STATE OF WISCONSIN
SUPREME COURT

Appeal No.: 2015AP002019

TETRA TECH EC, INC., and

LOWER FOX RIVER REMEDIATION LLC,

Petitioners-Appellants-Petitioners,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent-Respondent.

Appeal from the District III of the Wisconsin Court of Appeals' December 28, 2016 decision affirming the Order dated September 11, 2015 of the Circuit Court for Brown County
Honorable Marc A. Hammer, Presiding

REPLY BRIEF OF PETITIONERS-APPELLANTS-PETITIONERS

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INTRODUCTION

In its response brief, the Department of Revenue ("the DOR") concedes that the practice of granting "great weight" deference to an agency's interpretation of a statute violates the Wisconsin Constitution. However, the DOR argues that affording "due weight" deference does not, because Chapter 227 allegedly authorizes such deference be given. The DOR's argument is fatally flawed in two major respects.

First, nowhere in Chapter 227 has the legislature directed the courts of Wisconsin to afford *any* deference to agency interpretations of statutes, nor could it. Chapter 227 provides that courts shall give agencies "due weight," *but only to the* "experience, technical competence, and specialized knowledge of the agency involved" – not "due weight" to the agency's interpretation of a statute. *See* Wis. Stat. § 227.57(10). In fact, Chapter 227 directs the courts to provide independent review of agency interpretations of statutes. *See* Wis. Stat. § 227.57(5), (8).

Second, affording "due weight" deference to an agency's interpretation of a statute impermissibly delegates core judicial power in violation of Article VII, Section 2 of the Wisconsin Constitution. This is because "due weight" deference still requires courts to defer "even when an alternative statutory interpretation is equally reasonable to the interpretation of an agency." *Racine Harley-Davidson v. DHA*, 292 Wis. 2d 549, 717 N.W.2d 184. Thus, under the DOR's construct, courts would lose their independent duty to say what the law is as they would be forced to accept an agency's interpretation of a statute even when courts would otherwise have a different interpretation of the statute. The DOR's approach not only deprives the public and the law of courts' views and interpretations, but also abrogates the duty of our courts to interpret statutes and would make unelected agencies the final arbiter of the law, all in violation of the Wisconsin Constitution.

With respect to the sales tax imposed on Tetra Tech EC, Inc. and Lower Fox Remediation LLC (collectively, "the Taxpayers"), the DOR's Response Brief comes down to this: the activity at issue – solely separation (a fact not rebutted by the DOR) – is "processing" under Wis. Stat. § 77.52(2)(a)11

based on an after-the-fact, all-encompassing dictionary definition of "processing" selected by the DOR and accepted by the Tax Appeals Commission ("the Commission"). The definition employed cannot be correct because it illegally converts what the legislature intended (and long-standing law confirms) to be a limited and narrow sales tax on specifically enumerated services to tangible personal property into a general sales tax on all services to tangible personal property.[1] There is not a service to tangible personal property one could provide that would not be "processing" under the definition cited. This is *not* what the legislature intended.

ARGUMENT

I. THE PRACTICE OF AFFORDING ANY LEVEL OF DEFERENCE TO AGENCY INTERPRETATIONS OF STATUTES DOES NOT COMPORT WITH THE WISCONSIN CONSTITUTION.

A. Affording Great Weight Deference To An Agency's Interpretation Of A Statute Does Not Comport With The Wisconsin Constitution.

The DOR admits that granting "[g]reat weight deference violates the separation of powers because it unilaterally abdicates the court's 'constitutional responsibilit[y]' 'to finally decide rights and responsibilities as between individuals.'" DOR Response Brief, p. 26 (internal citations omitted.) The DOR also admits that the "plain text" of Chapter 227 also does not allow courts to grant great weight deference to agency interpretations of statutes. DOR Response Brief, pp. 12, 18.

While the Taxpayers agree that neither the Wisconsin Constitution nor Chapter 227 permit courts to apply great weight deference, the Taxpayers submit Chapter 227 does not direct the courts to afford *any* deference to agency

[1] The DOR also cites the Court of Appeals' use of an additional dictionary definition for "processing." However, the Court of Appeals' decision is not subject to this review. In any case, that definition suffers from the same defects as that used by the Commission.

interpretations of statutes. Moreover, an assertion that Chapter 227 instructs courts to apply "due weight" deference to statutory interpretations itself violates the Wisconsin Constitution.

B. Affording "Due Weight" Deference To An Agency's Interpretation Of A Statute Does Not Comport With The Wisconsin Constitution.

Article VII, Section 2 of the Wisconsin Constitution vests the "judicial power" of Wisconsin exclusively in the unified court system. As the Court recently stated in *Gabler v. Crime Victims Rights Board*, 2017 WI 67, ¶ 37, __ Wis. 2d __, __ N.W. 2d __ (June 27, 2017):

> No aspect of the judicial power is more fundamental than the judiciary's exclusive responsibility to exercise judgment in cases and controversies arising under the law. "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). As Alexander Hamilton famously explained, "[t]he judiciary . . . has no influence over either the sword or the purse; . . . [i]t may truly be said to have neither force nor will but merely *judgment*." Federalist No. 78 (Alexander Hamilton), *supra*, at 464 (emphasis added; capitalization omitted). By vesting the judicial power in a unified court system, the Wisconsin Constitution entrusts the judiciary with the duty of interpreting and applying laws made and enforced by coordinate branches of state government. The constitution's grant of judicial power therefore encompasses "the ultimate adjudicative authority of courts to finally decide rights and responsibilities as between individuals." *State v. Williams*, 2012 WI 59, ¶ 36, 341 Wis. 2d 191, 814 N.W.2d 460 (citing *State v. Van Brocklin*, 194 Wis. 441, 443, 217 N.W. 277 (1927).

This proposition was also stated by this Court in *Operton v. LIRC,* 2017 WI 46, ¶ 78, 375 Wis. 2d 1, 894 N.W.2d 426 (quoted source omitted):

> No less than in the federal system, in Wisconsin "[i]t is emphatically the province and duty of the judicial department to say what the law is."

Due weight deference violates the separation of powers because it impermissibly delegates a core and

exclusive constitutional judicial power. It is the court's "constitutional responsibilit[y]" "to finally decide rights and responsibilities as between individuals." *Gabler*, 2017 WI 67, ¶¶ 37, 44; Patience Drake Roggensack, Elected to Decide: Is the Decision-Avoidance Doctrine of Great Weight Deference Appropriate in this Court of Last Resort?, 89 Marq. L. Rev. 541, 542, 560 (Spring 2006). Yet, the doctrine of due weight deference requires courts to defer "even when an alternative statutory interpretation is equally reasonable to the interpretation of an agency."[2] This results in making an agency the "ultimate adjudicative authority" deciding those rights and responsibilities, not the courts of this state. *Racine Harley-Davidson*, 2006 WI 80, ¶ 20.

Modifying the doctrine of granting deference to agency interpretation of statutes to granting no deference not only reaffirms that it is the courts' constitutionally mandated function and obligation to determine the law, but also greatly simplifies the process of making that decision. The new and straightforward rule would simply provide that once court review is sought of an agency decision, courts will determine what a statute means *de novo* just as the Wisconsin Constitution provides.[3]

C. Contrary To The DOR's Assertion, The "Plain Text" Of Chapter 227 Does Not Provide Courts With The Ability To Grant "Due Weight" Deference To Agency Interpretations Of Statutes.

The DOR argues Chapter 227 provides a "framework" for providing "due weight" deference to an agency's interpretation of a statute. DOR Response Brief, pp. 29-36. The DOR is wrong in two respects.

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[2] To use a baseball saying, this is akin to the "tie going to the runner." Under the doctrine of "due deference," unless a court's interpretation of a statute is more reasonable than that of the agency's interpretation, the agency's interpretation would stand.

[3] Retaining due weight deference, as the DOR suggests, greatly complicates the application of deference and will lead to even more interminable arguments and disputes on whether to grant such deference and to what extent. Not only will it take more time of parties and the courts in making and deciding those arguments, the fact is that granting any level of deference does not comport with Article VII, Section 2 of the Wisconsin Constitution.

First, there is nothing in Chapter 227 of the Wisconsin statutes that requires courts to defer to an agency's interpretation of a statute. Instead, it states the contrary; Chapter 227 directs the courts to provide independent review of agency interpretations of statutes. *See* Wis. Stat. § 227.57(5), (8). The DOR concedes "Chapter 227 calls for *independent judicial review* of agency interpretations of law." DOR Response Brief, p. 12 (emphasis supplied.) Affording "due weight" deference to an agency's interpretation is not consistent with Chapter 227's mandate of independent judicial review.

Chapter 227 only provides that "due weight" be given to the "experience, technical competence, and specialized knowledge of the agency involved." Wis. Stat. § 227.57(10). Giving "due weight" to the "experience, technical competence, and specialized knowledge of the agency involved" is not the same as giving "due weight" deference to the agency's interpretation of a statute.

The DOR also argues that under Wis. Stat. § 227.57(10) that courts give "*more* [due] *weight*" or "less [due] weight" to an agency's interpretation of a statute depending on the amount of "experience," "technical competence," or "specialized knowledge" utilized by the agency. *See* DOR Response Brief, p. 30 (emphasis supplied.). Not only does Wis. Stat. § 227.57(10) not say that, but this greatly complicates the matters to be considered as it adds layers of deference within the "due weight" standard.[4]

Second, the DOR's claim that Chapter 227 provides a framework for courts to afford due weight deference impermissibly infringes on the court's constitutional duty "to say what the law is." As the Court stated in *Gabler*, 2017 WI 67, ¶ 31:

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[4] The DOR states "there is little difference between due weight deference and no deference," citing *Operton*, 2007 WI 46, ¶ 22. DOR Response Brief, p. 18. Given that fact, why maintain due weight deference? All it does is complicate the consideration of what a statute means, aside from the fact that granting deference allows an agency to be the final interpreter of a statute which violates Article VII, Section 2 of the Wisconsin Constitution.

> "[C]ore zones of authority are to be 'jealously guarded' by each branch of government," *Barland v. Eau Claire Cty.*, 216 Wis. 2d 560, 573, 575 N.W.2d 691 (1998) (citing *Friedrich*, 192 Wis. 2d at 14), meaning "[t]he coordinate branches of the government . . . should not abdicate or permit others to infringe upon such powers as are exclusively committed to them by the constitution," *Rules of Court Case*, 204 Wis. 501, 514, 236 N.W. 717 (1931).

The Court must protect the core judicial powers of our unified court system. As the Court recently itself stated: "If the judiciary passively permits another branch to arrogate judicial power unto itself, however estimable the professed purpose for asserting this prerogative, the people inevitably suffer." *Gabler,* ¶ 39.

II. THE COMMISSION'S INTERPRETATION OF WIS. STAT. § 77.52(2)(a)11 IS INCORRECT AND SHOULD BE REVERSED.

A. The Tax Imposed Is Based On A Definition Of The Term "Processing" That Is Contrary To Legislative Intent And Established Law.

The DOR argues that "[t]he term 'processing' is susceptible to an easily understood dictionary definition." *See* DOR Response Brief, p. 37. This argument greatly misses the mark. Although utilizing a dictionary definition is permitted to establish the ordinary and common meaning of a word, doing so "may not unfairly or inaccurately state[] the law or misconvey[] the legislative intent." *State v. Harvey*, 2006 WI App 26, ¶¶ 16-17, 289 Wis. 2d 222, 710 N.W. 2d 482.

The legislature undisputedly intended that the taxation of services to tangible personal property under Wis. Stat. § 77.52(2)(a), including (2)(a)11, be narrow and selective, and only used to impose tax if the service at issue is clearly and specifically listed.[5] No services other than those specifically "described under par. (a)" are subject to tax. *See* Wis. Stat. § 77.52(2)(a). This intent is reflected in the plain

[5] This legislatively mandated selective and narrow framework is in sharp contrast to the general retail sales tax under Wis. Stat. 77.52(1), which provides that all retail sales are taxable unless the type of sale is specifically listed as exempt by statute.

language of the statute itself, as well as in long-standing law. *See, e.g., Brennan Marine, Inc. v. DOR,* Wis. Tax Rptr. (CCH) ¶ 401-474 (WTAC 2011); *DOR v. Milwaukee Refining Corp.,* 80 Wis. 2d 44, 257 N.W.2d 855 (1977), cited in *Manpower, Inc. v. DOR*, Wis. Tax Rptr. (CCH) ¶ 401-223 (WTAC 2009) ("[O]nly sales of the specific services listed in Wis. Stat. § 77.52(2) are similarly subject to sales tax. Sales of services not listed in that section are not taxable.") Any interpretation of the statute's meaning must be made within that strict context. No self-serving selected dictionary definition can change, modify, misconvey, or expand that intent. However, that is exactly what the DOR and Commission did in this case.[6]

In marked contrast to these principles, the dictionary definition of "processing" selected by the Commission is so broad that it improperly turns what the legislature intended to be a selective and narrow tax on specific services to tangible personal property into a general tax on all services to tangible personal property.[7]

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[6] If the DOR desires a specific service be included, its remedy is to ask the legislature, not "self-tax" by use of a definition. "When a statute fails to address a particular situation, the remedy for the omission does not lie with the courts. It lies with the legislature." *Bostco LLC v. Milwaukee Metro. Sewerage Dist.,* 2013 WI 78, ¶ 61, 350 Wis. 2d 554, 835 N.W.2d 160.

[7] The DOR asserts that the Taxpayers argue the Commission's definition of "processing" "converts the sales-and-use tax into a general retail sales tax" citing pages 19-21 of the Taxpayers' Initial Brief. DOR Response Brief, p. 40. This is untrue. The Taxpayers have never argued that the dictionary definition used by the Commission transforms the narrow and selective and sales use tax on specific enumerated services into a general sales and use tax. Instead, the broad definition used by the Commission causes all services to *tangible personal property to be taxable*, not *all retail services*. There is a huge difference between "a general retail tax" and a tax on "services to tangible personal property."

B. The Activity In Question Is Separation – Not "Processing."

Wis. Admin. Code § Tax 11.38 defines activities that are to be considered examples of "processing" under Wis. Stat. § 77.52(2)(a)11.[8] The activity at issue here – separating materials dredged from the Fox River into their component parts[9] – does not come close to approximating any of the more than 20 examples provided by the DOR in Tax 11.38.

The Note at the end of Tax 11.38 states clearly that "Section Tax 11.38 interprets ss ... 77.52(2)(a)10 and 11 ... ." Those are the very statutory sections at issue here. But neither the DOR nor the Commission ever mentioned Tax 11.38 or the Note or relied on any analysis of Tax 11.38 whatsoever to interpret "process" and "processing" when they imposed the tax. Instead, the DOR and Commission relied exclusively – and improperly – on a dictionary definition which, when applied, converts a narrow, special tax on specific services to tangible property into a general tax on all services to tangible personal property, which is directly at odds with the legislature's clear intent.

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[8] The DOR asserts that the Taxpayers "do not provide a contrary definition of 'processing." DOR Response Brief, p. 2. However, on page 44 of its Response Brief, the DOR states, in direct contradiction to that claim, that "Tetra Tech claims that 'processing' is defined in Wis. Admin. Code § TAX 11.38, and that this definition does not include SDI's services."

[9] The DOR asserts that SDI "treated" the dredged material; and "cleanly separate[d] the riverbed material." DOR Response Brief, p. 38. However, the record is clear that what came into SDI, went out of SDI; the only difference being that the materials were separated into components. [App. 3 ¶ 3; App. 18; App. 31-32; App. 52-54 ¶¶ 9-16; App. 65-66]. The chemistry of the sediment or of the PCBs was not modified or altered in any way by SDI's operations. Rather, SDI's operations simply separated sands from the silts and clays to which PCBs predominantly adhere. [R.3.1:19; App. 18; App. 31-34; App. 54 ¶ 15; App. 67]. Moreover, SDI's operations did not attempt to remove PCBs from the sand nor was the sand cleaned. Rather, sand was simply separated from the remaining dredged sediment. [App. 18; App. 31-34; App. 54 ¶¶ 14-15; App. 66-67].

C. Out-Of-Context Descriptions Of The Activity Do Not Make It Subject To Taxation.

On pages 39-40 of its Response Brief, the DOR asserts that "SDI's activities are 'processing' is further reinforced by the companies' own words," and then describes alleged characterizations made by Tetra Tech and others. However, on page 43 of its Response Brief, the DOR asserts, in total contradiction to its earlier assertions:

> But whether SDI's activities fall within Subsection 77.52(2)(a)11 *does not depend on how Tetra Tech labels those services*. Rather, it depends on identifying what the services actually are and then determining whether they are "processing." [Emphasis supplied; italics on "actually" omitted.]

Then, citing *Wis. Carry, Inc. v. City of Madison*, 2017 WI 19 ¶¶ 25-26, 373 Wis. 2d 543, 892 N.W.2d 233, the DOR quotes: "[T]he label given to a legislative device is not dispositive – one identifies the devices taxonomy functionally." The Taxpayers agree that the actual function of what occurs is critically important: Here it is undisputed that the Taxpayers engaged solely in separation of materials and nothing more.

Any reliance on deposition testimony and documents in which the term "processing" or "process" is used is of no consequence. The issue here is not what "processing" might mean to the general public, in common parlance, or even how it is generally characterized by the Taxpayers. The issue is what the *legislature* intended processing to mean under the statutes dealing with taxation of retail services. What someone says in general conversation or in a general description does not make a service taxable; for a service to be taxable, the activity not only must be listed in the statutes, but also clearly and expressly so. The Commission in *Manpower, Inc.,* Wis. Tax Rptr. (CCH) ¶ 401-223, made this clear when it ruled that "temporary help services" were not taxable "services" despite the fact that the word "services" was used to describe the activity:

> While we can accept the Respondent's assertion that the word "services" might be interpreted to encompass certain aspects of temporary help services, *we do not see the "clear and express language" required for tax imposition purposes, and under well-settled law*, we

must therefore resolve the ambiguity in favor of the taxpayer. [Emphasis supplied.]

D. The Proposed Definition Renders Wis. Stat. § 77.52(2)(a)10 and (2)(a)11 Surplusage.

The DOR's definition of "processing" cannot be sustained as it negates and renders surplusage the other categories listed by the legislature. For example, if processing is "to put through the steps of a prescribed procedure" or "to prepare, treat, or otherwise convert by subjecting to a special process," then the legislature need not have separately identified "painting," "coating," "alteration," "fitting," "cleaning," "maintenance," and "repair," all of which the legislature listed in § 77.52(2)(a)10, or "laundry" and "photographic" services listed in Wis. Stat. § 77.52(2)(a)6 and 7. The same is true under § 77.52(2)(a)11 for "producing," "fabricating," "printing," or "imprinting." Each "converts, treats or prepares" something using a "prescribed procedure."

The DOR's argument that there can be some "overlap" within the subsections of Wis. Stat. § 77.52(2)(a)10 and in (a)11, is unpersuasive. DOR Response Brief, pp. 41-42. The DOR's proffered definition effectively eliminates those categorical subsections. There is not just some "overlap" as the DOR contends; rather, *DOR's expansive definition completely supplants the subsections*. The DOR and the Commission cannot completely – and arbitrarily – replace statute sections with a dictionary definition that renders them superfluous.

The DOR asserts the services listed in Wis. Stat. § 77.52(2)(a)11 are narrower than the services listed in Wis. Stat. § 77.52(2)(a)10 because the services listed in Wis. Stat. § 77.52(2)(a)11 are only taxed when the materials are furnished to a third party, whereas the services listed in Wis. Stat. § 77.52(2)(a)10 will be "taxed in all instances." DOR Response Brief, p. 43.

The DOR's logic is flawed because, although not specifically stated in Wis. Stat. § 77.52(2)(a)10, those services can only be taxed when they are provided to a third party who has provided the materials with respect to which a service is performed. One cannot be taxed, of course, for

"repairing" one's own vehicle or "towing" one's boat to the marina. A tax is only imposed under Wis. Stat. § 77.52(2)(a)10 if a third party provides the vehicle or boat and is charged for "repairing" that vehicle or "towing" that boat.

Therefore, there is no practical difference between 77.52(2)(a)10 and 77.52(2)(a)11, and the definition of "processing" used by the DOR and the Commission does, in fact, improperly negate Wis. Stat. § 77.52(2)(a)10 completely.

E. There Is Ambiguity And Doubt That The Separation Activity Is "Processing" Within The Meaning Of Wis. Stat. § 77.52(2)(a)11.

Taxes can only be imposed by clear and express language; services can only be taxed if specifically listed. *Any* ambiguity or doubt is resolved in favor of the taxpayer and against the one seeking to impose the tax. Accordingly, provisions in the sales/use tax statutes must be *construed narrowly,* not broadly. *See, Brennan Marine, supra.*

The facts in this case, as to what SDI does, and SDI does not do, renders doubtful and ambiguous the claim that "processing" in Wis. Stat. § 77.52(2)(a)11 covers separation activities. There is no "clear and express language" in Wis. Stat. § 77.52(2)(a)11 that specifically lists the character of SDI's separation activity. If it is so "clear" that the activities constituted "processing" then why go to a dictionary to define the term? Why did the DOR fail to put the processing claim in writing at the DOR level? Why didn't the DOR mention the term in any of the audit documents? Why was the term not contained in the formal Notice of Resolution on Petition for Redetermination issued by the DOR's Resolution Officer? Why did the DOR first cite and rely on a dictionary definition of "processing" only when it moved for summary judgment after the Taxpayers appealed to the Commission?

F. The Commission's Decision Is Not Entitled To Any Deference.

As set forth, the Commission's decision is not entitled to any deference because deferring to an agency's

interpretation of a statute violates Article VII, Section 2 of the Wisconsin Constitution.

Even if the constitutional issue was not before the Court, the Commission is still not entitled to any deference.

The DOR argues that the Commission's use of the dictionary definition to define "processing" "is consistent with its interpretation of this term in *Hammersley Stone Co. v. DOR,* Wis. Tax Rptr. (CCH) ¶ 400-383 at 31,999 (WTAC 1998)." DOR Response Brief, p. 45. The DOR misstates the holding in *Hammersley.* In fact, in *Hammersley* the Commission did not interpret "processing" within the context of Wis. Stat. § 77.52(2)(a)11 because the only issue in dispute was whether "the service was sold at retail." Indeed, the Commission never defined "processing" in *Hammersley.*

In this case, the mere fact the Commission relied on a dictionary definition of "processing" hand-picked by the DOR illustrates the Commission did not utilize any special knowledge or expertise. The Commission also failed to provide an articulated interpretation of Wis. Stat. § 77.52(2)(a)11. Therefore, under *Operton*, 2017 WI 46, ¶ 23 n.11, the level of deference the agency is afforded is not at issue:

> [P]erhaps our standard of review analysis in cases involving an agency's interpretation of a statute should include a threshold determination of whether the agency has articulated its interpretation of the statute. If an agency has not provided the court with an articulated interpretation of the statute, then the level of deference the agency is afforded is not at issue … ."

The Commission did not explain why it accepted the DOR's dictionary definition or why it was reasonable and appropriate. The Commission did not review the context and intent of the statute and the DOR's administrative rule pertaining to "processing." The Commission did not address the impact of its decision to use the DOR's definition, including whether it converted a selective tax on services to tangible personal property to an impermissible general tax on services to tangible personal property; rendered other provisions of the statute surplusage; or was in conflict with long-standing law and precedent that any sales taxes on services must be strictly construed and any doubt or

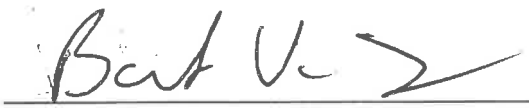
ambiguity in coverage must be resolved in favor of the person or entity against whom the tax is sought to be imposed. Moreover, the DOR apparently concedes the Commission's failure to articulate its decision as it did not address this critical issue in its Response Brief. An argument not responded to is deemed conceded. *State v. Jackson*, 2015 WI App 49, ¶ 35, 363 Wis. 2d 554, 866 N.W.2d 768 citing *Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

CONCLUSION

For the reasons given, the Taxpayers submit that the Court should reverse the Court of Appeals' September 11, 2016 decision and the Wisconsin Tax Appeals Commission December 30, 2014 Ruling and Order and hold that Taxpayers are not liable for sales taxes.

Dated this 21st day of July, 2017.

Respectfully submitted,



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CERTIFICATION

I certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with proportional serif font, as well as the Court's July 14, 2017 Order stating this brief should not exceed 6,000 words if a proportional serif font is used. The length of this brief is 4,247 words.

I further certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date. A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

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