

No. 25A

IN THE
Supreme Court of the United States

ASAP CRUISES, INC.,

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

ON APPLICATION FOR EXTENSION OF TIME TO FILE

**APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF WISCONSIN**

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CORPORATE DISCLOSURE STATEMENT

ASAP Cruises, Inc. has no parent corporation and no publicly held company owns more than 10% of its stock. It has no stock ticker symbol.

APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF WISCONSIN

To the Honorable Amy Coney Barrett, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Seventh Circuit.

Pursuant to Rules 13.5, 21, 22, and 30.2 of this Court, Applicant ASAP Cruises, Inc. (“Applicant”) respectfully requests that the time to file a petition for a writ of certiorari to the Supreme Court of Wisconsin be extended for 60 days, to and including July 12, 2026.

The Supreme Court of Wisconsin issued an order denying the Applicant’s petition for review on February 12, 2026. (Appendix A). Applicant is filing this application at least ten days prior to the current due date of May 13, 2026. *See* S. Ct R. 30.2. This Court would have jurisdiction over the judgment pursuant to 28 U.S.C. § 1257.

BACKGROUND

Applicant is a Florida corporation with its headquarters and principal place of business in Jacksonville, Florida. In the ordinary course of its business, Applicant contracted with Wisconsin-based travel consultants (“WTCs”) through the use of an “Independent Travel Consultant Agreement” (the “Agreement”). The form of the Agreement was prepared by Applicant and made available to WTCs for completion through Applicant's website.

A software platform was made available on Applicant's website for use by WTCs to sell travel services to customers of the WTCs (the “Software Platform”). The Software Platform was a multivendor aggregator that provided WTCs with one-stop access to third party travel vendors (*i.e.*, airlines, cruise lines, hotels, etc.) for purposes of booking travel packages. Through the Software Platform, WTCs were also offered access to online business management and marketing tools to help grow their independent travel business.

Applicant owned no real or tangible personal property in Wisconsin during the relevant periods. In addition, no employee of Applicant had resided or visited the State during the relevant periods. The computer servers "holding" or "hosting" the software relating to the Software Platform were located outside Wisconsin.

The WTCs booked travel services for their customers using the Software Platform. The WTCs earned commissions on sales of travel services made through the Software Platform during the periods at issue. Applicant's primary sources of revenue were from membership fees and fees relating to commissions earned by WTCs from booking travel through the Software Platform.

The Wisconsin Department of Revenue (the "Department") asserted that Applicant was liable for Wisconsin corporate franchise taxes relating to the amounts it earned from the operation of the Software Platform. Applicant contended that its activities were protected under Public Law 86-272, 15 U.S.C. §§ 381-384 ("P.L. 86-272"). Enacted in 1959, P.L. 86-272 restricts a State's authority to impose corporate income tax against out-of-state taxpayers. Specifically, out-of-state taxpayers are not liable for corporate income tax in a taxing state as long as it restricts its in-state activities to "the solicitation of orders ... for sales of tangible personal property."

Applicant relied on this Court's holding in *Heublein v. South Carolina State Tax Comm'n*, 409 U.S. 275 (1972). In *Heublein*, this Court explained that P.L. 86-272 "was designed to define clearly a lower limit for the exercise of [a State's taxing] power." *Id.* at 280. The Court further explained that the "lower limit" represented a line in the sand and that "the State's interest in taxing business activities below that limit [is] weaker than the national interest in promoting an open economy." *Id.* Applicant argued that its activities fell below this "lower limit" and, therefore, P.L. 86-272 acted as a bar to any assessment of Wisconsin corporate franchise tax.

The parties filed cross motions before the Wisconsin Tax Appeals Commission and the Commission granted summary judgment to the Department. The Commission held that P.L. 86-272 only applied to sales of tangible personal property and that Applicant was in the business of selling travel services. The Commission did not address Applicant's "lower limit" argument based on the holding in *Heublein*.

On appeal to the Circuit Court for Dane County, the court reversed citing a procedural issue. The court did not squarely address the challenge under P.L. 86-272. Both parties appealed to the Wisconsin Court of Appeals.

The Wisconsin Court of Appeals affirmed the decision of the Tax Appeals Commission.¹ The appeals court held that the scope of P.L. 86-272 was limited solely to the in-state solicitation of sales of tangible personal property. The appeals court did not agree with Applicant's interpretation of *Heublein* that P.L. 86-272 sets a "lower limit" of activity protected by federal law. Applicant appealed to the Supreme Court of Wisconsin which denied review. (Appendix A).

THE DECISION BELOW

The Wisconsin Supreme Court disagreed with Applicant's view that P.L. 86-272 draws a "line in the sand" between protected and unprotected activities. The appeals court held that "a more workable standard [is] that the 'lower limit' protected from State taxation is precisely the activity described by the plain language of Public Law 86-272. In the view of the appeals court, the solicitation of sales of tangible personal property is the "lower limit" activity that a State is prohibited from taxing, and it is only this activity that is protected from State tax by Public Law 86-272.

¹ See *Lake Beulah Mgmt. Dist. v. DNR*, 2011 WI 54, ¶25, 335 Wis. 2d 47, 799 N.W.2d 73 (making clear that on an appeal of a Circuit Court order reviewing a decision of a State agency, the court reviews the decision of the agency).

Applicant intends to seek certiorari. This Court was unambiguous in *Heublein* that P.L. 86-272 set a "lower limit" between in-state activities protected from State taxation and those that exceed the protections of the federal law and permit State taxation. In this way, P.L. 86-272 does in fact draw a "line in the sand." Moreover, more recently, in *Wisconsin Dep't of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214 (1992), this Court was again asked to consider the scope of P.L. 86-272. After reviewing the relevant history leading up to the enactment of P.L. 86-272, this Court stated that the federal law "established ... a 'minimum standard' for imposition of a State net-income tax based on solicitation of interstate sales." *Id.* at 222. The clear instruction from this Court is that there are in-state activities that fall below the "lower limit" or "minimum standard" outline in P.L. 86-272 that are also protected from State taxation.

The decision of the Wisconsin Court of Appeals interpreted P.L. 86-272 as providing a "bullseye" on a dart board – *i.e.*, you meet the articulated standard or not. In this way, the protections afforded by the federal law are in no way a "lower limit" or "minimum standard" as explained by this Court in both *Heublein* and *Wrigley*.

The U.S. economy has substantially evolved from the predominant sale of tangible personal property to sales of intangible services over the internet. As drafted and consistently interpreted by this Court, P.L. 86-272 was enacted to provide clear instruction to taxpayers on exactly when an out-of-state taxpayer's in-state activities are subject to tax in the taxing State. The decision of the Wisconsin Court of Appeals raises important issues concerning the scope of the federal law.

REASONS FOR GRANTING THE EXTENSION OF TIME

1. A combination of a recent illness, briefings, hearings, and contested motions in other matters in the weeks leading up to the current deadline leaves counsel concerned that, absent a sixty-day extension, a Petition for a writ of certiorari might not do full justice to the issues presented.

2. An extension should not cause prejudice to Respondents.

3. The opinion of the Wisconsin Court of Appeals raises significant issues relating to the scope of the protections from State taxation in P.L. 86-272. With the continued growth of e-commerce, the issues in this case are of substantial importance to business owners seeking to understand and account for their State tax obligations. A sixty-day extension will help ensure the issues are more clearly presented to the Court so it can determine whether certiorari is warranted.

Respectfully submitted,

/s/ Michael J. Bowen

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APPENDIX

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APPENDIX A — ORDER OF THE SUPREME COURT
OF WISCONSIN, FILED FEBRUARY 12, 2026.1a

FILED
02-12-2026
CLERK OF WISCONSIN
SUPREME COURT



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February 12, 2026

To:

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Circuit Court Judge
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Clerk of Circuit Court
Dane County Courthouse
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Sara Stellpflug Rapkin
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You are hereby notified that the Court has entered the following order:

No. 2023AP1251 ASAP Cruises, Inc. v. Wisconsin Department of Revenue,
L.C. #2022CV1975

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of petitioner-respondent-cross-appellant-petitioner, ASAP Cruises, Inc., and considered by this court;

IT IS ORDERED that the petition for review is denied, without costs.

REBECCA GRASSL BRADLEY, J., dissents.

Samuel A. Christensen
Clerk of Supreme Court