Report on Litigation

Summarized below are recent significant Wisconsin Tax Appeals Commission (WTAC) and Wisconsin Court decisions. The last paragraph of each decision indicates whether the case has been appealed to a higher Court.

The following decision is included:

Sales and Use Taxes

SALES AND USE TAXES

Exemption for Industrial Waste Treatment Facilities. *City of De Pere vs. Wisconsin Department of Revenue and Fox River Fiber Co., LLC* (Wisconsin Tax Appeals Commission, June 16, 2008).

The issue in this case is whether the total amount of the real estate and improvements at Fox River Fiber Co., LLC ("taxpayer") is exempt from property taxation under sec. 70.11(21), Wis. Stats.

NOTE: *Although this is a property tax case, the property tax treatment directly affects the Wisconsin sales and use tax treatment of certain transactions. Section 77.54(26), Wis. Stats., provides an exemption from Wisconsin sales and use taxes for tangible personal property which becomes a component part of an industrial waste treatment facility that is exempt from property tax under sec. 70.11(21), Wis. Stats. Please see Wisconsin Tax Bulletin 154 (December 2007), pages 33 and 34, for an explanation of tax law changes made in 2007 Wisconsin Act 19. This Bulletin can be accessed from the Department of Revenue's website at www.revenue.wi.gov/ise/wtb/154law.pdf.*

The taxpayer is a privately held company engaged in the business of using industrial wastepaper to produce a product usually referred to in the industry as wet lap recycled pulp, a form of wet lap pulp. Through its production process, the taxpayer recycles industrial wastepaper by removing contaminants and recovering fibers to produce the wet lap pulp, which is used by others to make paper products. The taxpayer sells such wet lap pulp to its paper manufacturer customers, who use it to produce a wide variety of tissue and paper products such as facial tissue, toweling, office paper, and commercial printing paper.

On or about June 13, 2005, the State issued notices of real property and personal property assessments for the year 2005. The taxpayer timely objected to the 2005 assessments by filing objections to the property assessment with the State Board of Assessors. In its objections, the taxpayer asserted that, pursuant to the Dane County Circuit Court's decision in *The Newark Group, Inc. vs. Wisconsin Department of Revenue* (January 31, 2005), its property qualified as a waste treatment facility and its real and personal property, therefore, were exempt from property tax. See *Wisconsin Tax Bulletin* 156 (April 2008), page 16, for a summary of *City of Green Bay vs. Wisconsin Department of Revenue and Green Bay Packaging, Inc.* (Wisconsin Tax Appeals Commission, December 21, 2007). This summary provides an explanation of the *Newark Group* case and can be accessed from the Department of Revenue's web site at www.revenue.wi.gov/ise/wtb/156lit.pdf.

Like the facilities in *Newark Group* and *Green Bay Packaging*, the taxpayer's facility is a paper recycling and manufacturing facility taxed under sec. 70.995, Wis. Stats., and is therefore eligible for exemption under sec. 70.11(21)(a), Wis. Stats. As in these prior cases, most of the taxpayer's machinery is exempt under sec. 70.11(27), Wis. Stats. This case primarily involves the taxpayer's land and buildings.

The parties offered essentially the same arguments in this case that the parties offered in *Green Bay Packaging*. Consequently, the Commission reaffirmed the interpretation of sec. 70.11(21)(a), Wis. Stats., that it adopted in *Green Bay Packaging*.

The Commission reaffirmed the central holdings of *Newark Group* and *Green Bay Packaging* to allow the exemption under sec. 70.11(21)(a), Wis. Stats., of a waste treatment facility that is located on property that is also used for other types of purposes or facilities. Applying this interpretation of sec. 70.11(21)(a), Wis. Stats., certain areas of the taxpayer's property were determined to be exempt to the extent they were related to the functions of waste treatment processes. The remaining portions of the property, such as the office and parking lot, were determined to not be exempt under that statute.

It was not known at the time of publication whether the taxpayer would appeal this decision.