

STATE OF WISCONSIN
TAX APPEALS COMMISSION

MASTERS GALLERY FOODS, INC.,

DOCKET NO. 19-M-067

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

ELIZABETH KESSLER, CHAIR:

This case comes before the Commission for decision on Cross-Motions for Summary Judgment. Petitioner, Masters Gallery Foods, Inc. (Masters Gallery), appears by Attorneys Don M. Millis, Sara Stellpflug Rapkin, Shawn E. Lovell, and Karla M. Nettleton, of Reinhart Boerner Van Deuren s.c., Madison, Wisconsin. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorneys William J. Richards and Kelly A. Altschul. Both parties have filed materials in support of their respective positions. In addition, the Cities of Green Bay, Neenah, and Sheboygan; the City of Wausau; and Wisconsin Manufacturers & Commerce, Inc., have filed amicus submissions.

Wisconsin Statute § 70.111(27) exempts machinery, tools, and patterns ("MTP") which are not used in manufacturing. Because Petitioner's MTP items listed in Exhibit D are used, albeit not exclusively, in manufacturing, we find that they do not

qualify for exemption. Likewise, we find that any MTP items listed in Exhibit E which are used at all in the manufacturing of cheese are also not exempt.

FACTS

Jurisdictional Facts

1. On July 11, 2018, the Department issued a Notice of Personal Property Tax Assessment for the 2018 tax year, assessing personal property tax on \$2,835,100 in personal property at the Masters Gallery location at issue in this appeal. (Stipulation of Facts (“Stip.”) ¶ 1, Ex. A.)

2. On or about July 20, 2018, Masters Gallery timely filed an Objection to the Manufacturing Personal Property Assessment with the Department, claiming property subject to personal property tax of \$1,339,241. (Stip. ¶ 2, Ex. B.)

3. On January 31, 2019, the State Board of Assessors sustained the Department’s assessment. (Stip. ¶ 3, Ex. C.)

4. On March 29, 2019, Masters Gallery filed a timely Petition for Review with the Wisconsin Tax Appeals Commission. (Commission File.)

Material Facts

5. Masters Gallery is a business corporation incorporated under Chapter 180 of the Wisconsin Statutes, with its principal place of business in Plymouth, Wisconsin. (Stip. ¶ 5.)

6. Masters Gallery is a company specializing in the procurement, aging, and distribution of cheese to grocery chains, wholesalers, restaurants, and distributors with a full line of cheese and cheese-related products. (Stip. ¶ 6.)

7. During the period at issue, Masters Gallery was a manufacturer as defined by Wis. Stat. § 70.995. (Stip. ¶ 8.)

8. Masters Gallery's Plymouth location is a "manufacturing establishment" as that term is used in Wis. Stat. § 70.995. (Stip. ¶ 10.)

9. In 2018, Masters Gallery owned or leased items of personal property used at its Plymouth location and that were assessed by the Department (the "Personal Property at Issue"). (Stip. ¶ 9, Exs. D and E.)

10. The parties have entered into a separate Partial Settlement Agreement pertaining to a portion of Masters Gallery's personal property located at its Plymouth facility and included in the 2018 personal property assessment. The Personal Property at Issue in the case does not include the personal property that is the subject of the Partial Settlement Agreement. (Stip. ¶ 11.)

11. Pursuant to the parties' Stipulation, the items of Personal Property at Issue listed on Exhibit D are machines or tools that are used directly in the manufacturing process by Masters Gallery but do not qualify for the exemption under Wis. Stat. § 70.11(27) because they do not meet the exclusive use requirement of Wis. Stat. § 70.11(27)(b). Exhibit D also includes the portion of the 2018 assessment associated with each item listed in the exhibit. (Stip. ¶ 12.)

12. Pursuant to the parties' stipulation, the items of Personal Property at Issue listed on Exhibit E are machines or tools that are used by Masters Gallery¹ at its Plymouth facility but do not qualify for the exemption under Wis. Stat. § 70.11(27) as they do not meet both the direct use requirement and the exclusive use requirement of Wis. Stat. § 70.11(27)(b). Exhibit E also shows the portion of the 2018 assessment associated with each item listed in the exhibit. (Stip. ¶ 13.)

13. Both Petitioner and Respondent have filed Motions for Summary Judgment as well as briefs and documents in support of their motions. Additionally, the Cities of Green Bay, Neenah, and Sheboygan; the City of Wausau; and Wisconsin Manufacturers & Commerce, Inc., have filed amicus submissions. (Commission file.)

APPLICABLE LAW

This case turns on the interpretation of Wis. Stat. § 70.111(27), which took effect with the 2018 tax year.

Wis. Stat. § 70.111 Personal property exempted from taxation. The property described in this section is exempted from general property taxes:

(27) Machinery, tools, and patterns.

(a) In this subsection, "machinery" means a structure or assemblage of parts that transmits force, motion, or energy from one part to another in a predetermined way by electrical, mechanical, or chemical means. "Machinery" does not include a building.

¹ Those items on Exhibit E that carry the designation "Leased" under the "Asset #" heading are items of personal property that are owned by an unrelated third-party who is not a manufacturer and are leased to Masters Gallery.

(b) Beginning with the property tax assessments as of January 1, 2018, machinery, tools, and patterns, not including such items used in manufacturing. (emphasis added)

Wisconsin Statutes Chapter 70 provides context for this exemption: All property is taxable unless it is exempt. Wis. Stat. § 70.01. This includes manufacturing property, which is assessed according to Wis. Stat. § 70.995. In Wis. Stat. § 70.995(1)(a), “manufacturing property,” is defined, in relevant part, as “all personal property owned or used by any person engaged in this state in any of the activities mentioned, and used in the activity, including raw materials, supplies, machinery, equipment, work in process and finished inventory when located at the site of the activity.”

Over time, the legislature has added exemptions to the types of manufacturing property that are taxable. For example, Wis. Stat. § 70.11(27), provides an exemption for some manufacturing machinery and equipment:

Wis. Stat. § 70.11(27) Manufacturing machinery and specific processing equipment.

(b) Machinery and specific processing equipment; and repair parts, replacement machines, safety attachments and special foundations for that machinery and equipment; that are used exclusively and directly in the production process in manufacturing tangible personal property, regardless of their attachment to real property, but not including buildings. The exemption under this paragraph shall be strictly construed.

In Wis. Stat. § 70.11(27)(a), the legislature helpfully defines the key terms – machinery, production process, used directly, and used exclusively:

2. “Machinery” means a structure or assemblage of parts that transmits forces, motion or energy from one part to another in a predetermined way by electrical, mechanical or chemical means, but “machinery” does not include a building.

5. "Production process" means the manufacturing activities beginning with conveyance of raw materials from plant inventory to a work point of the same plant and ending with conveyance of the finished product to the place of first storage on the plant premises, including conveyance of work in process directly from one manufacturing operation to another in the same plant, including the holding for 3 days or less of work in process to ensure the uninterrupted flow of all or part of the production process and including quality control activities during the time period specified in this subdivision but excluding storage, machine repair and maintenance, research and development, plant communication, advertising, marketing, plant engineering, plant housekeeping and employee safety and fire prevention activities; and excluding generating, transmitting, transforming and furnishing electric current for light or heat; generating and furnishing steam; supplying hot water for heat, power or manufacturing; and generating and furnishing gas for lighting or fuel or both.

7. "Used directly" means used so as to cause a physical or chemical change in raw materials or to cause a movement of raw materials, work in process or finished products.

8. "Used exclusively" means to the exclusion of all other uses except for other use not exceeding 5 percent of total use.

DECISION

The personal property exemption for machinery, tools, and patterns ("MTP") excludes such items from exemption when "used in manufacturing." Wis. Stat. § 70.111(27). This case turns on a purely legal issue, the interpretation of the phrase "used in manufacturing," which is not expressly defined in Chapter 70. Both parties have moved for summary judgment regarding the application of the Wis. Stat. § 70.111(27) exemption to Petitioner's MTP.

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). The effect of simultaneous motions for summary judgment is an assertion that the facts presented are not in dispute and only questions of law remain for determination. *Healthcare Services, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-085 (WTAC 2016). The parties have stipulated to the material facts, although, as noted herein, some details will require additional clarification.

In Wisconsin, personal property is presumed taxable. Wis. Stat. § 70.109. “Exemption from payment of taxes is an act of legislative grace; therefore, the party seeking the exemption bears the burden of proving entitlement.” *United Rentals, Inc. v. City of Madison*, 2007 WI App 131, ¶ 13, 302 Wis. 2d 245, 733 N.W.2d 322.

When interpreting a statute, we assume that the legislature's intent is expressed in the statutory language. 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*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. “If the language is clear and unambiguous on its face, we must construe the statute in accordance with its ordinary meaning and may not resort to extrinsic aids.” *Id.* If the language is unambiguous, we do not look to legislative history and related correspondence, such as that raised by amicus briefs. “[T]raditionally, ‘resort to legislative history is not appropriate in the absence of a finding of ambiguity.’” *Id.* at ¶ 51. Similarly, we decline to consider arguments of trends in the law, looking only to the language of the statute applicable during the relevant period.

Context, though, is important to meaning. So, too, is the structure of the statute in which the operative language appears. Therefore, 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. *Id.* at ¶ 46.

Even though the term “used in manufacturing” is undefined in Wis. Stat. § 70.111(27), that lack of definition does not necessarily mean that the term is ambiguous. The parties assert different meanings for the phrase “used in manufacturing,” but disagreement over meaning does not create ambiguity. *Id.* at ¶ 47. In rejecting the proffered definitions from both sides, we find that the phrase is not ambiguous and has one clear and reasonable meaning.

The Department argues for an overly broad interpretation of “used in manufacturing.” Suggested meanings look to the definition of “manufacturing property” in Wis. Stat. § 70.995, which includes “all personal property owned or used by” an entity classified as a manufacturing business in Wisconsin.

We reject the Department’s suggestion that “used in manufacturing” means “owned by a manufacturer.” Mere ownership of the property by a manufacturer ignores the word “used.” If the legislature had meant for “used in manufacturing” to turn solely on ownership, it could easily have said “owned by a manufacturer.” The legislature has shown an ability to do so within Wis. Stat. § 70.111. Examples of “owned by” language can be seen in Wis. Stats. §§ 70.111(6) (“owned by the operator or owner of a farm”), 70.111(11) (“Natural cheese owned by the Wisconsin primary manufacturer”), and

70.111(24) (“owned and used by a motion picture theater”). Ownership by a manufacturer does not, by itself, cause a piece of personal property to be “used in manufacturing.”

We also reject the suggestion that “used in manufacturing” should be defined as “used by a manufacturer.” While this suggestion is an improvement in that it considers use, for similar reasons to those explained above, this definition is also too broad. Moreover, had the legislature meant this, it could have simply said “used by a manufacturer” in the same manner as it has limited exemptions depending on the user in other provisions of Wis. Stat. § 70.111. Examples of “used by” language can be seen in Wis. Stats. §§ 70.111(3) (“used by commercial fishing boats...”); 70.111(14) (“used by a farmer”); and 70.111(25) (“used by a radio station”).

We further note that this “used by a manufacturer” definition would mean that anything used in any way by an entity whose industry falls under a manufacturing SIC code listed in Wis. Stat. § 70.995 is “used in manufacturing.” There is a significant difference between “used” and “used in manufacturing.” Not everything owned or used by manufacturer is used in manufacturing, even though it may be assessed as “manufacturing property” under Wis. Stat. § 70.995. For example, a snowblower owned by a cheese manufacturer and used to clear exterior walkways is certainly not in any way “used in manufacturing” cheese.

An additional suggestion is that “used in manufacturing” means “located at the site” of the manufacturing activity. This position is grounded in the language of Wis. Stat. § 70.995, which explains that manufacturing property is subject to assessment

by the Department “when located at the site of the activity.” While we agree that MTP used in manufacturing activity must be located at the site of the activity, the MTP exemption stresses a use requirement that cannot be ignored. Not everything located at the site is used in manufacturing, as the previous snowblower example illustrates.

A variation on all the interpretations rejected above is the suggestion that the phrase means both “owned by a manufacturer” and “used at the manufacturing location.” Again, “owned by” or “used by” are limitations employed in several other provisions of Wis. Stat. § 70.111 but are not present in Wis. Stat. § 70.111(27). We do not read words in where they have not been included in the statutory language. *Wisconsin Coach Lines v. Dep’t of Revenue*, Wis. Tax Rptr (CCH) ¶ 402-158 (WTAC 2017) (“We will not read into the statute language that the legislature did not put in One of the maxims of statutory construction is that courts should not add words to a statute to give it a certain meaning.” (citations omitted)). More importantly, this suggested interpretation considers who is using the MTP and where it is used, but it ignores the determinating factor in the language of the exemption – the manner in which the MTP is used.

Finally, the Department, joined by the municipalities in their amicus submissions, suggests that manufacturers already have their exemption in Wis. Stat. § 70.11(27), so Wis. Stat. § 70.111(27) simply is not intended for manufacturers. However, Wis. Stat. § 70.111(27) does not reference Wis. Stat. § 70.11(27), nor does it say that it does

not apply to manufacturers or to manufacturing personal property. It simply states that MTP is exempt unless it is used in manufacturing.²

Petitioner, on the other hand, advocates for an extremely narrow definition of “used in manufacturing,” namely, that Wis. Stat. § 70.111(27) exempts all items of MTP that are not already exempt under Wis. Stat. § 70.11(27). In other words, the only MTP excluded from the MTP exemption is that which is already exempt under Wis. Stat. § 70.11(27). However, just as the legislature chose not to use the “owned by” or “used by” language in this section, they also chose not to reference Wis. Stat. § 70.11(27). The legislature could easily have worded Wis. Stat. § 70.111(27) to say, “unless already exempt under Wis. Stat. § 70.11(27),” but it did not.

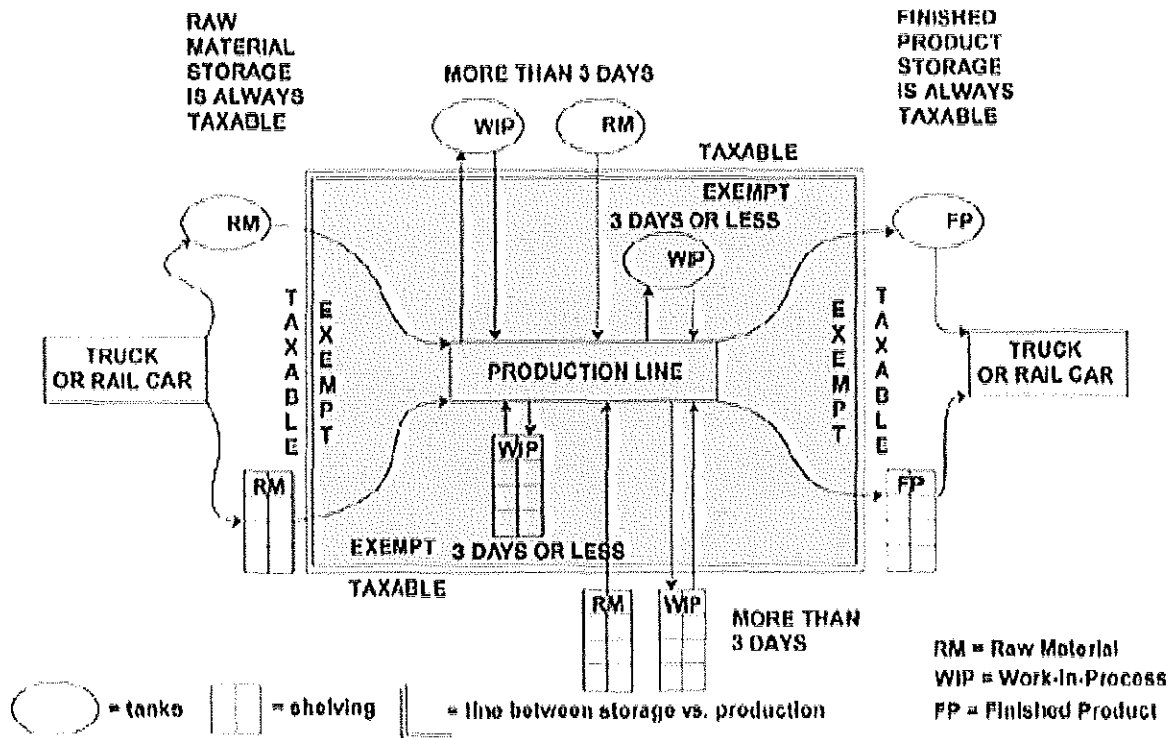
Petitioner clings to Wis. Stat. § 70.11(27) by arguing various aspects of it individually. As noted, in order to claim the manufacturing exemption, personal property must be “used exclusively and directly in the production process.” One somewhat less narrow suggestion is that at least the non-exclusively used items of MTP (Exhibit D explicitly but also Exhibit E by inference) should be exempt. First, it defies logic to say that, if something is used in making cheese but is not used exclusively for that purpose, it is not used in making cheese. Nothing in the plain language of Wis. Stat. § 70.111(27) suggests that “non-exclusively” used machinery and tools should be exempt, and there is no reasonable reading of Wis. Stat. § 70.111(27) that can be understood to

² We also note that the parties supporting the Department’s position argue the implications of budget planning and city revenues. Absent a finding of ambiguity, such information and argument are not properly before us for consideration.

exempt property used in manufacturing, merely because it is also used for other purposes.

Although not specifically addressed by the parties, the same holds true for personal property used in manufacturing but not used directly. Our recent decision of *Saputo Cheese USA, Inc., v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-408 (WTAC 2020) demonstrates how cleaning equipment, for example, can be used in an important manner in the manufacturing process but still not be “used directly” to manufacture cheese.

As an aid to understanding the breadth of the manufacturing exemption of Wis. Stat. § 70.11(27), the Department has created a diagram, Drascic Aff. Ex. A (“Diagram”), which illustrates manufacturing activities.



The Diagram’s shaded area represents the production process, a term defined in Wis. Stat. § 70.11(27). If manufacturing personal property is used directly and

exclusively in the production process portrayed in the shaded portion of the exhibit, that personal property may be eligible for the manufacturing exemption under Wis. Stat. § 70.11(27).

Petitioner argues that “used in manufacturing” means used in the production process, represented by the shaded area of the Diagram, and used exclusively and directly in that production process. This is just another way of saying “used in manufacturing” means exempt under Wis. Stat. § 70.11(27). Petitioner makes the leap to say that any MTP which does not qualify for the manufacturing exemption of Wis. Stat. § 70.11(27) is not “used in manufacturing” and, therefore, can be exempt under the MTP exemption of Wis. Stat. § 70.111(27). That leap is unfounded.

Using the Diagram, Petitioner also suggests that any property used in activities outside the shaded area of the Diagram should be exempt under Wis. Stat. § 70.111(27), because it is either not used in the production process, or it is not used exclusively (Ex. D), or it is not used exclusively and not used directly (Ex. E). Again, the failure to meet one or more of the qualifications for exemption under Wis. Stat. § 70.11(27) does not necessarily mean an item is not “used in manufacturing” under Wis. Stat. § 70.111(27).

Petitioner’s narrow interpretation of “used in manufacturing” would allow for an impermissibly broad exemption. Many items which do not qualify for the Wis. Stat. § 70.11(27) exemption are, nevertheless, used in manufacturing, perhaps not directly, perhaps not exclusively, perhaps not within the production process. Because

they are used in manufacturing, though, these types of MTP items also do not qualify for exemption under Wis. Stat. 70.111(27).

By its plain language, the MTP exemption does not apply to personal property “used in manufacturing.” To be exempt under Wis. Stat. § 70.111(27), MTP cannot be used in manufacturing at all. It cannot be used in the Diagram’s shaded activities because the production process is certainly manufacturing. Also, MTP which is not used exclusively or not used directly in manufacturing but is still used in some fashion in manufacturing, is not exempt under Wis. Stat. § 70.111(27), because it is still being used in manufacturing.

The state, via the Department of Revenue, assesses manufacturing property under Wis. Stat. § 70.995. That statute’s subject matter includes

all personal property owned or used by any person engaged in this state in any of the activities mentioned and used in the activity, including raw materials, supplies, machinery, equipment, work in process and finished inventory when located at the site of the activity. (emphasis added)

Wis. Stat. § 70.995(1)(a).

The “activities mentioned” in the assessment statute are presented as a list of activities corresponding to various manufacturing SIC codes, one of which is the manufacture of “food and kindred products.” Petitioner produces cheese and cheese-related products. Items used in the “activity,” i.e. making cheese, are used in manufacturing.

This dovetails with Chapter 70’s one definition of manufacturing. That definition is found in the Wis. Stat. § 70.11(27) manufacturing personal property

exemption. We therefore adopt the definition of Wis. Stat. § 70.11(27)3, which defines “manufacturing” as “engaging in an activity classified as manufacturing under s. 70.995.”

In practical terms, the borders of “the activity” need to be defined. We agree with the logic of the beginning and end points defined in the production process. Manufacturing begins with conveyance of raw materials from plant inventory to a work point as described in the production process definition, and manufacturing ends with conveyance of the finished product to the place of first storage. We further note that, if something is in the process of being manufactured, manufacturing is occurring regardless of the timing of completion. Any MTP used in relation to work in progress at any time after manufacturing has commenced and prior to completion is, therefore, also used in manufacturing.

SUMMARY

Petitioner owns many types of MTP. Some of the MTP is used directly and exclusively in the production process of manufacturing and, therefore, is exempt under Wis. Stat. § 70.11(27). Such items are not at issue because they are clearly used in manufacturing, so they do not qualify for exemption under Wis. Stat. § 70.111(27).

Some of Petitioner’s MTP items are used directly in manufacturing (cheese production) but not used exclusively in manufacturing. These are the types of items shown in Exhibit D. We note that the parties concentrate on a distinction between exclusively and non-exclusively. They could make the same distinction between used directly and indirectly. Either is a red herring with respect to the applicability of Wis. Stat. § 70.111(27) because MTP used non-exclusively or used indirectly, but used in

manufacturing in some lesser manner, is still “used in manufacturing” and is, therefore, not exempt under Wis. Stats. 70.111(27). The extent to which it is used in manufacturing is not relevant.

Petitioner also has MTP items that are not used directly in manufacturing and are not used exclusively in manufacturing; those items are listed in Exhibit E. The parties will need to further subdivide this list to identify items not used, even indirectly or non-exclusively, in manufacturing cheese products. If an item is used occasionally but not exclusively in the manufacturing activity, it is, nevertheless, used in manufacturing. Similarly, if it used in the manufacturing activity, but not used directly, it is still used in manufacturing. In either case, it is excluded from the MTP exemption because it is used in manufacturing.

The final category of MTP are those MTP items not used at all in manufacturing, although the items are used by a manufacturer at a manufacturing facility. It is important to note that not every activity a manufacturer engages in is manufacturing. Common non-manufacturing activities include administrative activities, HR, marketing, and groundskeeping. It is obvious, as noted earlier, that a snowblower used on the grounds of a cheese manufacturing facility is not used in the activity of manufacturing of cheese. Similarly, MTP items such as the coffee machine in the breakroom or the copier in the HR office are not used to make cheese. Because this type of MTP is clearly not “used in manufacturing,” such items are not excluded from the exemption, the identity of the owner or user notwithstanding.

With this holding, many of Petitioner's MTP items will not be exempt. Only those MTP items which are not used at all in the manufacturing activity are eligible for exemption under Wis. Stat. § 70.111(27). Unfortunately, because the delineations chosen by the parties in creating their Stipulation do not coincide with the "used in manufacturing" definition established in this Ruling, the parties will be faced with the task of recategorizing some of the MTP at issue in order to separate out those items which qualify for exemption.

CONCLUSIONS OF LAW

1. The term "used in manufacturing" in Wis. Stat. § 70.111(27) excludes from the exemption any machinery, tools, and patterns that are used in any way in manufacturing, which here means used at all in the production of cheese and cheese-related products.

2. Petitioner's machinery, tools, or patterns listed in Exhibit D are not exempt under Wis. Stat. § 70.111(27), because they are used in manufacturing, even though not exclusively.

3. Petitioner's machinery, tools, or patterns listed in Exhibit E which are used in manufacturing, as defined as the "production process" but also including activities involving work in process, are not exempt under Wis. Stat. § 70.111(27).

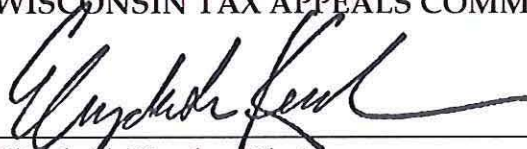
ORDER

The Department's denial of the Wis. Stat. § 70.111(27) exemption is upheld as to all items in Exhibit D of the Stipulation and as to those items in Exhibit E which are used in any way in manufacturing cheese and cheese-related products. The parties are ordered

to work together to determine which items of MTP listed on Exhibit E are used in manufacturing and which are not, as that phrase is defined in this Ruling. Once that work is complete, a final order will be issued. If the parties are unable to agree on the characterization of all items on Exhibit E within 60 days, a teleconference will be scheduled.

Dated at Madison, Wisconsin, this 8th day of September, 2020.

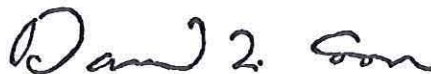
WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Chair



Lorna Hemp Boll, Commissioner



David L. Coon, Commissioner