

its employee, willfully and intentionally failed to do so, and preferred other creditors.

During the periods September 1977 through February 1978, and April and June of 1978, was taxpayer an officer or employee of Northern Coach, Inc., who was required to withhold, account for, or pay over to department withholding taxes on behalf of Northern Coach, Inc. and who intentionally did not withhold, account or pay as he was required?

The Commission held that September 1977 through February 1978, and April and June of 1978, Federwitz as an officer or employee of Northern Coach, Inc., was required to withhold, account for or pay over to the department taxes on behalf of Northern Coach, Inc. During this period, taxpayer knew or should have known the Wisconsin withholding tax requirements. Taxpayer intentionally and willfully failed

to remit the withholding taxes within the intent and meaning of s. 71.20(5) (a), Wis. Stats. The fact that one or more other officers or employees may also be held responsible does not preclude the department from proceeding against the taxpayer for the penalty under s. 71.20(5), Wis. Stats.

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

1. Exceptions 1 and 2 to the Addition to Tax Penalty

Facts and Question: Husband and wife both under 65 years of age filed a combined 1979 individual income tax return by the original due date, even though they were not required to file because their gross income was less than \$5,200. The only income reported on the 1979 return was a \$500 profit on the sale of stock owned by the husband (the selling price of the stock was \$1,000). There was no taxable income after applying the standard deduction. The taxpayers filed their 1980 return reporting a \$40,000 gain on the sale of jointly held property. The net tax of each spouse, which was remitted with the 1980 return, was \$1,219.

Question 1:

May either the husband or wife claim exception number 1 to the addition to tax penalty (s. 71.21(14) (a), Wis. Stats.) for failure to make declaration of estimated tax installment payments for 1980?

Answer:

No. Exception number 1 may not be claimed by either husband or wife since there was no tax liability on the 1979 return.

Question 2:

Can the husband or wife qualify for exception 2 (s. 71.21(14) (b), Wis. Stats.) to the addition to tax penalty on the basis of a return filed for the preceding

taxable year where there was no requirement for filing such return?

Answer:

Yes. In the above example, both spouses qualify for exception number 2. This exception provides that a taxpayer must make declaration payments which equal or exceed an amount computed based on the facts shown on the tax return of the preceding taxable year (except for personal exemptions) using the current year's tax rates and personal exemptions from the current year's return. Unlike federal law, Wisconsin law does not provide that the prior year's return must have been required to have been filed for purposes of applying this exception.

SALES/USE TAXES

1. Recreational Receipts and Recreational Facilities

Section 77.52(2) (a) 2, Wis. Stats., imposes the 4% tax of the gross receipts from the sale of admissions to amusement, athletic, entertainment or recreational events or places, and the furnishing, for dues, fees or other considerations the privilege of having access to or the use of amusement, entertainment, athletic or recreational devices or facilities.

A. One type of admission is where there is a presentation of some item or activity which is intended to entertain or amuse the persons paying the admission. The person attending does not participate in the activity, but is amused or entertained by the efforts of others. Examples of these admissions would be admission to movies, plays, operas, concerts, ballet, football, hockey, baseball and basketball games, boxing and wrestling matches, professional golf matches, ice shows, circuses, carnivals and track meets.

Admissions to this type activity are taxable under s. 77.52(2) (a) 2, Wis. Stats.

B. In another situation there is an amount paid for the use of amusement, entertainment, athletic or recreational facilities, in the sense that the person involved participates in the activity. In this situation

the facility is made available by the seller and it is up to purchasers to amuse or entertain themselves. Examples of these facilities would be skating rinks, tennis courts, swimming pools, gymnasiums, golf courses, hunting facilities, dance halls and bowling alleys.

The gross receipts from this type of admission are taxable under s. 77.52 (2) (a) 2, Wis. Stats.

C. In some instances the owner or operator of a facility will lease or rent the facility to a person or persons who will put on the show, game or other activity for the amusement or entertainment of third parties and sell tickets to the event (s). Several examples of this situation are as follows:

1. County coliseum is rented on an annual basis to a professional baseball and professional football team.
2. Movie theater is owned by "X" who leases it to "Y" (a theater operator) under a lease.
3. A city's arena is rented on a daily basis to a professional basketball team or the operator of an ice show.
4. A portion of the community's civic center (or school) is rented to a professional theatrical group for a two-week period.
5. A dance hall or ballroom is rented to a popular band for the night.
6. A field is rented by a promoter of a rock fest.

These examples all describe a rental or lease of a multipurpose facility to a professional group, which will sell admissions to the public for an amusing or entertaining event. The sale of admissions under s. 77.52 (2) (a) 2 is taxable. The promoter or professional group has rented real estate which is converted to a place of recreation or amusement, or entertainment by the presentation of a program. The gross receipts from the rental of a multipurpose facility to a promoter or professional group, which sells tickets to an amusing or entertaining event held in the facility, is a nontaxable rental of realty. However, rentals of personal property to promoters or professional groups are taxable as described in Part F.

D. In some cases the multipurpose facility is rented to another person or persons who will conduct an event that is not recreational in nature. The group may or may not charge admission to the general public to enter the facility. Several examples of this situation are:

1. A coliseum is rented to a religious group which conducts a one-week religious revival.
2. An arena is rented to the auto dealers for one week who put on an auto show in the facility.

3. A large hall or motel's banquet room is rented to a political group which puts on a 3-day antique show.
4. A hall is rented for a wedding reception not involving professional entertainment.
5. A large facility is rented for a school's graduation ceremony.

These rentals of facilities (realty) to someone who conducts a non-recreational type event are not subject to the tax, because the facility is not being used for recreational purposes when a religious revival, trade show, antique show or graduation ceremony is conducted on the premises. However, rentals of personal property are taxable as described in Part F.

E. A multipurpose facility also may be rented to amateurs who use the facility in providing entertainment to themselves and also possibly to the public. For example, an amateur theatrical group may eventually perform a play as a form of self-entertainment. If the play is open to the public, no charge is made for admission to attend. In this situation the facility is rented to the end user (amateur theatrical group) which uses the facility for recreational purposes, and this rental is taxable under s. 77.52 (2) (a) 2, Wis. Stats.

F. Frequently the rental of a multipurpose facility, such as a theater or arena, also involves the rental of tangible personal property, such as portable stages, portable basketball floors, portable public address systems, chairs, tables, stage risers, pianos, fork lift trucks, music racks, spotlights and projectors. The rental of such items is taxable, regardless of whether the lessee uses the building as a recreational, entertainment or amusement facility. In those cases in which the rental of the facility is nontaxable but the rental of the personal property is taxable, and both are rented for one amount, a reasonable allocation of the rental receipts must be made by the lessor.

2. Testing a Manufactured Product

Facts and Question: A company manufactures equipment at two locations and ships the equipment manufactured to its technical center for final testing before shipment of the product to the customer. This final testing does not add anything to the product or change the product in any way. Is this considered part of the step-by-step process of manufacturing the equipment so that the exemption in s. 77.54 (6) (a), Wis. Stats., applies to the machinery used in the technical center where the final testing takes place?

Answer: Yes, this is just one step in the overall manufacturing process, and the exemption in s. 77.54 (6) (a), Wis. Stats., would apply to the machinery used in the technical center, even though this testing is done at a location other than where the basic manufacturing of the equipment takes place.