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CIRCUIT COURT
DANE COUNTY, WI
2019CV002596

BY THE COURT:

DATE SIGNED: March 9, 2020

Electronically signed by Judge Valerie Bailey-Rihn
Circuit Court Judge



STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

BRANCH 3

WISCONSIN DEPARTMENT OF REVENUE,

Petitioner,

v.

Case No. 19CV2596

DEERE & COMPANY,

Respondents.

DECISION AND ORDER

INTRODUCTION

The Wisconsin Tax Appeals Commission (the “Commission”) reversed the Petitioner the Wisconsin Department of Revenue’s (the “Department”) assessment that the Wisconsin franchise tax did not apply to dividend income distributed by a foreign partnership owned by the Respondent Deere & Company (“Deere”). The Department requests judicial review of the Commission’s

decision under Wis. Stat. § 227.52. This Court has read the briefs, statutes, applicable case law and examined the record and **AFFIRMS** the decision of the Commission.

FACTS

Deere & Company is a Delaware Corporation and sole member of the Delaware limited liability company John Deere Holdings LLC (“JDH-US”). (Record 5, hereinafter “R.” 5; Document 15). Deere and JDH-US formed the “societe en commandite simple” partnership John Deere Holding LLC 1 S.C.S (“JDH-Lux”) under the laws of Luxembourg. *Id.* The JDH-Lux Partnership Agreement named JDH-US as the “General Partner” and entitled JDH-US to 0.1% of all profits and distributions. *Id.* The Partnership Agreement named Deere as the “Limited Partner” and entitled Deere to 99.9% of all profits and distributions of JDH-Lux. *Id.* Deere owns sole membership in JDH-US and therefore owns all partnership interest in JDH-LUX. *Id.* Deere filed the Internal Revenue Service (“IRS”) Form 8832 to treat JDH-Lux as a corporation for federal tax purposes. (R. 6). The IRS disregarded JDH-US and JDH-Lux as separate entities from Deere for income and franchise tax purposes. *Id.*

Deere included JDH-Lux cash distributions to Deere and JDH-US as income in Deere’s Wisconsin combined franchise tax for a period of three years. (R. 6). Deere claimed the JDH-Lux distributions qualified as a “dividends received deduction” (“Dividends Received Deduction”) under Wis. Stat. § 71.26(3)(j). *Id.* The Department audited Deere’s franchise tax return for the periods ending October 31, 2013, 2014 and 2015 (the “Tax Periods”). *Id.* the Department determined the JDH-Lux dividends did not qualify for the Dividends Received Deduction. *Id.* On October 16, 2017, the Department sent Deere a “Notice of Office Audit Amount Due” in the amount of \$151,937.00 in additional tax and \$57,064.35 in interest. *Id.*

On December 15, 2017, Deere timely filed its Petition for Redetermination to the Department's denial of the Dividends Received Deduction. (R. 6). On March 22, 2018, the Department denied Deere's Petition for Redetermination. (R. 54). On May 21, 2018, Deere timely filed a Petition for Review with the Commission. *Id.* On August 21, 2019, the Commission issued their decision and reversed the decision of the Department. (R. 262). On August 27, 2019, the Commission issued an amended decision that changed the wording of two paragraphs in the decision. (R. 221). On September 19, 2019, the Department petitioned the Court for judicial review of the Commission's decision. The Department filed their brief on December 13, 2019. Deere filed their response brief on January 31, 2020. The Department filed their reply on February 27, 2020.

STANDARD OF REVIEW

Administrative decisions that affect the substantial interests of a person are subject to judicial review. Wis. Stat. § 227.52. The review is limited to the record. Wis. Stat. § 227.57(1). If there is substantial evidence to support the agency's decision, it must be affirmed. *State ex. rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990); Wis. Stat. § 227.57. The test for substantial evidence is whether reasonable minds could arrive at the same conclusion reached by the agency after considering all the evidence of record and available inferences made from the record. *Milwaukee Symphony Orchestra, Inc. Wis. Dept. of Revenue*, 2010 WI 33, ¶ 31, 324 Wis. 2d 674. The agency determines the credibility and weight of the evidence, not the reviewing court. *Id.* The court will independently review an agency's interpretation of a statute while giving "'due weight' to the experience, technical competence, and specialized knowledge of the administrative agency." *Tetra Tech EC, Inc. v. Wisc. Dep't of Revenue*, 2018 WI 75, ¶108, 382 Wis. 2d 496, 512, 914 N.W.2d 21, 28-29. Where due weight deference is given, the court will

sustain an agency's decision unless another alternative legal interpretation is more reasonable. *Id.*, ¶ 15; *Barron Elec. Co-op. v. PSC*, 212 Wis. 2d 752, 762-3, 569 N.W.2d 726 (Ct. App 1997).

DISCUSSION

This judicial review of the Commission's decision leaves this Court with two statutory interpretation questions of law: (1) is JDH-Lux a corporation for tax purposes under Wis. Stat. § 71.22(1k); and if so, (2) do the JDH-Lux partnership distributions qualify for the Dividend Received Deduction under Wis. Stat. § 71.26(3)(j)? This Court addresses each issue in turn.

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

First, this Court statutorily interprets Wis. Stat. § 71.22(1k). The Commission relied on the specific language of § 71.22(1k) to decide JDH-Lux was a corporation under the statute. Wis. Stat. § 71.22(1k) states:

"(1k) 'Corporation' includes corporations, publicly traded partnerships treated as corporations in section 7704 of the internal revenue code, limited liability companies treated as corporations under the internal revenue code, joint stock companies, associations, common law trusts *and all other entities treated as corporations under section 7701 of the Internal Revenue Code, unless the context requires otherwise*. A single-owner entity that is disregarded as a separate entity under section 7701 of the Internal Revenue Code is disregarded as a separate entity under this chapter, and its owner is subject to the tax on or measured by the entity's income. "Corporation" does not include any entity that is a qualified subchapter S subsidiary under s. 71.365(7)." (emphasis added).

The Commission decided JDH-Lux was an entity treated as a corporation for tax purposes under § 7701 of the Internal Revenue Code (“IRC”). (R. 218). Therefore, the Commission stated JDH-Lux became a corporation under Wis. Stat. § 71.22(1k). (R. 222). The Department argues the plain language of “unless context requires otherwise” applies to JDH-Lux because JDH-Lux is not a corporation but a partnership that lacks common stock. Therefore, according to the Department, JDH-Lux was not a corporation under Wis. Stat. § 71.22(1k).

This Court finds the plain language of Wis. Stat. § 71.22(1k) unambiguous. Wisconsin courts “cannot disregard the plain, clear words of the statute.” *Kalal*, 271 Wis. 2d 633, ¶ 46. The language of the statute clearly includes “all other entities treated as corporations under section 7701 of the Internal Revenue Code.” Even the statute language “unless context requires otherwise” has a clear, plain meaning under Wis. Stat. § 71.22(1k). “Unless context requires otherwise” means that an entity is a corporation unless the context of another section requires that the Wis. Stat. § 71.22(1k) definition of a corporation not apply. Therefore, this Court must analyze whether Wis. Sta. § 71.26(3)(j) is a “context that otherwise” requires the Commission to decide JDH-Lux is not a corporation for tax purposes under § 71.22(1k).¹

Wis. Stat. § 71.26(3)(j) states:

“(j) Sections 243, 244, 245, 245A, 246 and 246A are excluded and replaced by the rule that corporations may deduct from *income dividends received from a corporation with respect to its common stock* if the corporation receiving the dividends owns, directly or indirectly, during the entire taxable year at least 70 percent of the total combined voting stock of the payor corporation. In this paragraph, “dividends received” means gross dividends minus taxes on those dividends paid to a foreign nation and claimed as a deduction under this chapter. The same dividends may not be deducted more than once.” (emphasis added).

¹ Neither the Department nor the Commission address any other context where JDH-Lux is not considered a corporation for tax purposes.

There is nothing in the language of § 71.26(3)(j) that states the corporation within the subsection cannot be a corporation under the definition of § 71.22(1k). Wis. Stat. § 71.26(3)(j). “[A] corporation” in § 71.26(3)(j) implies any corporation defined under this chapter, including partnerships. Consequently, decision of whether JDH-Lux is entitled to deduction for “income dividends received from a corporation with respect to its common stock” rests on the statutory analysis of § 71.26(3)(j)---specifically as to whether the payment was a “dividend” with respect to its “common stock.”

The Department argues the plain language of Wis. Stat. § 71.26(3)(j) does not allow JDH-Lux partnership distributions to be treated as dividends because they are not “common stock” of a “corporation.” Further, the Department alleges the Wisconsin Legislature intentionally distinguished the Wis. Stat. § 71.26(3)(j) definition of a Dividends Received Reduction from the federal statute definition of qualifying dividends under 26 U.S.C. § 243(b)(1)(A)-(B).²

The Commission interpreted § 71.26(3)(j) to allow any entity that is considered a corporation under § 71.22(1k) to deduct dividends from that entities’ equivalent of common stock. (R. 218). The Commission decided a partnership or LLC distribution is equivalent to a common stock dividend when treated as a corporation for tax purposes. (R. 217-18). Both the Department and the Commission’s interpretation of § 71.26(3)(j) are reasonable. If the statutory language “reasonably gives rise to different meanings” then the statute is ambiguous. *Kalal*, 271 Wis. 2d 633, ¶ 47. Therefore, this Court finds § 71.26(3)(j) ambiguous.

If the statute is ambiguous, this Court “turns to the scope, history, context and purpose of the statute” and looks at “extrinsic sources.” *Id.*, ¶¶ 48, 50 (quotation omitted). “Extrinsic sources” are interpretive resources outside of the statutory text, typically items of legislative history. *Id.*, ¶

² The federal equivalent is different, but the Department does not explain why the difference is important and the difference is irrelevant to this decision.

50. Context is important to meaning and “statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably to avoid absurd or unreasonable results.” *Kalal*, 271 Wis. 2d 633, ¶ 46.

First, the Court must decide whether the distributions were “dividends.” The Department argues that nowhere in ch. 71 does the statute allow distributions of a partnership to be treated as dividends. Further, the Department alleges JDH-Lux cannot distribute dividends because the foreign limited partnership can only distribute money through a partnership interest. However, the Wisconsin Legislature in 1979 defined dividends broadly in the statute.

“For the purposes of this chapter, the term ‘dividend’ means any distribution of property made by a corporation to its shareholders out of its earnings and profits.” Wis. Stat. § 71.316 (1979-1980). “Any distribution of property” is a broad and encompassing definition of dividends. JDH-Lux distributed property, a cash distribution, to JDH-US and Deere. JDH-Lux fits the definition of a corporation under Wis. Stat. § 71.22(1k). Deere is the sole owner of JDH-US and consequently is indirectly, the only shareholder of JDH-Lux. Therefore, based on the legislative history, cash distributions are considered dividends under the broad definition of dividends.

Next, the Court must decide if the dividends were from “common stock.” The Department argues the Legislature explicitly used the term “common stock” to disqualify any non C corporation entity from receiving a Dividends Received Deduction. Deere argues the Commission’s interpretation was correct that JDH-Lux’s “partnership interests were, for tax purposes, exchanged for stock” and equivalent with respect to common stock. (Resp. Br. p. 8, R. 218). This Court agrees.

The term “common stock” in 1979³ referred to the equity of a corporation. In 1979, C corporations and S corporations were the two primary business types and both used common stock. New types of business structures, such as limited liability partnerships and limited liability companies, were seventeen years away from national adoption. *See Gottsacker v. Monnier*, 2005 WI 69, ¶¶ 16-18, 281 Wis. 2d 361, 697 N.W.2d 436 (citing *Boucher et al., LLC’s and LLP’s*, at § 1.1). Wisconsin adopted the Wisconsin Uniform Limited Partnership Act in 1983 and the Wisconsin Limited Liability Company Law in 1993. *Id.* The 1979 Wisconsin Legislature did not intentionally leave out membership and partnership distributions because LLC’s and LLP’s were not common at the time.

In addition, the use of the term “common stock” in § 71.26(3)(j) has an even broader definition because the language of the statute states “with respect to common stock.” Wis. Stat. § 71.04 (1979-1980) (emphasis added). The phrase “with respect to” modifies the term “common stock” in relation to dividends. The addition of “with respect to” implies the Legislature wanted dividends to include money distributions based on a company’s equity.

The Department’s interpretation of § 71.26(3)(j) would mean that publicly traded partnerships, limited liability companies, joint stock companies, associations, common law trusts and all other entities that are treated as a corporation under § 7701 of the IRC would be ineligible for a Dividend Received Deduction. In addition, the Department’s interpretation would undermine the Legislature’s broad definition of a corporation for tax purposes in the closely related statute Wis. Stat. § 71.22(1k). This interpretation would allow the Department to deny a Dividend Received Deduction for all non C corporation entities taxed as a corporation but allow those entities other corporation tax deductions under ch. 71. To adopt the Department’s interpretation of

³ 1979 was the first time the language with respect to common stock was enacted and this language has not changed since that time.

§ 71.26(3)(j) would create an absurd and unreasonable result. Thus, based on the legislative history and broad definition of the phrase “with respect to common stock” § 71.26(3)(j) describes an distribution with respect to any corporation under chapter 71.

Nor is the Department’s use of dictionary definitions of “common stock” persuasive. The Department cites dictionary definitions of “common stock” from 2002, 1996 and 2004. The updated edition of Black’s Law Dictionary has no specific definition of common stock. However, Black’s Law Dictionary now defines “stock” as a “proportional part of a corporation’s capital represented by the number of equal units (or shares) owned, granting the holder the right to participate in the company’s general management and to share in its net profits or earnings.” STOCK, Black’s Law Dictionary (11th ed. 2019). Similarly, Deere is the sole owner of JDH-Lux’s capital and is granted the right to share in JDH-Lux’s net profits or earnings. The dictionary definition of stock helps strengthen the Commission’s interpretation that common stock under § 71.26(3)(j) includes ownership rights to distributions of net profits.

The Commission also based their decision on the Department’s own guidance policy Publication 119.⁴ (R. 219). Publication 119 Section IX stated that “[i]f an LLC is classified as a corporation, an LLC interest is treated in the same manner as stock.” (R. 216). Both LLP’s and an LLC’s distribute profits and losses through owner interests. The Commission stated that an LLC’s and an LLP’s interest are “not dissimilar in any relevant aspect” when both taxed as a corporation. (R. 216-17). This Court agrees. An LLP interest is personal property just like an LLC interest and shares of stock in a corporation. *Marx v. Morris*, 2019 WI 34, § 83, 386 Wis. 2d 122, 925 N.W.2d 112; *In re Schrieber’s Estate*, 68 Wis. 2d 135, 145, 227 N.W.2d 917 (1975). It was reasonable for

⁴ The parties stipulated that the 1/13 and 2/14 versions of Publication 119 were in effect during the Tax Period. The current version no longer contains the language of Section IX regarding the treatment of LLC ownership interest. (R:215).

the Commission to decide the Department's treatment of an LLC's interest as stock applies to an LLP's interest. Plus, the Department must adhere to its own guidance in effect during the Tax Period. Wis. Stat. § 73.16(2)(a).

CONCLUSION

This Court will give “‘due weight’ to the experience, technical competence, and specialized knowledge of the administrative agency” to the Commission's conclusions of law. *Tetra Tech*, Wis. 2d 496, ¶108. The Commission administers and interprets Wisconsin tax laws. *See* Wis. Stat. § 73.01(4)(a). In addition, the Commission has experience in applying the franchise tax, deductions and exemptions under that statutory scheme. *See Savings League v. DOR*, 141 Wis. 2d 918, 921, 416 N.W.2d 650 (Ct. App. 1987); *Mobile Oil Corp. v. Ley*, 142 Wis. 2d 108, 114-15, 416 N.W.2d 680 (Ct. App. 1987); *NCR Corp. v. DOR*, 128 Wis. 2d 442, 447-48, 384 N.W.2d 355 (Ct. App. 1986). Therefore, this Court gives due weight to the Commission's interpretation that JDH-Lux is a corporation for tax purposes and for the purposes of the Dividends Received Deduction.

Deere sufficiently met its burden when it pointed to the provisions of the Statute granting the exemption for a Dividends Received Deduction and how the company fit within the terms of the tax exception. *See Ramrod, Inc. v. Wisconsin Dept. of Revenue*, 64 Wis. 2d 499, 504, 2019 N.W.2d 604 (1974). The Commission agreed with Deere's interpretation. Based on the legislative history of § 71.26(3)(j), broad definition of the phrase “with respect to common stock,” the Department's own Publication 119 and the expertise of the Commission, this Court holds the Commission's statutory interpretation that dividends with respect to common stock applied to partnership distributions is reasonable.

Furthermore, the language “unless context requires otherwise” under § 71.22(1k) does not apply to JDH-Lux. This Court agrees with the Commission's reasonable interpretation of §

71.22(1k) that JDH-Lux became a “corporation” for tax purposes. Deere elected to treat JDH-Lux as a corporation for tax purposes when Deere filed the IRS Form 8832. (R. 249). The IRS approved the election. *Id.* JDH-Lux is an entity treated as a corporation under § 7701 of the IRC.

Consequently, this Court affirms the Commission’s interpretation of § 71.26(3)(j) that Deere is entitled to the Dividend Received Deduction because JDH-Lux partnership distributions are dividends with respect to common stock.

For the foregoing reasons, this Court **AFFIRMS** the decision of the Commission.

IT IS SO ORDERED.