



## 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 decisions are included:

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## SALES AND USE TAXES

**Lodging.** *Associated Training Services Corp. and Diesel Truck Driver Training School, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 8, 2005). The issue in this case is whether Associated Training Services Corp. (ATS) and Diesel Truck Driver Training School, Inc. (Diesel) were “furnishing accommodations that are available to the public” within the meaning of sec. 77.52(2)(a)1., Wis. Stats., which imposes Wisconsin sales and use tax on such services.

ATS is a Wisconsin corporation with its principal place of business located in Sun Prairie, Wisconsin. ATS is engaged in the business of operating an excavation and grading industry training program that involves training its students to operate certain pieces of heavy equipment (e.g., bulldozers, backhoes, loaders).

Diesel is a Wisconsin corporation with its principal place of business located in Sun Prairie, Wisconsin. Diesel is engaged in the business of operating a diesel truck driver training program that involves training its students to operate tractor trailers.

WaterTower Inn, Inc. (WaterTower) is a motel that furnishes rooms and lodging to the public. WaterTower’s facilities include bedrooms, color TV, laundry facilities, a game room, and continental breakfast.

ATS and Diesel (the taxpayers) purchased rooms or lodging services from WaterTower, then furnished or resold such rooms or lodging to their students to use during training programs. WaterTower is the only entity from which the taxpayers purchased rooms or lodging services for resale to their students. The students were not required to stay at WaterTower or to otherwise purchase a room or lodging services from the taxpayers. Neither of the taxpayers made the rooms or lodging services that they purchased from WaterTower available to any persons other than to their students. Both of the taxpayers also offered financing to assist their students with the purchase of the rooms or lodging services, course tuition, and other course fees.

Section 77.52(2)(a)1., Wis. Stats., imposes sales or use tax on “(t)he furnishing of rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations.” The taxpayers argued that they were schools and were not “other persons furnishing accommodations that are available to the public,” because the accommodations they sell are available only to their students, and not the “public.” They contended that their students are members of a narrow class of persons and that this class is too limited to be considered the “public.”

The Commission disagreed with the taxpayers and concluded that the taxpayers were “furnishing accommodations that are available to the public.” The gross receipts from furnishing rooms or lodging services by the taxpayers to their students are subject to Wisconsin sales tax.

At this time it is not known whether the taxpayers will appeal this decision. [↗](#)



### Real Property Construction Activities Versus Manufacturing.

*Visu-Sewer Clean & Seal, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 6, 2005). The issues in this case are whether Visu-Sewer Clean & Seal, Inc. (taxpayer) was (1) engaged in real property construction activities when it installed sewer liners, and (2) whether royalties paid by the taxpayer for its purchases of U-Liners are subject to Wisconsin use tax.

The taxpayer is a Wisconsin corporation engaged in various lines of business, including sewer cleaning and inspecting and re-lining underground sewer pipes that are in disrepair. All of the taxpayer's sewer re-lining work is for underground sewer pipes made of such materials as clay, reinforced concrete, non-reinforced concrete, case iron, steel, and transite. Sewer pipes have a design life of 50 years. The liners at issue that the taxpayer used have a design life of 50 years.

Once the liners are installed into a sewer pipe, the liners cannot be removed without damaging the liner and the host pipe. Removal of the installed liner would only be done if it were damaged. It requires destroying the liner by cutting it up, and may require excavation to pull out the liner. If the installed liner were removed after installation, it would be destroyed and could not be used again. The taxpayer re-lines the sewer pipes with one of two separate products, National Liners and U-Liners. The taxpayer billed its customers by the linear foot for the installed liner, a charge that included its labor, equipment, and materials.

For a re-lining job using National Liners, the taxpayer orders a custom amount of raw materials from Quail Pipe Corporation. Three raw materials were used for National Liners: a felt liner, resin, and a catalyst material. In order to use the raw materials for lining sewer pipes, the liquefied resin was mixed with the catalyst material, kept cool, and injected into the felt liner in what is known as a "wet-out" process. The "wet-out" process was normally done at the taxpayer's main facility. After the "wet-out" process, the liner was transported to the job site in a refrigerated truck to maintain the cool temperature. At the job site, the liner was inserted into the host sewer pipe with water or air pressure and each end of the liner was capped with steam shoes to create a closed system. Steam pressure was then used to expand the liner, which then fit tightly into the host pipe and oozed into any crevices or grooves, making a "mechanical lock." After curing and inspection, openings were cut or milled in the liner to match up with existing openings in the host sewer pipe.

When using the U-Liner product, the only item purchased from Quail Pipe Corporation was the lengths of U-Liner. U-Liner is a liner made of high-density polyethylene. There was no process performed on the U-Liner at the taxpayer's facility. The U-Liner was taken directly to the job site, inserted into the host sewer pipe, capped, and heated with steam, in a similar manner as the National Liner. After cooling and inspection, openings were cut in the liner to match up with the openings in the host sewer pipe. In addition to the purchase prices of the U-Liner, the taxpayer paid a flat license fee each year to Midwest Pipeliners for the territorial rights to use the U-Liner product. This fee was paid on a per-foot basis at different rates based upon the size of the diameter of the U-Liner.

The taxpayer argued that its installation of the National Liners and U-Liners into a customer's host sewer pipes is a manufacturing process, and that the raw materials, equipment, and equipment repair and maintenance were exempt from Wisconsin sales and use tax. The taxpayer also argued that the installation royalty payments paid with U-Liner purchases are exempt from sales and use tax because they are not tangible personal property.

The Commission determined that the installation of sewer liners by the taxpayer was a real property construction activity. The taxpayer's purchase of the materials, machinery, and equipment used to install the sewer liners were not exempt from Wisconsin use tax under sec. 77.53, Wis. Stats. The sewer liners were physically annexed to the real estate when they were installed into the host pipes and were clearly adapted to the use of those pipes. The sewer pipe lines were intended to be a permanent accession to the realty.

The Commission ruled that the taxpayer is liable for sales or use tax on its purchase of the materials that it used in the real property construction activity of the sewer liner installation: "(The taxpayer) is a real property construction contractor, and the activities in question are real property construction activities. Thus, (the taxpayer's) activities are not eligible for the manufacturing exemption."

The Commission also ruled that installation royalties that the taxpayer paid for its purchases of U-Liners are a part of the taxpayer's purchase price of the U-Liners and are subject to Wisconsin use tax.

The taxpayer has appealed this decision to the Circuit Court. [↗](#)