

rate was reduced or the work was "farmed out" to a less expensive photocopy business. In the latter instances, the taxpayer paid sales tax on the copying charges and passed on the full cost (copying plus sales tax) to the client.

The actual cost per billable copy was determined by a variety of cost elements. These included the cost of purchasing or renting photocopying machines; the rental of the space for the area in which the equipment was housed (2 separate rooms); the cost of equipment maintenance; the salary of an operator who did most of the copying (one person devoted about 80% of her time to copying) and for other people who do copying; and the cost of paper, toner and developing. The law firm paid sales tax when it purchased paper, toner, a copy machine and when it made lease payments on 2 additional copy machines. The taxpayer's financial administrator testified that each billable copy cost the law firm \$.23 for the fiscal year ending October, 1982 and that this figure "is probably reflective of ... (the cost) in the past", i.e., for the period under review.

The taxpayer's financial administrator testified that photocopying was a business cost which the law firm could have recouped in one of 2 ways: structuring it into the fees for legal services or itemizing it as a cost or disbursement. In an effort to be fair with its clients, the law firm chose to bill separately for photocopies to avoid charging someone unfairly for copies which were not made on account of that particular client.

During the period under review, the taxpayer did not charge sales tax on its itemized disbursements charged for photocopying nor did it receive exemption certificates from its clients.

The Commission held that during the period under review, the taxpayer's furnishing its clients with photocopies for a charge constituted the "sale of tangible personal property" within the intent and meaning of s. 77.51(4)(h), Wis. Stats., and is subject to sales tax under s. 77.52, Wis. Stats.

The taxpayer has appealed this decision to the Circuit Court.

Hein/Bakers Equipment Corporation vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, July 5, 1984). The sole issue in this case is whether or not

sinks and pot and pan washers that the taxpayer sold to bakeries engaged in manufacturing are exempt from sales and use tax under s. 77.54(6)(a), Wis. Stats. During the period under review, the taxpayer sold these items without collecting sales tax on their sales. Nor did the taxpayer file use tax returns covering these items.

During the period under review (1977-1980), the taxpayer was a Wisconsin corporation engaged primarily in sales of bakery machinery and equipment to bakers. The taxpayer was not a manufacturer of the items it sold its customers. Rather, it purchased products from manufacturers and resold them to bakeries. Among the items which the corporation sells to bakeries are sinks and pot and pan washers.

A bakery sink is generally a stainless steel receptacle consisting of 2 or 3 oversized compartments, usually large enough to allow a bun pan, which is 18" by 26" in size, to be laid flat in the sink. Commonly pots and pans which have been used in a bakery's operations are put into the sink filled with water.

A pot and pan washer is a stainless steel machine with a high pressure pump, moveable spray arms and a door. Under extreme pressure, heat and water flowage, usually with a special soap chemical, it cleans and sanitizes pots and pans and other items used in the bakery's production processes. It also washes display pans.

The sinks and pot and pan washers cleaned debris off pots and pans after these have been used in the manufacturing process. This occurred both during and after bakeries' manufacturing processes, but not when the baking product was in the pots and pans. A baker's production by machinery of baked products generally begins with the mixing of the ingredients and ends with the removal of the baked products from pots, pans or other similar receptacle and either bagging them or placing them for display. Clean pots and pans and similar items used in manufacturing by a bakery are essential to produce safe, edible, saleable products for human consumption.

The Commission ruled that the bakery sinks and pot and pan washers sold by the taxpayer primarily to bakeries were not used "directly" in

manufacturing by bakeries for the exemption in s. 77.54(6)(a), Wis. Stats. The department's assessment of use tax on the gross receipts from the taxpayer's sales of bakery sinks and pot and pan washers was correct.

The taxpayer has not appealed this decision.

Oscar Mayer & Co., Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, May 30, 1984). One issue in this case is whether cleaning supplies used during the hours the meat packing plant is not in operation are exempt under s. 77.54(2), Wis. Stats. The second issue is whether cleaning supplies used to clean the floors, walls and ceilings of the manufacturing facilities are exempt under s. 77.54(2), as being consumed or destroyed in the manufacture of tangible personal property in any form destined for sale. The third issue is whether chemicals used in a research department are taxable.

The taxpayer is engaged in the manufacture of meat products at its plant in Madison, Wisconsin. The plant operates 24 hours each day, on three 8-hour shifts. During the audit period, the taxpayer purchased a variety of chemicals and cleaners to clean and sanitize its manufacturing machinery and equipment and the environment of this equipment, including floors, walls and ceilings of production areas. The use of these chemicals to sanitize and maintain clean equipment and areas is required by the U.S. Department of Agriculture (USDA) and is indispensable and essential to the taxpayer's manufacturing operation. Cleaning operations of one type or another were performed at the plant all 24 hours of each working day. None of these chemicals ever touched the meat being processed, as this would have made the meat defective and unmarketable.

The cleaning supplies which were purchased by the company without tax which are at issue in this case are as follows:

- a. "Caustic soda beads", "caustic soda" and "anhydrous beads" were used to sanitize and clean meat deposits from ham and loaf forms. Raw meat which had been cured and processed was stuffed into forms and cooked within those forms to give it shape. The meat was then knocked out of

the forms and sliced to be packaged. Some forms were being used while others were being cleaned 24 hours each day. The forms were washed in a separate room from where the meat was processed. Loading cranes lifted heavy steel baskets full of these forms into tanks with cleaners.

"clean-in-place system" with built in spray.

- e. The "shark cleaner" was used similarly to smokehouse detergents. This cleaner was specifically developed as a low foaming, strong cleanser for recirculating clean-in-place systems. It was sprayed on equipment, eventually ran down a drain, and ran back to a tank where it was recirculated.
- f. "Dry acid cleaner" and "acid salt cleaner" were used to remove mineral deposits from production equipment which was not operating.
- g. "Flo-Mo" and "sterox" were used along with caustic soda as described in "a" above. Caustic soda was a very strong alkali and sterox and flo-mo were wetting agents and detergents added to them. They were used away from the manufacturing area in a separate cleaning area for ham and loaf forms.

None of the chemicals described above were used to clean storage areas, visitor areas (ex., restrooms), offices, the yards or trucks. These chemicals were not used in the research labs, with one exception. In the research department, there is a pilot plant, or miniature meat plant, in which the chemicals are used.

The Commission found that the chemicals and cleaners used in the taxpayer's pilot plant within the research department are subject to the sales/use tax because they do not qualify for exemption under s. 77.54(2), Wis. Stats., as consumed or destroyed or losing its identity in the manufacture of tangible personal property destined for sale.

The Commission also found that the balance of the chemicals and cleaners used in the taxpayer's manufacturing plant are exempt from the tax under s. 77.54(2), Wis. Stats., whether used on the floor, walls or ceilings in the manufacturing area or used to clean the manufacturing machinery or equipment. These chemicals and cleaners also qualify for exemption whether used during the hours the manufacturing takes place or at a time after production has ended.

Neither the department nor the taxpayer has appealed this decision.

Valley Microforms, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, May 30, 1984). Valley Microforms, Inc.

is a Wisconsin corporation with its principal office located in Green Bay, Wisconsin. During the period involved, the taxpayer was engaged in the business of source document microfilming. Source document microfilming is the creation of an image on reduced film that is processed or changed by changing sequences, index-identified so it can be found at a later time and put into forms that have specific uses in relationship to the requirements of individual customers. The advantages that the corporation's services and product offers to its customers are a secure storage, accessible method of storing and retrieving records and other documents in a greatly reduced area. During the period involved, the corporation's customers included banks, governmental agencies, hospitals and anyone else who had a need for its microfilming services.

The taxpayer's end products are

Aperture Cards: A card with a rectangular opening, specifically prepared for the mounting of insection of microfilm.

Microfilm Jackets: A flat, transparent, plastic carrier with single or multiple film channels made to hold single or multiple microfilm images.

Microfiche: A transparent sheet of film with microimages, arranged in a grid pattern. a heading or number large enough to be read without magnification normally appears at the top of the microfiche in a space reserved for this purpose.

Roll Film: Primarily used to store information on a space-saving basis.

There are seven steps in the taxpayer's source document microfilming operation:

1. Preliminary conference with customer as to goals.
2. Pick up and planning session which includes a detailed control effort to ensure accuracy and verify content, and to repair torn documents.
3. Camera session in which 5 or 6 different cameras and various other apparatuses in each of the taxpayer's plants are used that will respond to the size needs and the ultimate film form required by customer.
4. Quality and accuracy control review.
5. Indexing either by typewriter, keypunch or computer application.

- b. The "heavy duty cleaner" cleaned the form equipment (e.g., the interiors of large mixers, meat holding hoppers and meat curing bins and vats) after the shaping process had been completed, usually between 11:00 p.m. and 6:00 a.m. It was used in raw material areas, near uncooked meat. At the end of a day, a sanitation worker would first use hot water to rinse away the majority of the meat which clings to the equipments' sides. He would then mix the heavy duty cleaner with water in a barrel with a pump attached to a hose, and turn on the pump and use the hose to spray the cleaner over the surfaces to be cleaned. The cleaner was left on a while, then rinsed away.
- c. "General purpose", "experimental 4234 cleaners", and "utility cleaner" were not as harsh as heavy duty cleaner so they were used to clean process equipment with aluminum or other light metals in them. These were also used to clean walls and floors. These cleaners were used, for example, in a processing room where sliced meat was packaged to clean the equipment, walls and floors to keep them clean as part of the USDA requirements of sanitary conditions. These cleaners were used primarily, but not exclusively, between 11:00 p.m. and 6:00 a.m.
- d. "Smokehouse detergents" were used to clean and sanitize stationary smokehouses. Sausage was put into a smokehouse after it had been stuffed into casings or forms. Sawdust was burned and introduced into the room with heat to give the sausages their flavor and appearance and to cook them. In generating smoke and during processing, grease fell to the floor and creosote and tars were produced which accumulated within the smokehouses. These were cleaned on a daily basis generally between 11:00 p.m. and 6:00 a.m. The smokehouses have a

6. Insertion of film into the end product, principally aperture cards and microfilm jackets.
7. Delivery to customer.

The taxpayer used its machines and equipment to record images on film, to process the film, to cut the film, to sort the image frames and to assemble its end product.

During the period September 30, 1976 through September 30, 1979, the taxpayer purchased ex-tax various items of equipment. The taxpayer also purchased ex-tax, during this period, supplies and materials, equipment repair and other items for use in its microfilming operation. Under date of September 10, 1980, the department issued a \$6,494.40 Notice of Sales and Use Tax Deficiency Determination against Valley Microforms, Inc., covering the period September 30, 1976 through September 30, 1979. This assessment levied a sales and use tax on the equipment, materials and supplies purchased by the corporation, ex-tax during the period under review. The issue before the Commission is whether the taxpayer is entitled to the manufacturing exemption from sales and use tax contained in s. 77.54(6)(a), Wis. Stats.

The Commission held that during the period involved, the taxpayer was engaged in manufacturing as that term is defined in s. 77.51(27), Wis. Stats. The taxpayer is entitled to the manufacturing exemption provided for in s. 77.54(6)(a), Wis. Stats., for both the machinery and materials and supplies it purchased during the period hereunder review.

The department has not appealed this decision.

Young Women's Christian Association of Madison, Wisconsin Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June 4, 1984). The primary issue in this case is whether or not fees charged to the public for admission to a YWCA swimming pool are taxable as fees for the privilege of having access to or the use of an entertainment or recreational facility. Under date of December 16, 1981, the department sent the taxpayer an assessment of sales and use tax to-

talling \$1,772.94. The primary item to which the department applied the tax in the assessment was gross receipts from admissions to the YWCA's swimming pool facility. The assessment also applied the tax to "unreported merchandise sales" and "capital asset sales".

In 1977, the taxpayer applied for and obtained a Wisconsin sales and use tax seller's permit. On its permit application, the YWCA stated that "Swim Wear" was the merchandise it intended to sell. The YWCA held this seller's permit during the period under review.

The taxpayer is a nonprofit, charitable organization incorporated under the laws of the State of Wisconsin. It conducts a program of activities and services of a spiritual, intellectual and physical character intended and designed to improve, advance and develop the physical, mental and spiritual well-being of all youth and adults desiring to participate in such a program. It is partially supported by gifts, endowments, fund raising events, proceeds and like contributions which are not taxed. In addition, it sells certain goods and services, and any profits are used for charitable purposes.

During the period under review, the YWCA provided regular access to its swimming pool to the members of the public, during periods designated as "open swim", for the payment of a fee which varied between \$1 to \$2. The pool was thus used by members of the public for recreational and athletic purposes, as people could practice swimming or swim for health enrichment. The pool was commonly open for 1 1/2 hours during the noon hour, about the same time in early morning (ex., 6:00 to 7:30 a.m.), and occasionally in the evening. Groups commonly using the pool included downtown public employes (commonly over the noon hour), low income people and children in day care centers (on a contractual basis). Most commonly, about 10 or so people used the pool at one time. If a person came to the pool but was unable to pay the admission fee, the person was allowed to use the facility. Transfers from a scholarship fund were made on the

books of the taxpayer to allow any such person admission to and instruction at the pool. Lifeguards were on duty during these open swim periods. The YWCA also used the pool to provide swimming instructions. A fee was charged for these instructions.

The gross receipts from the public for admission to the swimming pool were insufficient to meet the costs of maintaining the pool and related services. Income sources other than open swim fees were used to maintain the pool.

Employees of the taxpayer who work around the pool include lifeguards, swimming instructors and maintenance personnel. None of these are engaged in a religious vocation. During open swim periods, the staff conversed with swimmers and may have discussed the purposes of the YWCA. However, the staff did not discuss religion with swimmers and there was no direct attempt to involve swimmers in religious discussion. Persons of all religious persuasions were permitted to use the YWCA's swimming facilities.

The YWCA did not collect or remit to the department any sales tax on the gross receipts from public admissions to the pool neither for open swim nor for swimming instructions. The department's assessment does not assert that sales tax should have been collected on gross receipts from swimming instructions.

The Commission held that the fees collected by the YWCA for public access to its swimming pool during open swim periods were admissions paid for the privilege of access to and use of "athletic . . . or recreational . . . places" under s. 77.52(2)(a)2, Wis. Stats., and thus, were subject to sales tax under that statute. The taxpayer has not presented clear and satisfactory evidence to overcome the presumptive correctness of the portions of the department's assessment relating to "unreported merchandise sales" or "capital asset sales".

The taxpayer has not appealed this decision.