

Manpower II: The Wisconsin Department of Revenue's Interpretation Limits the Beneficial Impact of the Landmark Manpower Decision

Six months after the landmark decision in *Manpower Inc. v. Wisconsin Department of Revenue*, the Wisconsin Department of Revenue has published guidance indicating how it will apply the *Manpower* decision. Unfortunately, the guidance appears to severely restrict the beneficial impact of the *Manpower* decision. (Reinhart attorneys John Austin, Don Millis and Kristina Somers represented Manpower in this case.)

Affected Services

When a seller provides a service subject to Wisconsin sales/use tax, the seller must remit tax to the Department of Revenue. Taxable services range from landscaping to providing hotel accommodations. In *Manpower*, the Wisconsin Tax Appeals Commission concluded that temporary help services are not taxable. The Commission held that companies like Manpower are not providing taxable services, even when the workers they place perform tasks that resemble taxable services. For example, if Manpower provides a worker to another business who mows the lawn for that business, Manpower is not providing landscaping, which is a taxable service. Rather, by providing persons who work at the control and direction of its clients, Manpower is selling only temporary help services.

Department of Revenue Requirements

In the *Wisconsin Tax Bulletin* published last month, the Department of Revenue released a summary of its application of the *Manpower* case. The Bulletin highlighted various criteria the Department will consider to determine whether a service is a nontaxable temporary help service. Unfortunately, the Department appears to have drawn the criteria from specific facts of the *Manpower* case, surprisingly limiting its beneficial effect.

The Department of Revenue's Bulletin provides three different requirements, all of which must be met for the taxpayer to be considered to be providing nontaxable temporary help services. First, the Department looks at whether the taxpayer is a company or organization that leases employees or provides

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temporary employees. Second, the Department checks whether the taxpayer holds itself out to the public as a temporary help company, such as through a Web site or relevant memberships. Finally, the Department lists a series of seven factors, each of which must be met. These factors deal with direction and control, and with the relationship between the taxpayer and its client.

The Department may request certain records to substantiate that the taxpayer was providing nontaxable temporary help services, such as contracts and job reports.

Affected Taxpayers

For some taxpayers, the Department of Revenue's narrow interpretation of the *Manpower* case will not pose any problems beyond a potential administrative headache of documenting, on a going-forward basis, that the Department's requirements are met. However, for taxpayers audited for periods before February 2010 (which audit periods may be open for several years yet), the Department's Bulletin could present an unwelcome difficulty. Those taxpayers will not have known of the Department's requirements and may not have the preferred documentation available.

For other taxpayers (such as those with multiple lines of businesses), the Department of Revenue's application of the *Manpower* case may be even more troubling, as such taxpayers may not be able to meet the requirements set forth by the Department. If you fall into either of these categories, we can help you decide the best course of action for your company.

In summary, for taxpayers who do not satisfy the Department of Revenue's requirements, the sales and use tax consequences may be costly. If you have concerns about how to fall within the Department's interpretation of the *Manpower* decision, call any of Reinhart's [State and Local Tax attorneys](#) to analyze how the *Manpower* case applies to you.

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