SUPREME COURT OF WISCONSIN

Wisconsin Department of Revenue v. Menasha Corp., 2008 WI 88

754 N.W.2d 95 (2008) · No. 2004AP3239 · Decided July 11, 2008

SUMMARY

The Wisconsin Supreme Court reviewed whether Menasha Corporation's SAP R/3 System qualified as custom computer software exempt from Wisconsin sales and use tax. The court held that the Tax Appeals Commission's interpretation of the applicable statute and administrative rule was entitled to deference and affirmed the conclusion that the software was custom and therefore tax-exempt.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Annette Kingsland Ziegler; Shirley S. Abrahamson; Ann Walsh Bradley; N. Patrick Crooks; David T. Prosser; Patience Drake Roggensack
JURISDICTION	Wisconsin
DECIDED	July 11, 2008
DOCKET	2004AP3239
DISPOSITION	affirmed
PROCEDURAL POSTURE	Review of a published Wisconsin Court of Appeals decision reversing the Dane County Circuit Court and affirming the Wisconsin Tax Appeals Commission's grant of Menasha's sales-and-use-tax refund.
STANDARD OF REVIEW	The court reviewed the application of the statute and administrative rule to undisputed facts de novo, reviewed the Commission's statutory interpretation with due-weight deference, and reviewed its interpretation of the administrative rule with controlling-weight deference.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion; precedential.
PARTIES	Menasha Corporation v. Wisconsin Department of Revenue

TOPICS

sales and use tax · tax refunds · administrative law · statutory interpretation · appellate procedure

PRACTICE AREAS

state and local taxation | administrative law | appellate practice

QUESTIONS PRESENTED

1. What level of deference should the Wisconsin Supreme Court give to the Tax Appeals Commission's interpretations of Wis. Stat. § 77.51(20) and Wis. Admin. Code § Tax 11.71(1)(e)?
2. Was the Tax Appeals Commission required to defer to the Department of Revenue's interpretation of Wis. Admin. Code § Tax 11.71(1)(e)?
3. Did the Commission reasonably conclude that SAP's R/3 System was a custom computer program exempt from Wisconsin sales and use tax?

HOLDINGS

1. The Commission's interpretation of the statute is entitled to due-weight deference.
2. The Commission's interpretation of the administrative rule is entitled to controlling-weight deference, and the Commission was not required to defer to the Department of Revenue's interpretation of the rule.
3. The R/3 System was a custom computer program and therefore was exempt from Wisconsin sales and use tax.

KEY QUOTATIONS

> *"We further conclude that when a DOR decision is appealed by the taxpayer to the Commission, the Commission is not required to give deference to the DOR's interpretation of Wis. Admin. Code § Tax 11.71(1)(e) when deciding that appeal."* (¶ 107)

> *"Finally, we conclude that when applying the controlling weight deference standard to the Commission's interpretation of Wis. Admin. Code § Tax 11.71(1)(e), the Commission reasonably interpreted the rule and concluded that the R/3 System was custom."* (¶ 108)

FACTUAL BACKGROUND

Menasha licensed SAP's R/3 enterprise software system in 1995 for approximately $5.2 million. The delivered system was not usable for Menasha's operations without extensive customization, including more than 3,000 modifications, development of interfaces and subsystems, testing, training, and continuing support. Customization and implementation took years and cost more than $23 million in total. Menasha paid sales and use tax on the system and sought a refund, contending that it was a custom computer program exempt under Wisconsin law.

PROCEDURAL HISTORY

Menasha paid sales and use tax on SAP's R/3 System and filed a refund claim. The Wisconsin Department of Revenue denied the claim and denied Menasha's petition for redetermination. The Tax Appeals Commission granted Menasha summary judgment and ruled that the R/3 System was custom software exempt from tax. The

Dane County Circuit Court reversed, but the Wisconsin Court of Appeals reversed the circuit court and reinstated the Commission's decision. The Wisconsin Supreme Court affirmed the court of appeals.

DISPOSITION

affirmed

CASES CITED

- DaimlerChrysler v. LIRC, 2007 WI 15, 299 Wis. 2d 1, 727 N.W.2d 311
- Orion Flight Services, Inc. v. Basler Flight Service, 2006 WI 51, 290 Wis. 2d 421, 714 N.W.2d 130
- Racine Harley-Davidson, Inc. v. Wisconsin Division of Hearings & Appeals, 2006 WI 86, 292 Wis. 2d 549, 717 N.W.2d 184
- DOR v. River City Refuse Removal, Inc., 2007 WI 27, 299 Wis. 2d 561, 729 N.W.2d 396
- DOR v. Caterpillar, Inc., 2001 WI App 35, 241 Wis. 2d 282, 625 N.W.2d 338
- Kamps v. DOR, 2003 WI App 106, 264 Wis. 2d 794, 663 N.W.2d 306
- DOR v. Heritage Mutual Insurance Co., 208 Wis. 2d 582, 561 N.W.2d 344 (Ct. App. 1997)
- DOR v. U.S. Shoe Corp., 158 Wis. 2d 123, 462 N.W.2d 233 (Ct. App. 1990)
- State ex rel. Kalal v. Circuit Court for Dane County, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110
- All City Communication Co., Inc. v. DOR, 2003 WI App 77, 263 Wis. 2d 394, 661 N.W.2d 845
- Telemark Development, Inc. v. DOR, 218 Wis. 2d 809, 581 N.W.2d 585 (Ct. App. 1998)
- Hillhaven Corp. v. Department of Health & Social Services, 174 Wis. 2d 461, 497 N.W.2d 783 (Ct. App. 1993)
- State ex rel. Griffin v. McCulloch, 168 Wis. 2d 101, 483 N.W.2d 535 (Ct. App. 1992)