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vidual business firms, if such printed material is used solely outside the state. (s. 77.54 (25), Wis. Stats.)

The issue in this case was whether the retailer was entitled to a sales tax exemption for advertising materials purchased in Wisconsin and shipped outside the state for exclusive use outside the state prior to May 12, 1972.

The court held that the retailer was entitled to the exemption. It stated that the legislative intent reflected that such a sales tax exemption existed prior to May 12, 1972 and that s. 77.54 (25) merely clarified the law in 1972.

The Department has appealed this decision to the Wisconsin Supreme Court.

Department of Revenue vs. James T. Jacobson (Circuit Court of Bayfield County, Case No. 7519, July 6, 1977.) The taxpayer was employed as a Wisconsin state trooper during the years 1970 through 1973, inclusive. The sole issue was whether the meal reimbursement funds he received from his employer were includable in gross income for Wisconsin income tax purposes.

The taxpayer contended that the meal reimbursements were excludable under s. 119 of the Internal Revenue Code. That section provides that to be excludable, meals must be furnished for the convenience of the employer and on the business premises of the employer.

The state highway patrol had certain policies regarding troopers' meals. Among them, troopers are not allowed to carry bag lunches or consume them on the roadside or in their vehicle. They must eat in close proximity to their assigned sector and may not go home for meals. The meals shall be eaten at the convenience of troopers when the workload allows. Troopers must be available to respond to emergencies at all times, and troopers are reimbursed for actual out-of-pocket expenses incurred as the result of such policies.

In this case, the taxpayer was stationed in northern Wisconsin and had not included his meal reimbursement in gross income. The taxpayer claimed that the meals were furnished in cash reimbursement form, for the convenience of the employer and pursuant to the employer's standards.

The Court overturned the Wisconsin Tax Appeals Commission and held that the meal reimbursements are taxable income. The Court held that the cash reimbursement was not the same as "meals" and did not, as such, fit within the statutory exemption language.

St. Michael Hospital of Franciscan Sisters, Milwaukee vs. David Adamany, as Secretary of the Department of Revenue, and Becker Construction Co., Inc. (Circuit Court of Milwaukee County, Case No. 449-303, July 7, 1977.)

The hospital claimed that its purchases of construction materials which were incorporated into a hospital addition constructed by Becker Construction Company, were exempt from the sales and use tax. The Department of Revenue assessed the construction company sales taxes, interest and penalties. The hospital's contract with the construction company provided that the hospital would reimburse the construction company for any amounts assessed.

The hospital went directly to circuit court asking for a declaratory judgment and the Secretary of Revenue moved that this action be dismissed until normal administrative remedies had been exhausted. The Court held that it had the jurisdiction and authority to void the Department's assessment against the construction company and denied the motion to dismiss.

The Department has appealed this decision to the Wisconsin Supreme Court.

Phillip Cullen vs. Department of Revenue (Circuit Court of Dane County, Case No. 152177, July 7, 1977.) Snowmobiles, all-terrain vehicles and boats were rented to the public by the taxpayer at the Lake Geneva Playboy Club-Hotel. The taxpayer owned the snowmobiles and all-terrain vehicles and the club owned the boats. Taxpayer contracted in writing with the club to maintain the equipment and operate on a commission basis for the benefit of club guests. A fact in dispute was who collected the fees, the taxpayer or the club.

The contract was silent on who was responsible for paying the sales tax. The issue before the Court was whether Mr. Cullen or the club had the responsibility of reporting the tax on these rental receipts. The Tax Appeals Commission affirmed the Department's assessment against Mr. Cullen.

The Court held that the Commission's findings of facts were in error and remanded the case to the Commission for further review. Changing the findings of fact may affect the conclusions of law issued by the Commission. The Court stated, however, that as a matter of law, the club, which owned the boats, was legally responsible for the sales tax on the rentals and commissions for the boats. It left open the question of whether the operator could also be liable for such taxes.

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answers may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. Unless otherwise indicated, Tax Releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.)

NOTE: Many of these were formerly distributed to Department personnel as sales tax memos or reports. It is thought that these positions would be of help to taxpayers and tax practitioners.)

SALES TAX

I. Admissions - Entry Fees

A. Entry Fees Paid by Professionals

Snowmobile race entry fees are not subject to the sales tax when the primary motive of the majority of persons entering the contest is "business" and not "recreation". At large snowmobile races, commonly most of the entrants are manufacturers who ship semitrailer loads of their snowmobiles to the event. They pay an entry fee (e.g., \$25) with the motive of winning some portion of the event and using the success for advertising purposes. Under these conditions, receipts from snowmobile entry fees (both fees of professional and amateur entrants) are not taxable because the majority of entrants are not pleasurable or recreationally occupied by the event.

Entry fees of both professional and amateur entrants are also not taxable for other sporting-type contests in which the primary motive of the majority of entrants is business, not recreation. Such events include golf tournaments, rodeos and auto races.

B. Entry Fees Paid to Enter Fishing Contests

A fee paid for entering a fishing contest on public waters is not taxable as an admission to a recreational facility. If the contest is held on a lake, river or other public waters and anyone may enter the recreational facility, the entry fee is generally a device for collecting funds to be used as prizes and is not taxable.

II. Mailing Services

If a Wisconsin printer's in-state or out-of-state customer requests a completed order (except exempt printed advertising material

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destined for exclusive out-of-state use) be shipped to an independent mailing service firm in Wisconsin, the gross receipts received by the printer are subject to sales tax. In this situation, the mailing service firm is the designee and agent of the purchaser and the sale has been completed in Wisconsin pursuant to s. 77.51 (4r), Wis. Stats. It is immaterial whether the mailing service firm mails all or part of the material outside Wisconsin.

If a printer contracts with a mailing service firm, bookbinder, or similar business to mail material, only the portion mailed to Wisconsin addresses is subject to tax. In this situation, the mailer is the designee and agent of the printer, and delivery does not take place in Wisconsin in respect to the material mailed to out-of-state addresses.

III. Door and Window Repairs

If storm doors, storm windows, interior doors or interior windows are repaired on a homeowner's premises, the service is considered the repair of real estate and not subject to sales tax. However, if this repair service is performed off the homeowner's premises, the charge for the service is taxable.

IV. Furnishing Asphalt

A person who furnishes and spreads liquid asphalt in its final resting place on a roadway or driveway is a contractor and the consumer of the liquid asphalt. Sales of such materials to the contractor are subject to the sales tax.

A person acts as a retailer if he or she delivers liquid asphalt to a storage area, such as a storage tank, where it is subsequently mixed with dry materials and applied by the purchaser. The gross receipts from such sales are subject to the tax.

V. Use Tax

Assume that a nationwide company has its central office and warehouse in Wisconsin. Office forms and supplies are distributed to all other plants in the nation from the Wisconsin warehouse. A printing plant is located in the warehouse, in which paper stock is converted into office forms. The company purchases the paper stock from an unregistered out-of-state supplier, which does not collect any tax on the transaction.

Under these facts, the use tax does not apply to the paper stock used to print forms for out-of-state use. The use tax applies to the portion of the paper stock for forms used in the Wisconsin office and warehouse or shipped to other Wisconsin plants of the company.

VI. Grocers' Reporting Methods

A grocery store operator may collect and report the sales tax in one of 3 methods:

Method 1: Segregate taxable and non-taxable items at the check-out counter. Total the taxable items and then add the tax. Maintain a daily record of taxable sales. Report and pay tax on gross receipts from taxable sales.

Method 2: Use purchase invoices to establish the ratio between taxable and non-taxable items purchased. Apply this ratio (percentage) to total gross receipts to arrive at taxable sales. Each store operator must establish the ratio for a store by a sample sufficient in scope to properly reflect taxable sales. The store operator is expected to re-establish ratios often enough to account for seasonal variations in sales.

Method 3: Mark up the wholesale purchase price of taxable items to their retail price. Pay the tax on monthly purchases of taxable commodities marked up to retail price.

A retailer must maintain appropriate records to be able to demonstrate that the method used reasonably reflects the proper tax liability.

A grocery store operator **MUST** request and receive the approval of the Department before using either Method 2 or 3. Approval may be requested by writing to the Wisconsin Department of Revenue, P. O. Box 39, Madison, Wisconsin 53701 (P.O. Box 8902, Madison, Wis. 53708 after December 31, 1977).

VII. Retail Cooperative's Patronage Dividends

A retail cooperative which gives annual rebates to its members based on the total amount of their purchases from the cooperative may not deduct these rebates from its gross receipts. These rebates are patronage dividends, not cash discounts, and are not deductible from the gross receipts of the cooperative for sales tax reporting.

VIII. Motion Picture Film or Tape

Section 77.54 (23m), Wis. Stats., provides a sales and use tax exemption for motion picture film or tape, and advertising materials related thereto, sold, leased or rented to a motion picture theater or radio or television station. The exemption applies to both audio and video tapes purchased by radio and television stations.

IX. Optical Company Sales

The following information may be of special interest to wholesale optical companies and other suppliers serving opticians, optometrists and ophthalmologists:

A. Taxable Sales

The following items, when sold to any person (including an ophthalmologist or optometrist) who does not furnish a Resale Certificate, are subject to the tax:

1. Contact lens solution and lens cleaners.
2. Glass guards and temple covers.
3. Tools, screw driver bits, occluders and eye crutches.
4. Opera glasses and other nonprescription goods.
5. Clip-on sunglasses, safety glasses and other glasses not ground to prescription. (Also see B below.)

B. Exempt Sales

Without Exemption Certificate: The following prescription items may be sold without tax to persons who demonstrate that they are licensed opticians, optometrists or ophthalmologists:

1. Lenses and frames for prescription glasses.
2. Contact lenses and cataract lenses.
3. Sunglasses with prescription lenses.
4. Hinges, screws and other repair parts for prescription glasses.
5. Cases and other containers which the professional will use to transfer prescription glasses to customers.

Repair labor charges for prescription glasses are also exempt.

With Exemption Certificate: The following items may be sold without tax to an optometrist or ophthalmologist only if the person furnishes a signed Certificate of Exemption:

1. Safety glasses with plano lenses.
2. Sunglasses with plano lenses.

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C. Sales for Resale

Sales of items listed as "taxable" under "A" above may be made without tax if the purchaser has provided the seller with a valid Resale Certificate.

An optometrist or ophthalmologist does not ordinarily have a Seller's Permit, and therefore cannot furnish a Resale Certificate. He or she is deemed to be a consumer, not a seller, in providing nontaxable service to patients.

An optician, however, is commonly in the business of selling to optometrists, ophthalmologists and others. If an optician sells items such as those listed in "A", the optician must have a Seller's Permit and may issue Resale Certificates.

X. Use of Exemption Certificates**A. In General**

Under the sales and use tax law, all gross receipts from sales of tangible personal property are subject to the tax unless exempt by statute. To the contrary, services are exempt unless enumerated in the statutes as taxable.

The burden of proving that a sale of tangible personal property is exempt is upon the person who makes the sale, unless an exemption certificate is accepted on an approved form in good faith from the purchaser. The Department has found that some sellers make sales without tax without acquiring an exemption certificate from the purchaser. In this situation, the seller's taxable sales are increased by the amount of the unsubstantiated deductions.

If a seller accepts an approved resale or other exemption certificate in good faith, the seller is not liable for the tax. The good faith of the seller will be questioned, however, if the seller has accepted a certificate with knowledge which gives rise to a reasonable inference that the seller knew or should have known that the purchaser did not intend to resell the property or use it for an exempt purpose.

B. Special Situations**1. Partial Exempt Use**

Some purchasers of tangible personal property purchase it for both exempt and non-exempt use, for example, fuel purchased by farmers. Utility companies and other retailers of fuels (not electricity) may handle such exemption claims in either one of two ways:

- (a) Accept an exemption claim for a specific percentage of a customer's purchases, and pay tax only on the percentage not claimed to be exempt, or
- (b) Pay tax on the full billings, but at the end of each year accept a letter from the customer stating the volume and dollar purchase value which was used in an exempt manner and file an application for sales tax refund on behalf of all such customers.

2. Repairer Provides Nontaxable Services

Persons who never have retail sales subject to the tax are not required to register and obtain a Seller's Permit, even though

they regularly purchase for resale. For example, the repair person who only performs exempt services on exempt farm machines (e.g., bulk milk coolers) could use the Certificate of Exemption (Form S-207) and claim "Repair parts purchased for resale in the repair of exempt agricultural machinery" when purchasing machinery parts.

3. Producing Exempt Item

A person engaged only in producing exempt items, such as building hay wagons or "green forage boxes" which are pulled by a tractor and are sold only to farmers, is not required to hold a Seller's Permit. When purchasing lumber, bolts, nails or component parts, the person may use Form S-207 (Certificate of Exemption), check block no. 7, and insert: "Component parts or materials purchased for resale in the form of exempt farm wagons."

4. Purchases Are Always For Resale

Persons who make all purchases for resale (such as pulpers and loggers who purchase standing timber for resale to lumber mills, paper mills, saw mills and other manufacturers) should use the Certificate of Exemption (Form S-207) and claim the exemption "Tangible personal property in any form destined for sale."

5. Farmers' Purchases

Farmers may use the Farmer's Exemption Certificate (Form S-206) to purchase parts for exempt machinery (such as spark plugs, batteries, tires, nuts, bolts and other types of property for a tractor) even though the parts may not be specifically designed for use in exempt property.