

VILLAGE OF THIENSVILLE

RESOLUTION NO. 2020-02

A RESOLUTION GRANTING APPEAL FROM
RED'S NOVELTY LTD.
REGARDING CLAIM OF UNLAWFUL PERSONAL PROPERTY TAX

WHEREAS, Red's Novelty Ltd. was charged Personal Property Tax in 2019; and

WHEREAS, Red's Novelty Ltd. claims that machinery, tools and/or patterns are exempt from Personal Property Tax pursuant to Wis. Stats 70.111(27) and that their Property included real property that was not subject to personal property tax; and

WHEREAS, Red's Novelty Ltd. reported no taxable personal property within the Village as of January 1, 2019.

NOW, THEREFORE BE IT RESOLVED that the Village Board of the Village of Thiensville hereby grants the appeal from Red's Novelty Ltd. regarding their claim of unlawful personal property.

PASSED AND ADOPTED by the Village Board of the Village of Thiensville, County of Ozaukee, State of Wisconsin on this 20th day of April, 2020.

Van A. Mobley, Village President

Amy L. Langlois, Village Clerk

Village of Thiensville - Amy Langlois

From: Village of Thiensville - Colleen Landisch
Sent: Tuesday, March 24, 2020 9:32 AM
To: Village of Thiensville - Amy Langlois
Subject: FW: Personal Property Tax
Attachments: PPT AG Letter.pdf

For April's meeting.

Have a great day,

Colleen J. Landisch-Hansen
Village Administrator

Village of Thiensville
250 Elm Street
Thiensville, WI 53092
Phone: (262) 242-3720
Fax: (262) 242-4743
Email: clandisch@village.thiensville.wi.us

<http://www.village.thiensville.wi.us/>



From: Tim Schoonenberg <tim.schoonenberg@housemanlaw.com>
Sent: Tuesday, March 24, 2020 8:48 AM
To: Village of Thiensville - Colleen Landisch <clandisch@village.thiensville.wi.us>
Subject: FW: Personal Property Tax

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Hi Colleen,

I agree with the Attorney General's letter analyzing the statute and disagree with our assessor (which is a rare thing). I therefore recommend that you grant the appeal at the next meeting, when possible. I also think it is the least risk averse position and we don't want to be the test case for this which would be expensive litigation over such a small amount.

Thanks,

Tim Schoonenberg
Attorney at Law
HOUSEMAN & FEIND, LLP
1650 9th Avenue
Grafton, Wisconsin 53024
(262) 377-0600
Fax - (262) 377-6080

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From: John Schulze <jschulze@abcwi.org>
Sent: Monday, March 9, 2020 5:59 PM
To: Tim Schoonenberg <tim.schoonenberg@housemanlaw.com>
Subject: FW: Personal Property Tax

Per your request
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STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

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Deputy Attorney General

Delanie M. Breuer
Chief of Staff

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
TTY 1-800-947-3529

January 3, 2019

SENT VIA INTERDEPARTMENTAL MAIL

The Honorable Robin Vos
Speaker of the Assembly
Room 211 West, State Capitol

SENT VIA EMAIL

Robin.Vos@legis.wisconsin.gov

Re: Question Concerning Personal Property Tax

Dear Speaker Vos:

On December 13, 2018, my office received your request for an opinion interpreting Wis. Stat. § 70.111(27)(a). Unfortunately, I am unable to issue a formal opinion, since a request for such an opinion must come directly from one house of the Legislature, or “the senate or assembly committee on organization, or by the head of any department of state government.” Wis. Stat. § 165.015(1).

I can offer you, however, my informal analysis of this statute, in the hopes that my analysis may guide and clarify future applications of this statute to Wisconsin manufacturers. I should note in particular that this letter is not meant in any way to bind or inhibit the role of the next Attorney General, who is obviously free to disagree with my position.

In general, you ask whether machinery, tools, and patterns are exempted from the personal property tax even if those items had been previously reported by the taxpayer on a schedule other than one labeled by the Department of Revenue (“DOR”) as “Schedule C - Machinery, Tools and Patterns.” As explained below, machinery, tools, and patterns are exempted from personal property tax even if a taxpayer reported those items on a different schedule in previous years.

The 2017–19 Wisconsin Biennial Budget Act created a new personal property tax exemption for machinery, tools and patterns “not . . . used in manufacturing” (“Machinery Exemption”). 2017 Wis. Act 59, § 997j. The relevant statute section provides that “[t]he property described in this section is exempted from general property taxes.” Wis. Stat. § 70.111. Wisconsin Statute § 70.111(27)(b) then lists “machinery, tools, and patterns, not including such items used in manufacturing.” (This final phrase, “not . . . used in manufacturing,” complements another provision that already exempts machinery used in manufacturing. Wis. Stat. § 70.11 (27).) “[M]achinery’ 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,” but not including a building. Wis. Stat. § 70.111(27)(a).

Wisconsin businesses report personal property on a form prescribed by DOR called a Statement of Personal Property (the “Statement”). The Statement contains several schedules providing space for taxpayers to list taxable property. For example, Schedule D provides space to list furniture, fixtures, and equipment, Schedule D2 provides space to list faxes, copiers, telephones, and computerized equipment, and Schedule H provides space to list all other personal property. For assessment years before 2018, the Statement provided space in Schedule C to list machinery, tools and patterns.

Given the new law, which exempts “machinery, tools and patterns,” you inquire about “machinery, tools and patterns” that may have been previously listed on schedules other than Schedule C. For example, a copy machine is an “assemblage of parts that transmits force, motion, or energy from one part to another in a predetermined way by electrical, mechanical, or chemical means.” Wis. Stat. § 70.111(27)(a). Thus, a copy machine would be “machinery” under the statute, and therefore exempt from taxation. Yet a taxpayer, in previous years, may have listed that same copy machine under Schedule D2, which provides space to list “multifunction faxes, copiers, postage meters, telephone systems, and computerized equipment.”

A taxpayer’s previous use of DOR schedules is not determinative or relevant. The statute is plain and unambiguous. Nothing in the statutes provides in any way, either explicitly or implicitly, that machinery is not defined as machinery merely because in previous tax years a taxpayer listed the item in a schedule other than “Schedule C – Machinery, Tools and Patterns.” When the Legislature added subsection 27 to Wis. Stat. § 70.111, it changed what is exempt from taxation, and in doing so it provided no language limiting the definition of machinery (except that

The Honorable Robin Vos
January 3, 2019
Page 3

“machinery” cannot be a “building”). If a piece of property fits the definition of “machinery,” then it is exempt from taxation, regardless of a taxpayer’s previous use of a DOR form.

I understand that my opinion may have policy and fiscal consequences. My analysis is purely based on the text of the statute, and not my policy preferences or whether I think the Legislature intended one way or another. Whatever the effect of this opinion, it is the Legislature’s choice to alter this language if it is not satisfied with the current text of the statute and its potential implications.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brad Schimel", written in a cursive style.

Brad D. Schimel
Wisconsin Attorney General

BDS:DPL:alm



Coin Operated Amusement Equipment

RED'S
NOVELTY LTD.

www.redsnovelty.com

Red's Novelty

January 31, 2020

VIA PERSONAL SERVICE

Clerk
Village of Thiensville
250 Elm St

Re: Red's Novelty ltd
1921 S 74th St
Acct #120000124000 Bill#382054



To Whom It May Concern:

On behalf of Red's Novelty ltd ("Claimant"), we hereby serve this claim of unlawful tax ("Claim") on the Village of Thiensville ("City"). You are directed to serve a copy of any notice of disallowance on the undersigned and Douglas A. Pessefall, Esq. Reinhart Boerner Van Deuren s.c., 1000 N. Water Street, Suite 1700, Milwaukee, WI 53202.

1. This Claim is brought pursuant to Wis. Stat. § 74.35 for a refund of unlawful taxes collected from the Claimant by the Village for the 2019 tax year, plus interest as provided by law, with respect to certain property located in the Village and known by the personal property tax Account 120000124000 ("Property").

2. At all times relevant to this Claim, the Claimant was the owner of the Property, was responsible for the payment of taxes imposed with respect to the Property and the prosecution of tax disputes involving the Property, and is authorized to bring this Claim in its own name.

3. The Village is a body corporate and politic, duly organized as a municipal corporation under Wisconsin law, with its principal office located at 250 Elm St.

4. The basis for this Claim is that one or more palpable errors specified in Wis. Stat. § 74.33(1) were made. Specifically, the Property included machinery, tools and/or patterns exempt from taxation pursuant to Wis. Stat. § 70.111(27); the Property included assets no longer used in a trade or business as of the assessment date; the Property included real property that was not subject to personal property tax and was, therefore, subject to double taxation; and/or the assessment of the Property violated the Uniformity, Due Process and Equal Protection clauses of the Wisconsin Constitution.

5. Red's Novelty reported Zero taxable personal property within the Village as of Jan. 1 2019

6. Notwithstanding the Reported Value, the Property was assessed by the Village at \$1923. as of January 1, 2019 ("Assessed Value").

Acade Equipment
CD & Internet
Juke Boxes
Pinball
Redemption
Pool Tables
Darts
Plush Cranes
Home Sales

1921 S. 74th St.
West Allis, WI
53219

414-321-3000

Fax
414-321-3076

On Line
Sanctioned
Leagues
Pool & Dart

WAMO

NDA

League Phone
414-321-3345



Coin Operated Amusement Equipment

RED'S NOVELTY LTD.

www.redsnovelty.com

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7. Based on the Assessed Value, the village issued the Claimant a 2019 tax bill in the amount of \$44.47.

8. However, the Assessed Value exceeded the Reported Value by \$1923.. and the 2019 tax bill should have been no more than zero.

9. The Claimant timely paid the 2019 tax bill issued by the Village, and is aggrieved by the levy and collection of an unlawful tax against the Property.

10. The amount of this Claim is \$44.47 plus interest.

By this letter, the Claimant stated a valid claim to recover the unlawful tax paid with respect to its Property. **The Claimant respectfully requests the Village to grant this Claim within 90 days from the date of service hereof.**

Please date-stamp a copy of this claim and return to our waiting messenger. Please contact the undersigned with any questions.

Very truly yours,

Red's Novelty Ltd

Rosalie Jacomet
Rosalie Jacomet

cc: Douglas A. Pessefall, Esq.

Miensville