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Wisconsin Tax Appeals Commission
Nicole Ahee - Legal Assistant

STATE OF WISCONSIN
TAX APPEALS COMMISSION

VERIZON CONNECT NWF, INC.,

DOCKET NO. 22-S-179

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING AND ORDER

KENNETH ADLER, COMMISSIONER:

The Petitioner, Verizon Connect NWF, Inc. appears by its Attorney Sara Ferland. The Respondent, the Wisconsin Department of Revenue (the Department), appears by Attorney Nicole M. Kuehl. This case comes before the Commission for decision on competing Motions for Summary Judgment.

The issue for determination is whether Petitioner's Fleet Management Services, which gather, analyze, and translate data, and generate reports to an online platform available to customers, are subject to sales and use tax.

STIPULATED FACTS

On-Board Diagnostic Systems

1. On-board diagnostic or "OBD" systems are a federally mandated component of all cars sold in the United States since 1996. (Stipulation of Facts ("Stip."))

¶ 13.)

2. OBD systems became mandatory for heavy-duty vehicles in 2010.

(Stip. ¶ 14.)

3. An OBD system is defined by the US Environmental Protection

Agency as:

additional computer software that monitors the emission control and emission-related components/systems, along with certain engine components that provide vehicle operational information. By monitoring and evaluating the various components and systems, the on-board computer is able to determine the presence of a malfunction or deterioration that can affect emissions and illuminate the "Check Engine" or "Service Engine Soon" light (also known as the malfunction indicator lamp or MIL) on the dashboard. In some instances, the computer software may identify a problem before there is an overt indication to the vehicle operator. The combination of the various emission control and engine components/systems, the MIL, and the diagnostic computer software make up the On-Board Diagnostic system. (Stip. ¶ 15.)

4. The OBD system monitors vehicle performance on an ongoing basis.

(Stip. ¶ 16.)

5. Data is continuously generated from various parts of the vehicle (powertrain, chassis, body, wiring) and collected and stored by the OBD system. (Stip. ¶ 17.)

6. A variety of data is collected, including RPM, speed, pedal position, spark advance, airflow rate, coolant temperature, miles driven, etc. (Stip. ¶ 18.)

7. In addition, the OBD system captures "diagnostic trouble codes," which are malfunctions detected by the vehicle and captured by the OBD system. (Stip.

¶ 19.)

Diagnostic Trouble Codes

8. Diagnostic Trouble Codes (“DTCs”) are defined by Society of Automotive Engineers (SAE) standards. (Stip. ¶ 20.)

9. DTCs and other captured information are not readily readable or accessible without a separate, specialized device. (Stip. ¶ 21.)

10. Certain DTCs generate critical alerts that are displayed to drivers via signals on the vehicle dashboard (check engine, low tire pressure, time for vehicle maintenance, etc.) (Stip. ¶ 33.)

Petitioner’s Fleet Management Services

10. Petitioner sells "Fleet Management Service" to customers. (Stip. ¶ 6.)

11. The Fleet Management Service provides customers with a real time, comprehensive view of the status of each vehicle in their fleet at a single online location via an Online Platform. (Stip. ¶ 7.)

12. According to the Verizon Networkfleet Hardware and Services Addendum to Verizon Wireless End Customer Agreement, the Fleet Management Service includes:

- a. Collection of diagnostic and/or location information from a vehicle;
- b. Analysis, delivery and posting of vehicle information to the Networkfleet Website;
- c. Notification to customer and/or a designated third party by

e-mail of certain events or vehicle information;

- d. Customer access and usage of customer website pages;
- e. Device installation services; but only to the extent such services are identified on a Service offering; and
- f. Any proprietary data feed or elements thereof or any application programming interfaces (API's) provided by Networkfleet, ("Networkfleet Data Services") but only to the extent such services are identified on a Service Offering.

(Stip. ¶ 8.)

13. Customers cannot use the Fleet Management Service to send emails or texts themselves. (Stip. ¶ 37.)

The Device

14. The Fleet Management Service is enabled by the installation of a device (the "Device") in customer vehicles. (Stip. ¶ 9.)

15. Customers install the Device by plugging it into the vehicle's OBD port, which is located under the dashboard of most vehicles. (Stip. ¶ 10.)

16. Most customers install the Devices themselves; however professional installation can be arranged with third party installers for a separate charge. (Stip. ¶ 11.)

17. The Device serves two purposes:

- a. It captures diagnostic codes and other information such as odometer data (distance traveled), RPMs (speed), and voltage

events (such as whether the vehicle is on or off) generated by the vehicle's onboard computer system; and

- b. It captures vehicle location and other related data via its global positioning system ("GPS").

(Stip. ¶ 12.)

18. The Device also includes a sensor port for monitoring voltage events occurring within the vehicle. (Stip. ¶ 23.)

19. If the sensor is installed, it will also identify when the engine is turned on or off, when a door is opened or closed, etc. (Stip. ¶ 24.)

20. GPS functionality in the Device allows Petitioner to capture other data points for customers, such as vehicle location and speed. (Stip. ¶ 25.)

21. Location detail shows the time and date of the last GPS position update for the selected vehicle, the ignition status (i.e., whether the engine is on or off), current vehicle speed and vehicle location. (Stip. ¶ 26.)

22. Depending on the type of OBD system in the vehicle, the speed is either reported in real time (in which case Petitioner presents the speed of the vehicle to the customer in real time) or, if the system does not send speed data, Petitioner will capture multiple GPS points and apply a mathematical algorithm to determine speed and distance traveled. (Stip. ¶ 27.)

23. The Device has an internal antenna, but it may also be connected to a GPS antenna that is attached to the glass on the vehicle windshield. (Stip. ¶ 28)

24. Petitioner "pings" or contacts the Device on a regular basis to collect

the data from the vehicle. (Stip. ¶ 29.)

The Data

25. Data collected from the vehicle is encrypted and relayed over a secured wireless/cellular connection back to Petitioner's servers located in San Diego, CA and Phoenix, AZ. Petitioner uses wireless Internet service and/or satellite service that Petitioner purchases from wireless/satellite providers to relay data from the vehicle to Petitioner's servers located in San Diego, CA and Phoenix, AZ. (Stip. ¶ 30.)

26. Once Petitioner receives the DTCs, it matches each code to the associated SAE definition from a database and translates each code for customers so they can view each specific problem with the vehicle. (Stip. ¶ 22.)

27. When customers log on to the Online Platform, they see a dashboard that displays a summary of performance and location data for a selected vehicle and they can schedule the appropriate vehicle maintenance. (Stip. ¶¶ 22, 30.)

The Online Platform

28. The Petitioner's Online Platform displays the vehicle alert data showing:

- a. DTC Alert Code - The code corresponding to the specific trouble code encountered;
- b. DTC Alert Type - The specific area of the vehicle affected by the DTC alert;
- c. Alert Description - A brief clarification of the DTC alert's meaning;

- d. First Detected - The date & time the DTC alert was first detected by the system;
- e. Recent Detection - The most recent date & time the DTC alert was detected by the system; and
- f. Status - An indication of whether the DTC alert is active or pending.

(Stip. ¶ 34.)

29. Customers can enter a phone number or email address into the Online Platform and specify the alert types it wants to be immediately notified of— the Platform will send that DTC alert to the customer via text or email. (Stip. ¶ 35.)

30. Petitioner purchases a specific plan from its wireless carrier called "Enterprise Messaging" which allows it to send high volumes of text and email messages, such as text and email alerts to customers. (Stip. ¶ 36.)

31. The functionality of the Device controls most of the features that the customers have access to. For example, the 5500 series device includes a diagnostic link connector to download OBD data from a vehicle, while the 5200 series only has GPS functionality. (Stip. ¶ 39.)

32. The features within a Device are not adapted or "turned off." (Stip. ¶ 40.)

33. Customer data remains proprietary to the customer. (Stip. ¶ 31.)

34. Customers grant Petitioner the right to use the data in the performance of the Petitioner's services, and the right to use the data to develop new

offerings, but not the right to sell or disclose the data to third parties. (Stip. ¶ 32.)

Monthly Charges

35. Customers pay a monthly recurring charge per-vehicle for the Fleet Management Service. The charge varies depending on the number of vehicles in the fleet (i.e., the larger the fleet, the lower the monthly charge per vehicle), but the base service does not change. (Stip. ¶ 38.)

36. Customers are charged a fixed monthly rate for the Fleet Management Service, based on device type. (Stip. ¶ 41.)

37. The monthly recurring charge also includes the Online Platform services provided by Petitioner (dashboard views of vehicle data, GPS service, email/text alerts, etc.). (Stip. ¶ 42.)

38. Customers have access to all Online Platform services and all features included with the Device regardless of whether they use the services/features or not. (Stip. ¶ 43.)

39. The price for the Fleet Management Service plan does not change if the customer only uses certain features or platform services or uses some features/services more than others. (Stip. ¶ 44.)

JURISDICTIONAL FACTS

40. The Petitioner was issued a Field Audit assessment for Wisconsin Sales and Use Tax (the "assessment") dated December 4, 2020, covering the following periods: January 1, 2014-December 31, 2014; January 1, 2015-December 31, 2015;

January 1, 2016-December 31, 2016; and January 1, 2017-December 31, 2017. (Stip. ¶ 1.)

41. The Assessment adjusted Petitioner's 2014-2017 Wisconsin Sales and Use Tax return to include sales tax on the monthly charges for Petitioner's Fleet Management Services. (Stip. ¶ 2.)

42. The Petitioner filed a Petition for Redetermination with the Respondent dated February 3, 2021. (Stip. ¶ 3.)

43. On March 28, 2022, the Respondent issued a Notice of Action denying Petitioner's Petition. (Stip. ¶ 4.)

44. On May 25, 2022, the Petitioner filed an Appeal with the Tax Appeals Commission. (Stip. ¶ 5.)

STANDARD OF REVIEW

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). Both parties filed Motions for Summary Judgment and filed a Joint Stipulation of Facts, supported by related documents. Summary judgment is thus appropriate.

ISSUE

The issue for determination concerns whether Petitioner's Fleet Management Services, which gather, analyze,¹ and translate² data, and generate reports detailing vehicle performance and location data to its customers via an online platform are considered a taxable inspection of personal property per Wis. Stat. § 77.52(2)(a)(10)

RELEVANT STATUTES

Chapter 77 of the Wisconsin Statutes, Sales and Use Taxes for Income and Franchise Taxes, provides in relevant part as follows:

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

...

(2) For the privilege of selling, licensing, performing or furnishing the services described under par. (a) at retail in this state, as determined under s. 77.522, to consumers or users . . . a tax is imposed upon all persons selling, licensing, performing or furnishing the services at the rate of 5 percent of the sales price from the sale, license, performance or furnishing of the services.

(a) The tax imposed herein applies to the following types of services . . . :

...

10. . . . the . . . inspection, and maintenance of all items of tangible personal property ... unless, at the time of that inspection, or maintenance, a sale in this state of the type of property, item, or good repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected, or maintained would have been exempt to the customer from sales taxation under this subchapter [underline added]

¹ Stipulation ¶ 8

² Stipulation ¶ 22

RELEVANT ADMINISTRATIVE CODE

The Wisconsin Administrative Code, Chapter 11, Sales and Use Tax, provides, in relevant part, as follows:

Wis. Admin. Code § Tax 11.67(2)(c)

1. If there is a single charge for providing both taxable and nontaxable services that are not a bundled transaction as defined in s. 77.51(1f), Stats., the entire charge is subject to the tax, unless it is determined by the department that another method, such as allocation or primary purpose of the transaction, more accurately reflects the tax. . . .

2. If there is a single charge for providing both taxable and nontaxable services in a transaction that is a bundled transaction as defined in s. 77.51(1f), Stats., the entire charge is subject to the tax, except as provided in s. 77.52(20)(b), Stats.[underline added]

ANALYSIS

Assessments made by the Department are presumed to be correct, and the burden is on the Petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Itsines v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-341 (WTAC 2010), citing *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984).

The imposition of a tax is to be narrowly construed. "A tax cannot be imposed without clear and express language for that purpose, and where ambiguity and doubt exist, it must be resolved in favor of the person upon whom it is sought to impose the tax." *Dep't of Revenue v. Milwaukee Refining Corp.*, 80 Wis. 2d 44, 48, 257 N.W.2d 855 (1977).

The parties stipulated to the following explanation of the services provided

by Petitioner:

Once Petitioner receives the DTC codes it matches the code to the associated SAE [Society of Automotive Engineers] definition from a database and translates the codes for customers so they can view the specific problem with the vehicle. (Stip. ¶ 22.) When customers log on to the Online Platform, they see a dashboard that displays a summary of performance and location data for a selected vehicle and they can schedule the appropriate vehicle maintenance. (Stip. ¶¶ 22, 30.)

The Department provides three foundations for taxing the Fleet Management Services provided by Petitioner. First, the Department argues the entire process – “the act of retrieving the information from the vehicle, reading, analyzing and interpreting that data and then communicating back to the customer” – is a taxable inspection service.³ Second, the Department asserts Petitioner’s “transmission of the diagnostic data to its servers is a telecommunications service and the notification of errors through e-mail or SMS text messages is a telecommunications messaging service.”⁴ Third, the Department asserts the inspection services were included with other services for a single non-itemized price, and therefore the full amount is subject to sales tax as a bundled transaction.⁵

This is a case of statutory interpretation. Statutory interpretation “begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop

³ Respondent’s Brief in Support of Motion for Summary Judgment, page 5.

⁴ *Id.* at page 9. The Department finds these services taxable also, as they were sold with the inspection services which the Department considered taxable and they were not an incidental element of another service that is not taxable under Wisconsin law.

⁵ *Id.* at page 9

the inquiry.” *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110. When interpreting a statute, we assume the legislature's intent is expressed in the statutory language. *Id.*

Under Wisconsin law, a service is not subject to Wisconsin sales and use taxes unless the service is specifically listed in the law as a taxable service. The Department determined that Petitioner's sale of its Fleet Management Services – which gathers, analyzes, and translates data, and then communicates information to Petitioner's customers – is a taxable inspection service pursuant to Wis. Stat. § 77.52(2)(a)(10). The Department provides various explanations for why it considers Petitioner's sales of its Fleet Management Services to be a taxable inspection. First, “Verizon's sales of the network fleet services are taxable under Wisconsin law as inspection services because diagnostic information is obtained via on-board sensors and then analyzed, reviewed, and interpreted.”⁶ Second, “[t]he act of retrieving the information from the vehicle, reading, analyzing, and interpreting that data and then communicating back to the customer” is an inspection service.⁷ Third, “Verizon charges customers for the service of interpreting, analyzing, and identifying diagnostic information, which is an inspection.”⁸ Fourth, “[a] taxable inspection service occurs when the service is performed to determine whether tangible personal property is working properly or if it is in need of repair or maintenance. The reading and interpreting of onboard diagnostic information clearly

⁶ Respondent's Brief in Support of its Motion for Summary Judgment, page 4.

⁷ *Id.* at page 5

⁸ *Id.* at page 6

meets this definition.”⁹

The inspection of all items of tangible personal property is listed as a taxable service in Wis. Stat. § 77.52(2)(a)(10). The statute provides no definition of what comprises an “inspection.”

Because the statutes do not define “inspection,” the Department refers to the Wisconsin Tax Bulletin No. 179, which states “[a] taxable inspection service is a service which is performed to determine whether tangible personal property or an item, property, or good is functioning properly or is in need of repair, service, alternation, filling, cleaning, painting, coating, towing or maintenance.”¹⁰ The Tax Bulletin provides the following at Examples 9 and 12:

Example 9. Company performs emissions testing on private motor vehicles. The Wisconsin Department of Transportation certifies and contracts with company to do the testing. The individuals whose vehicles are tested did not pay to have their vehicles emissions tested. *The service is an inspection to determine if tangible personal property (i.e. the motor vehicle) is functioning properly. Although the inspection is a taxable service, Company’s charge is not taxable because the Wisconsin Department of Transportation is exempt from Wisconsin sales tax on its purchases* [italics in original]

Example 12. Company is hired by Customer to check the accuracy of Customer’s automobile speedometer. Company checks whether the readings given by the speedometer are accurate. *The service is an inspection to determine if tangible*

⁹ *Id.* at page 6

¹⁰ Wisconsin Tax Bulletin No. 179, at 11. Wisconsin statute section 73.16(2) discusses the use of departmental publications and the reliance taxpayers may place upon those publications. The Bulletin itself states “[t]ax releases are designed to provide answers to the specific tax questions covered, based on the facts indicated. In situations where the facts may vary from those in a tax release, the answers may not apply. Unless otherwise indicated, tax releases apply for all periods open to adjustment, and all references to section numbers are to the Wisconsin statutes.” *Id.*

personal property (i.e., the speedometer), is functionally properly and is subject to tax. [italics in original]

The Department references the above, stating:

[A] taxable inspection service occurs when a service is performed to determine whether tangible personal property is working properly or if it is need of repair or maintenance. The reading and interpreting of onboard diagnostic information clearly meets this definition. Multiple definitions of diagnosis (e.g., serving to distinguish or identify) are synonymous with inspection. Further, the primary purpose of a customer purchasing this service and attaching a device to its vehicle is to be notified when the vehicle is not functioning properly.¹¹

While this particular Tax Bulletin has been available to the public since 2013, and supports the Department's position in this matter, under the present circumstances, it is not authoritative. Wisconsin Statute § 73.16(2)(a) instructs that the Department cannot take a position contrary to its published guidance unless the guidance at issue has been ". . . subsequently retracted, altered, or amended by the department or the legislature or by a final and conclusive decision of the tax appeals commission or courts." In other words, the Department is bound by this guidance, but it does not follow that the guidance cannot be challenged, nor that the guidance cannot be found to incorrectly interpret the law. The guidance provides a potential definition of inspection, and we must determine if that definition is correct and applicable to the case before us.

The Department does not provide a reference for its assertion "[m]ultiple definitions of diagnosis (e.g. serving to distinguish or identify) are synonymous with

¹¹ Respondent's Brief in Support of its Motion for Summary Judgment, page 6.

inspection.” The Merriam-Webster online Dictionary defines “diagnosis” as follows: “1a. the art or act of identifying a disease from its signs and symptoms, b. the decision reached by diagnosis (the doctor's *diagnosis*), 2a. investigation or analysis of the cause or nature of a condition, situation, or problem (*diagnosis* of engine trouble), b. a statement or conclusion from such an analysis.”¹²

The Department continues by noting Wisconsin law does not require an inspection be performed by a specialist or professional, nor does Wis. Stat. § 77.52(2)(a)10 require a hands-on physical inspection.

In the digital age, there are many inspections that can occur virtually. For example, anti-virus software that is installed on customers' computers to continuously monitor their networks and identify any evidence of suspicious activity and provide notifications of any threats. This service is taxable as an inspection of tangible personal property. The inspection is done to determine if the network is functioning properly or if it requires repair, service, alteration, or maintenance to function properly.¹³

Finally, the Department reiterates that Petitioner charges its customers for the service of obtaining, analyzing, and translating diagnostic information which is then communicated to the customers so they can assess the vehicles' performance and driver operation. Again, that diagnostic information is meaningless to the customer, and the customer has no knowledge of vehicle performance or driver operation, until that data is analyzed and translated by Petitioner and then communicated to the customer.

The Petitioner asserts its retrieval of diagnostic information from a

¹² <https://www.merriam-webster.com/dictionary/inspect>.

¹³ Respondent's Brief in Support of its Motion for Summary Judgment, page 6.

customer's vehicle, and its subsequent analyzing and translating of that information, is not a taxable inspection service under Wis. Stat. § 77.52(2)(a)(10). The Petitioner argues that the *retrieval* of the diagnostic data from the on-board diagnostic system does not determine whether the vehicle is functioning properly or in need of repair. And the diagnostic service - the determination of what is wrong with the vehicle - is not performed by Petitioner but by the on-board diagnostic system which continually monitors the vehicle's functioning and creates diagnostic trouble codes if functioning appears compromised. The Petitioner references Stipulation of Fact #15 which states as follows:

An OBD system is defined by the US Environmental Protection Agency as; "additional computer software that monitors the emission control and emission-related components/systems, along with certain engine components that provide vehicle operational information. By monitoring and evaluating the various components and systems, the on-board computer is able to determine the presence of a malfunction or deterioration that can affect emissions and illuminate the "Check Engine" or "Service Engine Soon" light (also known as the malfunction indicator lamp or MIL) on the dashboard. In some instances, the computer software may identify a problem before there is an overt indication to the vehicle operator. The combination of the various emission control and engine components/systems, the MIL, and the diagnostic computer software make up the On-Board Diagnostic system." (Stip. ¶ 15.)

The Petitioner also claims inspection services must involve a specialist being hired to physically examine and look over the tangible property to draw a conclusion as to whether the property is operating correctly.¹⁴ The Petitioner further

¹⁴ Petitioner's June 1, 2022 Petition, page 7

references the examples in Tax Bulletin 179¹⁵ and states “[i]n all instances, the company hired to perform the inspection did a thorough analysis of the property and provided a report detailing its findings.”¹⁶ However, there is nothing in fact or law that requires a specialist perform the inspection or that the inspection be a physical inspection.

The Petitioner further argues that its Fleet Management Services is not an inspection service, but an exempt data processing service.¹⁷ They state that the process of data retrieval, translation, and coding is non-taxable and cite *Janesville Data Center, Inc. v. Wisconsin Department of Revenue* to support this argument.¹⁸ In that case, the Wisconsin Supreme Court found that the sale of an intangible good is not taxable in Wisconsin. Specifically, the court explained the sale of keypunch cards, magnetic tapes, and computer printouts was not a taxable sale of tangible goods, because the essence of the transaction was the intangible data embodied in those tangible articles. The Commission and the courts have since looked to the essence of a transaction to determine whether a particular tax applies. The search for this common theme is also defined as a search for the “true objective” of the transaction and is further explained in Wis. Admin. Code § Tax 11.67.

Following Petitioner’s argument to its logical conclusion, no vehicle with an on-board diagnostic system could be subject to a taxable inspection where the

¹⁵ Petitioner also references Private Letter Ruling No. W 0820001, *Horgan Sales and Service, Inc. v. Wisconsin Department of Revenue*, Wisconsin Tax Appeals Commission, Docket No. S-10762, April 29, 1986 and Sales and Use Tax Report, No. 1-15. *Id.*

¹⁶ *Id.* at page 8

¹⁷ *Id.* at page 8

¹⁸ *Janesville Data Center, Inc. v. Wisconsin Department of Revenue*, 84 Wis. 2d 341, 267 N.W.2d 656 (1978)

inspector utilizes on-board diagnostic data, because such vehicles are essentially “self-inspecting,” and any inspection which is performed by connecting to the on-board diagnostic system is simply “data processing.” The Commission is not persuaded that this is a correct result and declines to follow this analysis.

The parties agree the on-board diagnostic system described above collects and stores diagnostic trouble codes and other data generated from various parts of the vehicle, including RPM, speed, pedal position, spark advance, air flow rate, coolant temperature, and miles driven.¹⁹ And, while certain diagnostic trouble codes generate critical alerts displayed to drivers via signals on the vehicle dashboard²⁰, other diagnostic trouble codes and other captured information are not readily readable or accessible without a separate specialized device.²¹ The Fleet Management Service operated by Petitioner is enabled by the installation of such device in each of its customer’s vehicles.²²

Based upon the above, the Commission concludes that Petitioner’s Fleet Management Service performs taxable inspection services pursuant to Wis. Stat. § 77.52(2)(a)(10). First, the majority of information collected by the on-board diagnostic system is not available without the installation of Petitioner’s Device.²³ Therefore, it is Petitioner’s Device which obtains the information to be translated into actionable alerts for its customers.

¹⁹ Stipulation ¶¶ 18, 19.

²⁰ Stipulation ¶ 33.

²¹ Stipulation ¶ 21.

²² Stipulation ¶ 37.

²³ The only information available to the vehicle owner without the Device are the critical alerts which appear on the vehicle’s dashboard. Those alerts do not tell owners what specifically needs repair. They merely direct attention to a system, i.e. “engine” or “tires.”

Second, it is Petitioner's *entire* Fleet Management Service which is being reviewed for tax liability. The Petitioner is hired to complete a thorough translation and analysis of the diagnostic codes it receives from its Device installed on the customer's vehicles and then provide detailed reports to its customers based on the findings from that translation and analysis. The Fleet Management Service not only downloads data and forwards it to Petitioner's servers which analyze and translate²⁴ that data to a meaningful message, it also sends that message to the customer and posts it on the customer's online dashboard. That *entire* process is an inspection.

Third, as early as 1996, on-board diagnostic systems have been required in vehicles.²⁵ Those systems have not, however, taken the place of vehicle inspections. Any vehicle with an on-board diagnostic system still requires an individual with a computer to download the data generated by that system, process it through the computer, and communicate the outcome to the vehicle owner - whether the individual or the computer instructs the vehicle owner to take certain actions. Petitioner's Fleet Management Services performs the same diagnostic functions as a mechanic in a modern garage. Petitioner's own Customer Agreement states its Fleet Management Services include: collection of diagnostic and/or location information from a vehicle; analysis, delivery, and posting of vehicle information to the Networkfleet Website; and notification to customer and/or designated third party by email or certain events or vehicle information.²⁶

²⁴ The parties stipulated that Petitioner translates data and Petitioner's marketing materials state that it analyzes data. Stipulation ¶¶ 13, 8.

²⁵ Stipulation ¶ 13.

²⁶ Stipulation ¶ 8.

Fourth, the Commission does not find the *Janesville Data* case to be controlling because the facts of that case were significantly different. The primary difference was the *Janesville Data* case involved both tangible and intangible property with the Court determining the taxability of a sale based upon the relationship between the two types of property that made up the transaction. The *Janesville* Court concluded that the transaction at issue constituted neither the sale of tangible personal property nor a service identified as taxable under Wisconsin statutes and further stated “[b]ecause Data Center’s gross receipts were not derived from the transfer of tangible personal property . . . or the furnishing of [taxable] services . . . they are not taxable under the provisions of section 77.52 Stats.”²⁷ The Petitioner is clearly providing a service – all of Petitioner’s agreements, promotional materials and the very name of its product refer to services. The reasoning of the court in the *Janesville Data* case is not controlling, given the facts of Petitioner’s case.

Finally, the Commission finds that while the OBD system initially gathers information on the vehicle’s operation, Petitioner’s Device downloads that information. Petitioner’s servers then translate and analyze that data by matching the codes provided by the on-board diagnostic system to the SAE standards and calculating location information. Petitioner finally communicates that information to the customer in a user-friendly format. The receipt of the final reported information is the primary purpose of Petitioner’s services and the primary reason Petitioner’s customers pay for those services.

²⁷ *Janesville Data Center, Inc., v Wisconsin Department of Revenue*, 84 Wis. 2d. 341, 267 N.W.2d 656 (1978).

The Commission concludes Petitioner's Fleet Management Service performs a taxable inspection pursuant to Wis. Stat. § 77.52(2)(a)(10) when it: downloads diagnostic information from a vehicle's on-board diagnostic system via its device; analyzes and translates that data by translating codes and calculating distance information; and then sends messages to its customers in a format easily understood by the customer. The Petitioner's report allows Petitioner's customers to make decisions regarding vehicle maintenance or repair and to monitor their fleet and driver behavior. The information regarding the mechanical status of vehicles in Petitioner's reports reflects the same service performed when an inspection is performed.

The Department also asserted Petitioner's (1) transmission of the diagnostic information gathered from the Device to Petitioner's servers is a telecommunication services subject to tax under Wis. Stat. § 77.52(2)(a)5.am, and the subsequent (2) communication to customers via email and SMS text alerts regarding the diagnostic information gathered, analyzed, and translated by Petitioner is a communication messaging service subject to tax under Wis. Stat. § 77.52(2)(a)5m. However, as the Commission has determined Petitioner's entire Fleet Management Service - provided for a single, non-itemized price - is a taxable inspection, the Commission does not find it necessary to decide this issue to determine the outcome of this appeal and declines to do so.

Finally, the Department also argued that although Petitioner's inspection services were sold in a package which included other services resulting in a single, non-itemized price, each of the services in Petitioner's Fleet Management Services package

could be offered separately. And, pursuant to Wis. Stat. § 77.52(20)(a) the entire amount is subject to sales and use tax as a bundled transaction. The Commission does not find it necessary to decide this issue to determine the outcome of this appeal and declines to do so.

CONCLUSION OF LAW

By gathering, analyzing, and translating diagnostic information, and generating reports to an online platform available to customers, Petitioner's Fleet Management Services constitute taxable inspection services pursuant to Wis. Stat. § 77.52(2)(a)(10).

ORDER

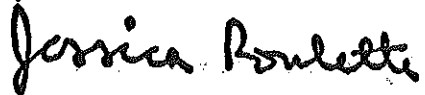
That the Respondent's Motion for Summary Judgment is granted and the Petitioner's Motion for Summary Judgment is denied.

Dated at Madison, Wisconsin, this 2nd day of October, 2023.

WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Chair



Jessica Roulette, Commissioner



Kenneth Adler, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION