

The Commission concluded that taxpayer is entitled to an exemption within the intent and meaning of s. 77.54 (12), Wis. Stats., for lubricants used in conjunction with its rolling stock. The lubricants used in the manner prescribed by the taxpayer for its rolling stock are exempt and are construed to be included in the phrase "... accessories, attachments, parts or fuel ...".

The department has appealed this decision to Circuit Court.

City of Racine vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 29, 1981). The City of Racine, through its Park and Recreation Department, conducts and administers various leagues for sports activities including softball, volleyball, basketball and tennis. Fees are charged to individuals and teams engaging in such activities conducted at city recreational areas at previously scheduled times. No other individual or team can use the recreation area at that specified time. The fees charged are based on the direct costs of the facilities involved to the City of Racine and are an attempt on its part to defray or recoup its expenses.

During the period January 1, 1975 through March 31, 1979 the city did not collect sales tax on such fees.

On June 27, 1979, the department issued a notice of sales and use tax deficiency determination against the City of Racine in the total amount of \$32,111.04, covering the period of January 1, 1975 to March 31, 1979. It imposed a sales and use tax on the fees on the basis that they were collected for the use or access to athletic or recreational facilities, and thus were taxable under s. 77.52 (2) (a) 2, Wis. Stats.

The City of Racine maintained that the fees it collected were not for the use or access to its athletic or recreational facilities but rather a charge for services rendered in conjunction with the facilities' use, based on its cost, and thus should not be subject to tax.

The Commission determined that the fees charged and collected by the City of Racine were for the privilege of having access to and the use of its athletic and/or recreational facilities and thus were subject to sales tax.

The taxpayer has appealed this decision to Circuit Court.

Wisconsin Department of Revenue vs. Family Hospital, Inc. (Court of Appeals, District IV, April 27, 1981). The sole issue is whether the gross receipts from a parking lot operated by a nonprofit hospital for use by its patients, employees and guests are subject to Wisconsin sales tax. Family Hospital, Inc., taxpayer, is a nonprofit Wisconsin corporation which operates a nonprofit hospital in Milwaukee. The parking lot in question is adjacent to the hospital. It is used predominantly by hospital patrons and personnel.

The Court found that s. 77.52 (2) (a) 9, Wis. Stats., unambiguously lists parking as a service subject to sales taxation. Therefore, it concluded that the provision of parking space is a separate service subject to the sales tax on services unless exempted by s. 77.54. The department contended that s. 77.54 was intended to exempt receipts from "sales to" the state and other enumerated entities, and receipts from the "use or consumption of" property and "services by" those entities. (Emphasis supplied.) Under this construction the statute exempts the listed entities only when they are the recipients of goods or services, and not when they are the providers of either. The trial court read the language of the statute more broadly, as exempting from taxation receipts from "sales to, and ... services by" the exempted entities. (Emphasis supplied.) The Court found that the statute was susceptible of either construction. Since the statute was ambiguous, it looked beyond its language to determine legislative intent.

The Court concluded that the legislative history of s. 77.54 was of little aid in determining the meaning of the statute. Therefore, it looked to the position taken by the department in two "technical information memoranda" interpreting s. 77.54 (9a), on February 25, 1974 and September 2, 1975. In each the department expressed its opinion that receipts by "governmental units within the state, hospitals and other exempt entities" for "(p)arking, docking and storage of motor vehicles, automobiles, aircraft and boats" were not subject to sales tax. (Emphasis supplied.) The

Court found no support for the department's contention that the memoranda were intended to apply only to governmentally operated hospitals. Although the memoranda were entitled "SUBJECT: GOVERNMENTAL UNITS," they expressly encompassed "hospitals and other ... entities" exempted by s. 77.54 (9a).

The Court affirmed the Circuit Court decision (see summary of Circuit Court decision in Wisconsin Tax Bulletin #15) and ruled that the gross receipts from the parking lot were not subject to Wisconsin sales tax.

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

Fort Howard Paper Company vs. Wisconsin Department of Revenue (Court of Appeals, District IV, March 20, 1981). Fort Howard Paper Company (taxpayer) is a large manufacturer of paper and paper products. The question involved was whether taxpayer was required to pay a use tax on four categories of personal property. (See summary of Circuit Court decision in Wisconsin Tax Bulletin #20.) The issues to determine were as follows:

1. Taxpayer purchased and used coal to generate steam and electricity in large quantities. It used all the steam and electricity in its paper making process and the electricity and steam was produced in a power plant nearly identical to power plants which sell steam and electricity to the public. Taxpayer contended that the coal purchased was exempt from use tax by s. 77.54 (6) (c), Wis. Stats., which exempts "Coal ... converted to electric energy, gas or steam by utilities and that portion of the amount of coal ... converted to steam for purposes of resale by persons other than utilities."

The Court ruled that taxpayer had not shown that the exemption created by s. 77.54 (6) (c) clearly applied to it. The Court, therefore, sustained the Circuit Court's decision that the purchases of coal were not exempt since taxpayer was not a utility.

2. Taxpayer owned and maintained railroad-type equipment to switch and transport loads on its premises. It also maintained crews to work the railroad yard switching

peration. Taxpayer contended that s purchases of a switch engine and rackmobile were exempt from tax under s. 77.54 (12), Wis. Stats., which exempts "locomotives or other rolling stock used in railroad operations. . . ."

The Court affirmed the Circuit Court's decision. It concluded that taxpayer's railroad-type equipment clearly falls within the definition of items "used in railroad operations," and therefore falls within the exemption provided in s. 77.54 (12).

3. Taxpayer maintained an art department consisting of 23 artists. The art department assisted in the manufacturing of specialty products such as napkins, placemats, tray covers, coasters, doilies, paper towels, and company reports, manuals and brochures. The art department had its own composing operation which prepared initial drawings or paintings to finished art work which was reduced to photographic plates for imprinting on the particular paper product involved. Taxpayer also maintained a staff of photo technicians and printers involved in manufacturing paper specialty products. The art supplies used by taxpayer which were in issue were poster white, ink, cement, water color sets, colored pencils, erasers, Kleer Kote, pencils, tracing paper, masking tape, razor blades, artist's triangles, artist's brushes, pen points, Bourges stylus, pens, lead holders, push pins, pen holders, handis-pencer and lettering points.

The Court upheld the Circuit Court's ruling that under s. 77.54 (2), Wis. Stats., which exempts from sales and use tax property which is "consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale . . .", the following types of art supplies were exempt: pencils, poster white, ink, cement, water color sets, colored pencils, erasers, Kleer Kote, tracing paper, and masking tape.

4. Taxpayer installed various items of effluent treatment equipment which added an additional recycling operation to the papermaking operation. The equipment reduced the amount of waste discharge and changed what was once sewage into raw material.

The Court agreed with the Circuit Court that the effluent treatment equipment was exempt under s. 77.54 (6) (a), Wis. Stats., which exempts from tax "Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property."

Neither the taxpayer nor the department has appealed this decision.

Wisconsin Department of Revenue vs. Horne Directory, Inc. (Court of Appeals, District IV, February 13, 1981). The issue in this case is whether the taxpayer, Horne Directory, Inc., is subject to a use tax under s. 77.53 (1) and (2), Wis. Stats., for the cost of printing and delivering telephone directories from an out-of-state printing establishment to Wisconsin residents. Summaries of the Circuit Court and Tax Appeals Commission decisions are found in Wisconsin Tax Bulletin #14 and #12, respectively.

The Wisconsin Department of Revenue appealed from a judgment of the Circuit Court based upon the trial court's conclusion that the taxpayer was exempt from the tax. The Court of Appeals affirmed the judgment, but not the reasoning, of the Circuit Court.

The Court of Appeals indicated that the Circuit Court erred in determining that the taxpayer, and not the printer, was the "seller" of the directories under s. 77.51 (4r), Wis. Stats. The Court of Appeals further stated that no event occurred within Wisconsin constituting a taxable use of the directories by the taxpayer, since the directories never transferred to the taxpayer.

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

Miss Wisconsin Pageant, Inc. vs. Wisconsin Department of Revenue (Dane County Circuit Court, February 9, 1981). In Wisconsin Tax Bulletin #20 it was indicated that the taxpayer had appealed a Wisconsin Tax Appeals Commission decision to Circuit Court. That appeal was dismissed by the Circuit Court on procedural grounds.

Wisconsin Department of Revenue vs. Gerhard Van Beck (Circuit

Court of Wood County, December 16, 1980). The question in this case was whether taxpayer, Gerhard Van Beck, had properly surrendered his seller's permit before the sale of his business to qualify the sale as an occasional sale and, therefore, not subject to the sales and use tax. A summary of the Wisconsin Tax Appeals Commission decision on this case is contained in Wisconsin Tax Bulletin #16.

The Circuit Court affirmed the decision of the Tax Appeals Commission and ruled that the sale was an "occasional sale", as defined in s. 77.51 (10) (a), Wis. Stats., and was, therefore, exempt under s. 77.54 (7) from sales and use tax.

The department has not appealed this decision.

Steve Varese vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, March 18, 1981). Taxpayer Steve Varese on January 20, 1962, applied for a seller's permit to be issued in the trade name of "Steves Liquor Store" and said permit was issued by the Department of Revenue on February 1, 1962 assigning permit number 9726. Taxpayer operated a retail liquor store at 3618 University Avenue, Madison, Wisconsin, from the date of issuance of said permit until he ceased his operation of that store on December 31, 1979.

On September 19, 1969, he applied for a seller's permit to be issued in the same trade name, "Steves Liquor Store", and was issued such permit as number 9726B on October 13, 1969. Taxpayer's original permit number was, apparently, amended thereafter to be known as 9726A. Taxpayer operated a 2nd retail liquor store at Route 2, Mineral Point Road, Madison, from the date of issuance of the permit number 9726B and is still operating it.

On December 28, 1979, at 2:15 p.m., taxpayer surrendered his original seller's permit relating to the University Avenue liquor store by personally delivering it to a Department of Revenue office and obtaining a receipt for the surrender thereof. On December 31, 1979, he ceased his business operations at the University Avenue retail liquor store; however, he continued to conduct business at the Mineral Point Road location under permit number 9726B. On January 1, 1980, he sold

the University Avenue retail liquor store business including tangible personal property, the value of which was assessed by the department for sales taxes on the grounds that the taxpayer held or was required to hold a seller's permit at the time of said sale.

The sole issue was whether taxpayer's surrender of permit number 9726A was effective to qualify the sale of the University Avenue prop-

erty as exempt from sales tax as an occasional sale under s. 77.51 (10) (a), Wis. Stats.

The Commission concluded that even though taxpayer properly surrendered his Wisconsin seller's permit on December 28, 1979, for the business operation on University Avenue, at the time the sale of the University Avenue property became effective, on January 1, 1980, the fact that taxpayer held a seller's permit

on the Mineral Point Road retail liquor store business on the date of the sale constituted a holding of a seller's permit as that terminology is meant in s. 77.51 (10) (a), Wis. Stats. Therefore, the sale of the taxpayer's business on January 1, 1980, was taxable as assessed and did not qualify as an exempt occasional sale under s. 77.51 (10) (a).

The taxpayer has not appealed this decision.

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answer 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.)

INCOME TAXES

I. Federal Farm Credit Bank Securities

Facts & Question: A Wisconsin resident receives interest income from a "Federal Farm Credit Banks Consolidated Systemwide Security". Is the interest income received from this security income from a federal security which is exempt from Wisconsin income tax under s. 71.05 (1) (b) 1, Wis. Stats.?

Answer: Yes. Interest income which an individual receives from system-wide securities issued by the Federal Farm Credit System is considered to be interest from a U.S. Government security which is exempt under s. 71.05 (1) (b) 1, Wis. Stats.

II. Money Market Trust Distributions

Facts & Question: A Wisconsin resident invests in a money market trust (the trust qualifies as a mutual fund under the Internal Revenue Code) which invests exclusively in U.S. Government securities. Are the distributions which are received from the money market trust considered income from a federal security which will be exempt from Wisconsin income tax under s. 71.05 (a) (b) 1, Wis. Stats.?

Answer: No. An individual who has invested in and receives distributions from a money market trust (mutual fund) has not received interest directly from a federal obligation which would be considered exempt from taxation by Wisconsin. The trust cannot pass through to the investor the tax-exempt character of income it receives from federal securities.

III. Addition to Tax Exception Based on Prior Year's Income — Person Was a Nonresident or Part-Year Resident in Prior Year

Facts & Question: Individuals subject to Wisconsin income tax must make installment payments of estimated tax if they expect to have a balance of \$100 or more of tax due on their return for a year. If required installment payments of estimated tax are not made by prescribed due dates or if insufficient amounts are paid, a 9% "addition to the tax" penalty may be imposed. The penalty is computed on the basis of the number of days that an installment (or a portion of an installment) was not paid.

Section 71.21 (14) (b), Wis. Stats., provides that the 9% penalty will not be imposed if timely estimated tax payments for the taxable year equal or exceed an amount determined by recomputing the tax shown on the return for the immediate preceding year. To figure this exception to the penalty, the tax on the prior year's return is recomputed by using the current year's tax table and then the current year's personal exemption credit is subtracted. If the estimated tax payments for the current year are at least as much as the resulting amount (recomputed tax minus personal exemption credits), no penalty may be applied.

Is an individual who was a part-year resident or a nonresident during the prior year allowed to use the s. 71.21 (14) (b) exception? If so, must the prior year's income be annualized when the tax for that year is recomputed?

Example: A self-employed single individual with no dependents reports on the calendar year basis. During 1979 this person was a part-year resident (moved into Wisconsin August 1, 1979) and reported Wisconsin taxable income of \$12,000 on a 1979 return. For 1980 this individual was a full-year Wisconsin resident.

Answer: Yes, part-year Wisconsin residents and nonresidents of Wisconsin are allowed to use this exception. The prior year's income to be used in recomputing the tax of that year is the amount of Wisconsin taxable income on the prior year's return. The income does not have to be annualized.

The individual in the above example would be required to make estimated tax payments of at least \$669 for 1980 to meet the exception to the 9% penalty provided by s. 71.21 (14) (b). The minimum payment amount is computed as follows: