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STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 1

EAU CLAIRE COUNTY

CHARLES M. MALONE,

Petitioner,

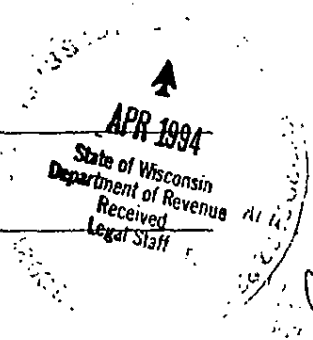
v.

Case No. 93-CV-274

WISCONSIN DEPARTMENT  
OF REVENUE,

Respondent.

NOTICE OF ENTRY OF FINAL ORDER



TO: Nancy M. Rottier  
130 Lakewood Boulevard  
Madison, Wisconsin 53704

Attorney for Petitioner

PLEASE TAKE NOTICE of findings of fact and conclusions of law and a final order, of which a true and correct copy is hereto attached, signed by the court on the 31st day of March, 1994, and duly entered in the circuit court for Eau Claire County, Wisconsin, on the 31st day of March, 1994.

Dated at Madison, Wisconsin, this 8<sup>th</sup> day of April, 1994.

Respectfully submitted,

JAMES E. DOYLE  
Attorney General

WARREN D. WEINSTEIN  
Assistant Attorney General  
State Bar #1013263

Attorneys for Respondent

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-3793

APR 05 1994

STATE OF WISCONSIN

CIRCUIT COURT  
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CHARLES M. MALONE,

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v.

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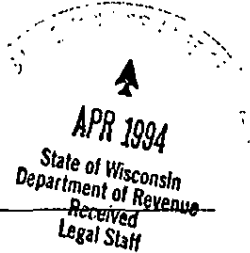
Respondent.

FILED  
CIRCUIT COURT  
EAU CLAIRE COUNTY

Case No. 93-CV-274

MAR 31 1994

DIANA J. MILLER  
CLERK OF CIRCUIT COURT



**FINAL ORDER**

The court held a hearing on the petition for judicial review on March 16, 1994. Petitioner appeared in person and by counsel, Nancy Rottier. Respondent appeared by Assistant Attorney General Warren D. Weinstein. The court reviewed the briefs of counsel, the record and statutes and, after oral argument by counsel, in accordance with the oral decision issued from the bench and the findings of fact and conclusions of law made with this final order,

IT IS ORDERED that the decision of the Wisconsin Tax Appeals Commission, dated March 25, 1993, is hereby affirmed.

Dated at Eau Claire, Wisconsin, this 31 day of March, 1994.

BY THE COURT:

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THOMAS H. BARLAND  
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 1

EAU CLAIRE COUNTY

CHARLES M. MALONE,

Petitioner,

v.

WISCONSIN DEPARTMENT  
OF REVENUE,

Respondent.

FILED Case No. 93-CV-274  
CIRCUIT COURT  
EAU CLAIRE COUNTY

MAR 31 1994

DIANA J. MILLER  
CLERK OF CIRCUIT COURT**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The court held a hearing on the petition for judicial review on March 16, 1994. Petitioner appeared in person and by counsel, Nancy Rottier. Respondent appeared by Assistant Attorney General Warren D. Weinstein. The court reviewed the briefs of counsel, the record and statutes and, after oral argument by counsel, enters the following:

**FINDINGS OF FACT**

1. Petitioner, Charles M. Malone, is an adult resident of the city of Eau Claire, Eau Claire County, Wisconsin.
2. Petitioner is the sole proprietor of a self-service laundry business known as Scrub Hub, located in the city of Eau Claire.
3. The Scrub Hub contains both ticket-operated and coin-operated washers and dryers.
4. Respondent assessed additional sales and use taxes to petitioner in the amount of \$15,739.63, including interest from January 1987 through December 1990.

Petitioner filed a timely request for reconsideration and, upon denial, a timely request for a hearing before the Tax Appeals Commission. On adverse decision from the Tax Appeals Commission, petitioner filed a timely petition for review in this court.

5. Petitioner consulted various tax professionals to determine whether his self-service, ticket-operated laundry machines were subject to sales and use tax. The petitioner did not request the opinion of the Department of Revenue.

### CONCLUSIONS OF LAW

1. The Tax Appeals Commission correctly determined there were no material facts at issue between the parties and, therefore, summary judgment was appropriate before the Commission.

2. The court applies the following principles of statutory interpretation to the dispute over section 77.52(2)(a)6., Stats.:

(a) Taxation is the rule, and exemptions are exceptions which must be read narrowly;

(b) Statutes must be interpreted to give all words in the statute import; and

(c) Tax exemptions, being matters of legislative grace, must be strictly but reasonably construed.

3. The court finds that section 77.52(2)(a)6. is a narrow exemption to sales and use tax which exempts laundry services when three elements are present:

(a) The service must be performed by the customer;

(b) The service must be performed on a coin-operated machine; and

(c) The machine must be a self-service machine.

4. The court concludes that "coin operated" and "self-service" both modify the word "machines" as indicated by the comma in the sentence following "coin operated" and preceding "self-service." The court concludes on this basis that the grammatical construction requires that coin operated and self-service be read in the conjunctive rather than the disjunctive. Therefore, petitioner must satisfy all three of the above elements to bring himself within the statutory exemption.

5. The court finds the statute is clear and unambiguous and applies only to coin-operated and self-service machines for laundry performed by the customer.

6. The court concludes that, because the petitioner's machines are ticket operated, he has not brought himself within the clear and unambiguous language of section 77.52(2)(a)6.

7. When a statute is clear and unambiguous, resort to the legislative history is inappropriate.

8. The court finds that, even though resort to the legislative history is not appropriate in this case, if the court were to resort to the legislative history, the legislative history supports the interpretation of the statute that all three requirements: coin-operated machines, self-service machines and services performed by the customer, must be met. This is shown most vividly by the Governor's veto of a bill removing the words "coin operated."

9. An individual seeking to impose estoppel against a governmental entity bears a heavy burden. Generally estoppel is not applied to governmental agencies.

10. There are three elements of estoppel:

(a) Action or non-action by the party to be held estopped;

(b) Reliance on that action or non-action by the individual seeking estoppel;

and

(c) Detrimental reliance on the action or non-action by the individual seeking estoppel.

11. The court concludes that reliance upon third-party, professional representation that the machines in this case were not subject to tax was not reasonable reliance. This is true even though the reliance was in good faith and the belief of non-taxability was widespread in the professional community. The court further concludes that the action or inaction must be by the agent of or the principal to be held estopped.

12. The court concludes that estoppel is not applicable in this case.

13. The court finds that the rule, Wis. Admin. Code § Tax 11.72(1)(b), does not alter the requirements of the statute. Therefore, the court concludes that the Tax Appeals Commission correctly found there was no retroactive application in this case.

Dated at Eau Claire, Wisconsin, this 31 day of March, 1994.

BY THE COURT:

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THOMAS H. BARLAND  
Circuit Court Judge

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