



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, and Withholding of Taxes

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SALES AND USE TAXES, AND WITHHOLDING OF TAXES

Temporary Services. *Manpower Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 12, 2009). The issue in this case is whether the temporary help services Manpower Inc. (Manpower) provides to its clients in Wisconsin are taxable under sec. 77.52, Wis. Stats.

Manpower is in the business of placing temporary help workers with companies in need of additional help. The workers may be sent out for a day, or a week, or months. The following facts relate to Manpower's business:

- Manpower provides to its clients in Wisconsin workers with a wide range of skills who work under the direction and control of those clients.
- In the process of placing a worker, Manpower's client will typically request a worker who possesses certain skills, such as the ability to type at a certain speed, accounting skills, or the ability to program computers.
- Manpower pays the wages of the workers it places and also pays for withholding taxes, other payroll expenses and, in some circumstances, certain fringe benefits.
- Manpower does not contract to provide certain outcomes or results. Rather, it is the responsibility of Manpower's clients to ensure that any desired outcome or result is achieved.
- When Manpower places a worker, Manpower's client defines the scope of the duties to be performed by the worker by deciding the tasks to be assigned to that worker and the manner in which those tasks are to be carried out. Manpower's client also supervises and directs the worker with respect to the worker's activities for the client.
- Manpower does not supply tools or equipment necessary for its workers to perform tasks that are assigned to them by Manpower's clients. Rather, Manpower's clients provide the necessary tools and equipment.
- Manpower does not train its employees to provide a particular outcome. Any job training that is specific to the outcome desired by a Manpower client is provided by that client, not Manpower.
- Manpower's workers do not perform their activities for Manpower's clients at Manpower's offices.
- Manpower is a member of numerous groups and associations in the staff augmentation and personnel industry.
- Manpower is classified as a "temporary help company" under sec. 108.02(24m), Wis. Stats.
- Manpower is not a member of any professional or trade organization that consists primarily of any of the following types of service providers and does not hold itself out as a provider of such services:
 - a. Hotels, motels, and inns;
 - b. Providers of entertainment, athletic, recreational, or amusement events or facilities;
 - c. Providers of telecommunication services;
 - d. Providers who record and transmit telecommunications messages;
 - e. Laundries, dry cleaners, pressing and dyeing service providers;
 - f. Photographers and photographic studios;
 - g. Providers of parking services;

- h. Providers of information technology services and other computer-related services, or any other provider of services relative to tangible personal property;
- i. Firms that produce, print, fabricate, process, or imprint upon tangible personal property;
- j. Sellers of cable television services;
- k. Landscapers and lawn maintenance service providers.

The Department sought to impose sales tax on Manpower for the temporary help services performed by its employees that match any service listed in sec. 77.52(2), Wis. Stats. Manpower argued that the service it provides is “staff augmentation” and that this service is not specifically listed in sec. 77.52(2), Wis. Stats.

The Wisconsin Tax Appeals Commission concluded that sec. 77.52(2), Wis. Stats., is ambiguous as to whether or not temporary help services are included in the services listed therein.

The Commission looked to the substance and realities of the activities in question. First, the workers that Manpower sends out are in many ways essentially substitutes or stand-ins of the purchaser’s own workforce, and the wages of one’s own workforce are clearly not subject to sales and use tax. Second, once at a job site, a Manpower employee may wind up doing tasks that are clearly nontaxable based on the purchaser’s needs on that particular day, which calls into question the nature of the original transaction itself. Third, the minute-by-minute recordkeeping requirements suggested by the department are significantly more burdensome than those normally required of a seller subject to sales tax. Fourth, there are at least two major differences between a taxable service and a service provided by a temporary help company: (1) Manpower does not control the employee performing the taxable service; and (2) Manpower does not guarantee a particular result.

An examination of the substance and realities led the Commission to the conclusion that there is a reasonable doubt that temporary help services are the same as the services that the legislature has enumerated in sec. 77.52, Wis. Stats. The Commission did not see the “clear and express” language needed for tax imposition purposes.

The Department has not appealed this decision.