Commission will contact the parties to arrange a telephone status conference to discuss the resolution of any issues remaining in this matter.

Dated at Madison, Wisconsin, this 22<sup>nd</sup> day of January, 2008.

**WISCONSIN TAX APPEALS COMMISSION**

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David C. Swanson, Commissioner