



## 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

Exemptions – manufacturing machinery and equipment

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### SALES AND USE TAXES

**Exemptions – manufacturing machinery and equipment.** *Wisconsin Department of Revenue vs. Wissota Sand and Gravel Company* (Dane County Circuit Court, January 27, 2005). This is a judicial review of the Wisconsin Tax Appeals Commission decision dated January 24, 2004. See *Wisconsin Tax Bulletin* #138 (April 2004), page 22, for a summary of the Commission's decision. The issues in this case are:

- A. Whether the taxpayer's activity of picking up material (bank run) which has fallen from the face of its quarry and conveying it to its primary crusher is part of the taxpayer's manufacturing operation.
- B. Whether the taxpayer's purchases of wheel loaders, skid steers, and an excavator for use in its quarry operations qualify for the exemption for manufacturing machinery and equipment.

The taxpayer is a Wisconsin corporation engaged in the business of selling sand and gravel. The taxpayer operates three quarries at which it crushed, sorted, and washed aggregate products into approximately ten products.

The taxpayer separates rock from quarry walls by first removing overburden (topsoil) from on top of the rock, then allowing the forces of nature to cause the rock material (bank run) to slough off and fall to the ground.

During the period under review, the taxpayer purchased two 988F wheel loaders, both of which were used exclusively to lift the bank run from the quarry face and carry the bank run to and deposit it in the primary crusher. The taxpayer also purchased a 980F II wheel loader that was used to move the sand and gravel from drying piles to large storage piles where it was ready to be sold to customers. In addition, the taxpayer purchased two skid steer loaders, which were used to pick up breaker run that had fallen off conveyors, and replace it back onto the conveyors to be crushed.

About once per month, the taxpayer used a 322L hydraulic excavator to remove small particles of sand, called fines, from settling ponds and deposit them in a dump truck which took them to a drying pile. The fines were sold as silt or bedding sand.

The Commission concluded that (A) the taxpayer's activity of picking up material (bank run) which had fallen from the face of its quarry and conveying it to its primary crusher is part of the taxpayer's manufacturing operation, and (B) the taxpayer's purchases of the wheel loaders, skid steers, and hydraulic excavator for use in its quarry operations qualified for the exemption for manufacturing machinery and equipment. The Commission also concluded that the taxpayer's purchase of light towers for use in its quarry operations did not qualify for the exemption for manufacturing machinery and equipment and that the taxpayer was negligent for failure to report use tax on the purchases of the light towers. The taxpayer *did not* challenge the Commission's decision with respect to the light towers or the associated negligence penalty.

Although the department requested that the Circuit Court review the issue *de novo* (giving no weight to the decision given by the Commission), the Circuit Court found the Commission's decision to be reasonable and supported by substantial evidence. Therefore, the Circuit Court affirmed the decision of the Commission and remanded a portion of the case back to the Commission for purposes of making the calculations necessary to properly reflect the correct amount of tax, interest, and negligence penalty owing.

The department has not appealed this decision to the Court of Appeals. [↗](#)