

4. Return Requirements

Statutes: Section 71.10(1), 1985 Wis. Stats.

Background: Corporations chartered by the State of Wisconsin (domestic corporations) are required to file Wisconsin corporate franchise or income tax returns unless they are specifically exempt. Corporations which are not chartered by the State of Wisconsin (foreign corporations) are required to procure a Certificate of Authority from the Wisconsin Secretary of State if they wish to transact business in Wisconsin. Every foreign corporation licensed to do business in Wisconsin must file a return whether or not business was transacted in Wisconsin. Also, any unlicensed foreign corporation which does business in Wisconsin must file a return.

Facts and Question: Is a corporate entity that filed Articles of Incorporation with the Wisconsin Secretary of State during 1987 required to file a 1987 Wisconsin corporate franchise or income tax return if no capital was transferred for the stock and the corporate entity was inactive?

Answer: Yes. Since the corporation is organized under the laws of Wisconsin, a Wisconsin corporate franchise or income return is required to be filed for 1987. However, since the corporation was inactive for all of 1987, a declaration of inactivity (Form 4H) may be filed in lieu of a regular corporate franchise or income tax return.

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5. Withdrawal of Election Not to Be a Tax-Option (S) Corporation for Wisconsin

Statutes: Section 71.042(4), Wis. Stats. as created by 1987 Wis. Act 27 and amended by 1987 Wis. Act 92

Background: Beginning with the 1987 taxable year, a corporation that is an S corporation for federal income tax purposes may elect not to be a tax-option (S) corporation for Wisconsin corporate franchise or income purposes. This "opt-out" election requires the consent of persons who hold more than 50% of the shares of the tax-option (S) corporation on the day on which the "opt-out" election is made.

The election is made by filing a Wisconsin Form 5E, "Election by an S Corporation Not to Be Treated as a Tax-Option Corporation," on or before the due date or extended due date of the corporation's Wisconsin franchise or income tax return for the first year affected by the election. Once the election is completed, the corporation or its successor may not claim Wisconsin tax-option status for the next 4 taxable years after the taxable year to which the "opt-out" election first applies. Corporations which make the "opt-out" election are treated as regular (C) corporations for Wisconsin and must file Wisconsin Form 4 or 5 rather than Form 5S.

Facts and Question: A properly completed Form 5E was filed with the department on February 1, 1988, for the 1987 taxable year of Corporation X, a calendar year S corporation. Can the "opt-out" election be withdrawn prior to the date the Wisconsin corporate franchise or income tax return is filed?

Answer: Yes. An "opt-out" election is not completed until the filing of the Wisconsin corporate franchise or income tax return of the first taxable year affected by the "opt-out" election. To withdraw the election, a letter should be sent to the department requesting the withdrawal. This letter must contain the signatures of shareholders that hold more than 50% of the shares of the corporation. Once a Wisconsin corporate franchise or income tax return has been filed in accordance with the "opt-out" election, that election is completed and remains effective for at least the next 4 taxable years of the corporation or its successors.

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6. Wisconsin Compensation for Purposes of the Payroll Factor

Statutes: Section 71.07(2)(b), 1985 Wis. Stats., as repealed and recreated by 1987 Wis. Act 27

Wis. Adm. Code: Section Tax 2.39(4), January 1978 Register

Note: The references to s. 71.07(2)(b), Wis. Stats., in the following tax release are to that section as repealed and recreated by 1987 Wis. Act 27.

Background: The payroll factor, one of the factors in the standard three-factor apportionment formula used by most unitary, multi-state corporations in arriving at Wisconsin net income, is the ratio of compensation paid in Wisconsin during the year to total company compensation paid during the year. The payroll factor is also utilized by certain types of businesses which apportion their income to Wisconsin on the basis of an apportionment formula other than the standard three-factor apportionment formula. These include interstate pipeline companies, interstate financial organizations, and interstate public utilities.

Compensation includes wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Compensation also includes the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services, provided that such amounts constitute income to the recipient under the federal Internal Revenue Code. Additionally, compensation includes any deductible management or service fees paid to a related corporation as consideration for the performance of personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded.

Section 71.07(2)(b)2, Wis. Stats., provides that compensation is paid in Wisconsin (that is, it is included in the numerator of the payroll factor) if:

- a. The individual's service is performed entirely in Wisconsin; or
- b. The individual's service is performed in and outside Wisconsin, but the service performed outside Wisconsin is incidental to the individual's service in Wisconsin; or
- c. A portion of the service is performed in Wisconsin and the base of operations of the individual is in Wisconsin; or
- d. A portion of the service is performed in Wisconsin and, if there is no base of operations, the place from which the individual's service is directed or controlled is in Wisconsin; or
- e. A portion of the service is performed in Wisconsin and neither the base of operations of the individual nor the place from which the service is directed or controlled is in any state in which some part of the service is performed, but the individual's residence is in Wisconsin; or
- f. The individual is neither a resident of nor performs services in Wisconsin but is directed or controlled from an office in Wisconsin and returns to Wisconsin periodically for business purposes and the state in which the individual resides does not have jurisdiction to impose income or franchise taxes on the employer.

An individual is considered to be performing a service in Wisconsin during the year if that individual spends any portion of at least 5 days during the corporation's taxable year in Wisconsin performing services. Because of the statutory requirements, the compensation of any one employee cannot be split between two or more states during the year, unless the employee is transferred or changes positions during the year. Management fees can be allocated between states; the allocation is based on where the service is performed.

Facts: Corporation A has its headquarters, a sales office, and a manufacturing plant located in Wisconsin. Corporation A also has a sales office in California and a manufacturing plant and sales office in Indiana. In addition, various employees of the corporation work out of their homes, which are located throughout the United States.

Question 1: If an Illinois resident works at the manufacturing plant located in Wisconsin, is this employee's compensation included in the numerator of the payroll factor as Wisconsin compensation?

Answer 1: Yes. Since the employee's service is performed entirely in Wisconsin, the compensation is included in the numerator of the payroll factor as Wisconsin compensation (s. 71.07(2)(b)2.a, Wis. Stats.).

Question 2: The manager of the Wisconsin manufacturing plant spent 2 weeks during the tax year in Indiana training the new plant manager of the Indiana plant. Does this affect the assignment of the Wisconsin plant manager's compensation to Wisconsin?

Answer 2: No. The Wisconsin plant manager's compensation is included in the numerator of the payroll factor as Wisconsin compensation. The service performed in Indiana is incidental to the service performed in Wisconsin (s. 71.07(2)(b)2.b, Wis. Stats.). In addition, the employee's compensation is assignable only to one state. Therefore, the compensation is not split between Wisconsin and Indiana.

Question 3: A salesperson, who is based in the Wisconsin sales office, solicits sales in Wisconsin and Minnesota. Is the salesperson's compensation included in the numerator of the payroll factor as Wisconsin compensation?

Answer 3: Yes. The salesperson's compensation is included in the numerator of the payroll factor as Wisconsin compensation since a portion of the service is performed in Wisconsin and the base of operations of the salesperson is in Wisconsin (s. 71.07(2)(b)2.c, Wis. Stats.).

Question 4: A salesperson, who works out of his home in Iowa, solicits sales in Iowa and Nebraska. Corporation A doesn't have nexus in either Iowa or Nebraska. The salesperson is directed from the Wisconsin sales office and spends 10 working days a year in that office for meetings and training. To which state is this employee's compensation assigned?

Answer 4: The employee's compensation is assigned to Wisconsin (that is, it is included in the numerator of the payroll factor) since his service is directed or controlled from Wisconsin and he spent at least 5 days in Wisconsin during the year for business purposes (s. 71.07(2)(b)2.d, Wis. Stats.).

Question 5: The facts are the same as in Question 4 except that Corporation A has nexus (that is, the activities of the corporation in the state are sufficient to allow the state to impose a franchise or income tax on the corporation) in both Iowa and Nebraska due to the employee's activities in these states exceeding sales solicitation. Would the employee's compensation still be included in the numerator of the payroll factor?

Answer 5: No. Since the employee's residence is in a state that has jurisdiction to impose income or franchise taxes on Corporation A, the employee's compensation is not included in the numerator of the Wisconsin payroll factor (s. 71.07(2)(b)2.f, Wis. Stats.).

Question 6: A salesperson, residing in Wisconsin, solicits sales in Wisconsin and Michigan. The salesperson is directed from the Indiana sales office, but performs no services in Indiana. To which state is this employee's compensation assigned?

Answer 6: Since the employee resides in Wisconsin and performs no service in the state from which the service is controlled or

directed, the employe's compensation is assigned to Wisconsin (that is, it is included in the numerator of the payroll factor) (s. 71.07(2)(b)2.e, Wis. Stats.).

Question 7: A salesperson, who resides in Nevada, solicits sales in Nevada and is directed from the California sales office. Corporation A does not have nexus in Nevada. If the salesperson spent 2 weeks a year in Wisconsin for meetings and training, would her compensation be included in the numerator of the payroll factor as Wisconsin compensation?

Answer 7: No. Since the services of the employe are directed or controlled from California and the employe is not a resident of Wisconsin, the compensation is not included in the numerator of the payroll factor as Wisconsin compensation (s.71.07(2)(b)2.d and e, Wis. Stats.).

Question 8: If a Wisconsin resident works at the manufacturing plant located in Indiana, is that employe's compensation included in the numerator of the payroll factor as Wisconsin compensation?

Answer 8: No. Since no part of the employe's service is performed in Wisconsin, the compensation is not included in the numerator of the payroll factor as Wisconsin compensation.

Question 9: Corporation B owns 100% of the stock of Corporation A and is headquartered in Illinois. Employees of Corporation B perform all the accounting functions for Corporation A. For these services, Corporation A paid Corporation B \$30,000 in management fees during the year. The employees of Corporation B that performed the accounting services for Corporation A spent 20% of their time in Wisconsin while performing these services. What amount, if any, of these management fees is included in the numerator of the payroll factor as Wisconsin compensation?

Answer 9: Since the employees of Corporation B spent 20% of their time in Wisconsin performing services for Corporation A, 20% of the \$30,000, or \$6,000, is includable in the numerator of the payroll factor as Wisconsin compensation. The entire \$30,000 of management fees is includable as total company compensation in the payroll factor denominator.

It should be noted that Corporation B cannot include in its computation of a Wisconsin payroll factor the compensation paid to its employes which pertain to the performance of services for Corporation A (section Tax 2.39(4), Wis. Adm. Code).

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FARMLAND PRESERVATION CREDIT

1. Noncompliance With Soil and Water Conservation Follows Claimant

Statutes: Section 71.09(11)(o), 1985 Wis. Stats.

Background: Section 71.09(11)(o), 1985 Wis. Stats., provides that a farmland preservation credit may not be allowed if a notice of noncompliance with an applicable soil and water conservation plan or standard is in effect with respect to the claimant at the time the claim is filed.

Facts and Question: A farmland preservation claimant may have farmland where a portion of the land is in noncompliance with a soil and water conservation standard, and a portion of the land is in compliance with the conservation standard. For example, this may occur because the farmland is located in two counties and the land meets the conservation standard in one county, but not the other. If a farmer who is notified that he or she is in noncompliance with a soil and water conservation plan or standard claims farmland preservation credit on farmland which is not covered by the notice, may the credit be allowed?

Answer: No. The farmland preservation credit may not be allowed since a notice of noncompliance with a soil and water conservation plan or standard is in effect with respect to the claimant.

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SALES/USE TAXES

1. Bicycle Tours

Statutes: Sections 77.52(2)(a)2, 1985 Wis. Stats.

Wis. Adm. Code: Section Tax 11.65(1), July 1987 Register

Facts and Question: Bicycle riders taking a tour must register in advance through the mail. Participants drive to the starting point of each tour. The operator of the tour advertises that the tour fee provides lodging, meals, snacks, and a welcome wine and cheese party. A full breakfast and dinner are provided each day of the tour and lunch is at the participant's own expense. The operator is prepared to assist with flat tires and minor bike problems.

In addition to lodging and meals, all tours include two qualified tour leaders, van support, trail and park admissions, boat and ferry fares, and a t-shirt. Tour prices do not include admissions to plays, concerts, or museums. Information on obtaining tickets for cultural events is included in each confirmation packet sent to a participant.

Most participants provide their own bikes, but bikes may also be rented from the tour operator for \$30 a weekend or \$60 for a mid-

week tour. Helmets and handlebar bags may also be rented from the tour operator.

Are the gross receipts of the bicycle tour operator taxable recreational receipts?

Answer: No. The gross receipts of a bicycle tour operator are not subject to the sales tax under s. 77.52(2)(a)2, 1985 Wis. Stats. The tour operator is paid for arranging and coordinating the tour and providing other services to the riders. These are not taxable services.

NOTE: Since the gross receipts are not taxable, the tour operator must pay sales tax on its purchases of meals from restaurants, lodging from motels, and any other purchases of taxable items provided by the tour operator to tour registrants. The tour operator's rental receipts from bicycles, helmets, and handlebar bags are subject to the sales tax.

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2. Cardboard Used Under Manufacturing Machines

Statutes: Sections 77.54(2), 1985 Wis. Stats.

Wis. Adm. Code: Section Tax 11.41(3), July 1987 Register

Facts and Question: A company is engaged in the business of manufacturing and selling fiberglass boats. The tangible personal property at issue is cardboard which is placed on the floor of the company's factory to collect the fiberglass overspray which occurs in the course of manufacturing fiberglass boats. This overspray accumulates at the rate of one to two inches per week. The cardboard and overspray is disposed of when the accumulation reaches approximately two inches. New cardboard is then placed on the floor.

The cardboard is essential to the manufacturing operation. Without it, the overspray would bond to the floor and the accumulation would make the plant inoperable in a matter of a few months.

Is the purchase of this cardboard by the company exempt under s. 77.54(2), 1985 Wis. Stats.?

Answer: Yes. This cardboard is an essential part of the company's manufacturing operation and the exemption in s. 77.54(2), 1985 Wis. Stats., for items consumed or destroyed or losing their identity in the manufacture of tangible personal property applies to this cardboard.

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3. Purchases of Telephone Service and Equipment by a Cellular Radio Telephone Company

Statutes: Sections 77.51(13)(p) and (14)(m), 77.52(2)(a)4 and (13), and 77.54(24), 1985 Wis. Stats.

Wis. Adm. Code: Sections Tax 11.14 and 11.66, July 1987 Register

Background:

Purchases of Telephone Service - A Radio Common Carrier (RCC) purchases telecommunication service from a regulated telephone company. This RCC is in the business of providing two-way telecommunication services to its customers which is described as cellular-mobile communications. A cellular-mobile service usually provides a telecommunication connection between an automobile (or airplane) and the landline telephone system. RCC's are regulated by the Federal Communication Commission (FCC). The FCC has determined that RCC's are not subject to "access service" charges by telephone companies even though they receive services from the local telephone company which are similar.

The regulated landline telephone company charges the cellular-mobile service for the use of trunk lines which consist of 100 individual telephone numbers used to provide the cellular-mobile service. These trunk lines feed into the cellular-mobile company's terminal. The cellular-mobile company's equipment is able to "seize" the phone number being called and direct it to the appropriate cell site, or that which is closest to the mobile phone being called. These access trunks carry all network services, including short and long distance calling (within cell site range). The cellular-mobile service has numerous cell sites and phone calls can be carried anywhere within the cell site area.

Equipment Used by RCC - The cellular telephone system uses radio, control, and switching equipment to connect mobile telephone users (in motor vehicles) to one another and to the landline telephone network. The three major components of each system are (1) mobile end-user equipment in the motor vehicle, (2) the central switching office connected to the landline telephone system, and (3) cell-site (base station) equipment located at various locations throughout a several county area.

The typical cellular radio telephone company has one main office staffed by employees. This office is the point of interconnection with the landline telephone system and it contains the company's Mobile Telephone Switching Office (MTSO). The MTSO is a computer which is the primary control point for the transmission of messages within the local area covered by cellular service. Every call in the system is switched and transmitted through the MTSO. It acts as a central processing unit used to record data concerning every call made within the system. The subscriber must be identified and the duration of each call recorded in order to bill each customer. Data is also collected and evaluated regarding traffic, usage, and peaks for each billing period in the MTSO.

A cell-site is comprised of a small structure housing radio transmission equipment and a radio tower and antenna.

The National Association of Regulator Utility Commissioners developed a uniform system of accounts for cellular communication licensees in 1985 and the Wisconsin Public Service Commission has adopted this system of accounts. Using this system of accounts, a cellular company's computer (Electronic Mobile Exchange 250; EMX-250) and other control center equipment is classified in Acct. 307. Equipment at the cell-sites is classified in Acct. 310.

Questions:

- A. Can the cellular-radio telecommunication carrier purchase its telephone service without tax for resale?
- B. Is cell-site equipment, user equipment in motor vehicles, and mobile telephone switching office (MTSO) equipment of a cellular-radio telephone company exempt under s. 77.54(24), 1985 Wis. Stats., as "central office equipment?"

Answers:

- A. The cellular-radio telecommunication carrier may purchase without tax for resale the telephone trunk and access line telephone service it purchases from the telephone company and which are incorporated into the cellular-mobile telecommunication service the RCC provides its customers.
- B. The equipment classified in Acct. 307 located at the company's mobile telephone switching office and used in transmitting traffic and operating signals is exempt under s. 77.54(24), 1985 Wis. Stats. Equipment in Acct. 307 not used in transmitting traffic and operating signals is taxable. Equipment located at the cell-sites and user equipment in motor vehicles are not exempt under s. 77.54(24), 1985 Wis. Stats.

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4. Tax Payable on Items Given Away by Manufacturer

Statutes: Sections 77.51(19), 77.53(1), and 77.57, 1985 Wis. Stats.

Wis. Adm. Code: Section Tax 11.28(2)(intro.), July 1987 Register.

Facts and Question: A manufacturer of sporting goods has its main office and manufacturing plant in Wisconsin. It gives away some of its manufactured items to employees as gifts and to customers as samples. This manufacturer purchases its raw materials used in production without tax under s. 77.54(2), Wis. Stats., and produces sporting goods from these raw materials. It then takes manufactured goods from finished goods inventory in Wis-

consin to give away to persons in Wisconsin and out-of-state as described below.

1. It sends sporting goods to a Michigan retailer via UPS.
2. The manufacturer's salesperson takes sporting goods along when he or she flies to New York to call on a potential customer. The goods are given away in New York to the potential customer.
3. The manufacturer's trade show staff take sporting goods with them to Atlanta where they are given away at a trade show.
4. The manufacturer sends sporting goods to a retailer located in Wisconsin.
5. A customer from Illinois comes to the Wisconsin plant and tours the plant. At that time the customer is given sporting goods as a gift or sample.
6. A gift is given to each employe during the Christmas season.

In which of these six factual situations described above, where sporting goods are given away, is a Wisconsin use tax payable on the transaction and what is the measure of the tax?

Answer: The Wisconsin use tax is payable under s. 77.53(1), 1985 Wis. Stats., measured by the manufacturer's cost of materials in the sporting goods given away. In examples 4, 5, and 6, the Wisconsin use tax is payable because in each of those examples the items were given away in this state. In the factual situations described in examples 1, 2, and 3, the items were given away out-of-state and in that case the Wisconsin use tax does not apply.

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5. Telephone Company's Billing and Collection Services

Statutes: Section 77.52(2)(a)4, 1985 Wis. Stats.

Wis. Adm. Code: Section Tax 11.66(1)(b), July 1987 Register.

Facts and Question: In the newly restructured telephone industry, the local landline telephone company, which provides the basic local exchange telephone service, may provide billing and collection services for interexchange long-distance telecommunication carriers. This interexchange long-distance service is primarily interstate service but also involves some intrastate service.

Section 77.52(2)(a)4, 1985 Wis. Stats., imposes the sales tax on the gross receipts from "The sale of telephone services of whatever nature including, in addition to services connected with voice communication, any services connected with the transmission of

sound, vision, information, data or material other than by voice communication, and connection, move and change charges . . .”

Are the gross receipts received by the local telephone company for providing billing and collection services to an interexchange telecommunication carrier subject to the sales tax?

Answer: Yes. The gross receipt from billing and collection services are subject to the sales tax because they are included in the broad definition of taxable telephone services found in s. 77.52(2)(a)4, 1985 Wis. Stats.

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6. Tree Trimming on a Utility's Right-of-Way

Statutes: Section 77.52(2)(a)20, 1985 Wis. Stats.

Wis. Adm. Code: Section Tax 11.86(5), September 1984 Register.

Note: This Tax Release supersedes the Tax Release titled “Landscaping or Lawn Maintenance on a Utility's Right-of-Way” which appeared in WTB 32, page 9.

Facts and Question: Tree trimming services are performed on a utility's right-of-way. Rights-of-way are easements over land owned by others and are used by utilities for their transmission and distribution lines. Before the right-of-way can be used by the utility, it must be cleared of trees to provide access and safety in the construction of power lines. Trees on rights-of-way are trimmed periodically to prevent interference with overhead distribution lines or as a result of storm damage where limbs have fallen on power lines.

Are the gross receipts from tree trimming on a utility's right-of-way subject to the sales tax under s. 77.52(2)(a)20, 1985 Wis. Stats.?

Answer: No. The gross receipts from tree trimming on the right-of-way are not taxable services under s. 77.52(2)(a)20, 1985 Wis. Stats., pursuant to the decision of the Wisconsin Tax Appeals Commission in the *Capital City Tree Experts, Inc.* case of June 19, 1987, as modified by Stipulation and Order, dated September 21, 1987,

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7. U.S. Government Bankcard Charges

Statutes: Section 77.55(1), 1985 Wis. Stats.

Wis. Adm. Code: Section Tax 11.05(4), October 1987 Register

Facts and Question: An individual federal employe may use a numbered U.S. Government bankcard when traveling. The individual employe's name is embossed on the card and the card clearly states that it is a U.S. Government purchasing card which only can be used for official business purposes. The card indicates “U.S. Government Tax Exempt.” Payment of all purchases will be made by the federal government. The U.S. Government Bankcard may not be used for:

- A. Rental or lease of motor vehicles, when on official travel.
- B. Rental or lease of land or buildings.
- C. Purchase of airline, bus, boat, or train tickets.
- D. Purchase of meals, drinks, or lodging.
- E. Purchase of gasoline or oil for vehicles except: aircraft, vessels, and Department owned vehicles.
- F. Repair of GSA leased vehicles.
- G. Purchase of janitorial, yard, or maintenance services.
- H. Purchase of telecommunications (telephone) equipment.
- I. Purchase of clothing or footwear (except for emergency purposes identified as required for safety).
- J. Purchase of non-expendable property as defined by the federal government Department/Agency.
- K. Supplies, furniture, and equipment available from mandatory sources such as the General Services Administration (GSA) except in quantities required for immediate or emergency needs.
- L. Cash advance through bank teller or automated teller machines, unless separately authorized.

Are the gross receipts from sales of tangible personal property or taxable services by Wisconsin retailers to federal employes using the U.S. Government Bankcard exempt sales to the federal government under s. 77.55(1), 1985 Wis. Stats.?

Answer: Yes. These sales qualify for the exemption under s. 77.55(1), 1985 Wis. Stats., because they are considered sales to the federal government, provided the retailer makes out the billing or invoice in the name of the federal government agency and the retailer receives a purchase order or similar written document from that agency. The retailer should keep copies of its billing and the federal agency's purchase order as evidence of the exempt sale.

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COUNTY SALES/USE TAXES

1. County Tax: Exemption Certificate Given - Lumber Used in Construction Activities

Statutes: Sections 77.52(13) and 77.71(3), 1985 Wis. Stats.

Wis. Adm. Code: Section Tax 11.68(7) and (12), July 1987 Register.

Facts and Question: Purchaser A gives a resale certificate to Seller B for the purchase of lumber. Purchaser A obtains possession of the lumber in a taxable county. Purchaser A had validly issued the resale certificate to Seller B under the sales and use tax law because Purchaser A makes retail sales of lumber and uses lumber in real property construction activities. Purchaser A uses \$100 of the lumber in construction activities in a taxable county.

- A. Is this \$100 subject to the use tax in the taxable county?
- B. Would the answer to A. be different if the \$100 of lumber, for which Purchaser A obtained possession in a taxable county, is later used in construction activities in a nontaxable county?
- C. If Purchaser A validly issues a resale certificate to Seller B and obtains possession of the lumber in a **nontaxable** county, would the county tax apply if that lumber is used in construction activities in (a) a taxable county or (b) a nontaxable county?

Answer:

- A. When Purchaser A uses \$100 of the lumber in real property construction activities in a taxable county, the county tax of that county is imposed under s. 77.71(3), 1985 Wis. Stats.

B. If the same lumber is used in real property construction activities in a nontaxable county, the county tax does not apply to the use of this lumber.

C. When Purchaser A uses the lumber in construction activities in a taxable county, the county tax of that county is imposed under s. 77.71(3), 1985 Wis. Stats. If the same lumber is used in real property construction activities in a nontaxable county, the county tax is not imposed on the use of this lumber.

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2. County Tax: Location of Mobile Telephone Service

Statutes: Section 77.72(3), 1985 Wis. Stats.

Facts and Question: The situs of a service for county sales tax purposes is at the location where it is furnished to the customer, except that a communication service has a situs where the customer is billed for the service if the customer calls collect or pays by credit card. A customer using cellular radio or other mobile communication service may start using the communication service in a cell located in one county and continue to use the service as he or she travels into other cells which may be located in another county. Both counties have adopted the 1/2% county sales/use tax. If this is not a collect or credit card call, which county is entitled to the county sales tax on a telephone conversation that takes place in two counties?

Answer: The county entitled to the sales tax on the charge for the mobile communication service used in two counties is the county where the call originated.

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