

PRIVATE LETTER RULINGS

"Private letter rulings" are written statements issued to a taxpayer by the department that interpret Wisconsin tax laws to the taxpayer's specific set of facts. Any taxpayer may rely upon the ruling to the same extent as the requestor, provided the facts are the same as those set forth in the ruling.

The number assigned to each ruling is interpreted as follows: The first two digits are the year issued, the next two digits are the week issued, and the last three digits are the number in the series of rulings issued that year. "Issued" means when the ruling is available to be published (80 days after being mailed to the requestor). The date following the 7-digit number is the date the ruling was mailed to the requestor.

Certain information contained in the ruling that could identify the taxpayer requesting the ruling has been deleted. Wisconsin Publication 111, "How to Get a Private Letter Ruling From the Department of Revenue", contains additional information about private letter rulings.

W9028006, April 23, 1990

Type Tax: Sales/Use

Statutes: Sections 77.51(13)(a) and (17), 77.52(2)(a)5 and 77.58(3)(a), Wis. Stats. (1987-88)

Issue: IntraLATA toll service

This is in response to your request for a Private Letter Ruling regarding the sales and use tax status of charges for intraLATA toll service.

Facts

Company A is a public utility engaged in providing local exchange, exchange access and toll communications services in Wisconsin. The Company is one of over 90 companies providing local exchange and exchange services in Wisconsin, each within its own franchised service area. The Company's toll services are provided within four local access and transport areas ("LATA") pursuant to court decree. The Company is prohibited from providing services between LATAs, but may provide toll services within each of the four LATAs.

Company A began providing intraLATA toll services to the independent companies on January 1, 1990.

The provision of intraLATA toll service requires the facilities of one to three telephone companies. The call originates from the local loop of the telephone company serving the customer originating the call. The originating company routes the call to a toll center where it is transported via facilities owned by an intraLATA toll carrier. The intraLATA toll carrier delivers the call to the local switch or

end office owned by the company serving the recipient of the call. In some cases the intraLATA carrier may own the facilities at the originating end, the terminating end, or both.

From the customer's or end user's viewpoint, intraLATA toll service is provided by the intraLATA toll carrier. The intraLATA toll carrier, being entitled to the revenue from the call, compensates the local exchange companies (LEC) at the originating and terminating ends of the call for the use of their facilities by paying an access charge. The intraLATA toll carrier will reflect these revenues on its books of account as Revenue-IntraLATA toll and a corresponding Accounts Receivable while the originating and terminating companies would book the access charge they receive in a similar manner.

Although the toll service is provided by the intraLATA toll carrier, billing to end users is performed by the local exchange company serving the billed party. On most calls this will be the company serving the end user who originated the call. For collect calls, the company serving the terminating end user would bill for the call. IntraLATA toll calls are listed on a separate page clearly identifying the intraLATA toll carrier as the party providing the service. The local exchange company buys the accounts receivable from the intraLATA toll carrier and proceeds to collect the amounts billed on the intraLATA toll carrier's behalf. Included on that bill will be a separate line or lines for Wisconsin sales tax and county sales tax, if applicable.

Request

The issues submitted for resolution are 1) whether the intraLATA toll carrier or the billing LEC is liable for the reporting and remitting the sales tax on receipts from intraLATA toll service, and 2) if the liability is fixed on the intraLATA toll carrier may the billing LEC report and pay over the taxes directly to the state on behalf of the intraLATA toll carrier?

Ruling

The intraLATA toll carrier is the retailer of the telecommunication service it provides and its gross receipts from such service are subject to Wisconsin sales and use tax. The intraLATA toll carrier could, if it so wished, designate another person to prepare its sales and use tax returns, however all of the intraLATA toll carrier's gross receipts must be reported on the intraLATA toll carrier's return. The billing LEC's may not include receipts of the intraLATA toll carrier on its own (the LEC's) sales and use tax return.

Analysis

Under sec. 77.51(13)(a), Wis. Stats., "retailer" includes every seller who makes any sale of tangible personal property or taxable service.

Under sec. 77.51(17), Wis. Stats., "seller" includes every person selling, leasing or renting tangible personal property or selling, performing or furnishing services of a kind the gross receipts from

the sale, lease, rental, performance or furnishing of which are required to be included in the measure of the sales tax.

Sec. 77.52(2)(a), Wis. Stats., imposes a tax "upon all persons selling, performing or furnishing" certain defined services at the rate of 5% of the gross receipts from the sale, performance or furnishing of the services. Included in the list of taxable services is:

"5. The sale of telecommunication services of whatever nature not including services paid for by the insertion of coins in a coin-operated telephone but including any services connected with the transmission of voice, sound, vision, information, data or material including connection, move and change charges; whether transmitted by wire, microwave, satellite or other means; including interstate services originating in this state and charged to a subscriber or telephone located in this state."

Company A, as the person providing the intraLATA toll service, is clearly identified on the customer's bill as the provider of the intraLATA toll service, and is understood by the customer to be the provider of the intraLATA toll service.

Section 77.58(3)(a), Wis. Stats., states, in part, that

"For purposes of the sales tax a return shall be filed by every seller. ... Returns shall be signed by the person required to file the return or by a duly authorized agent but need not be verified by oath."

Paragraph (b) states, in part, that

"For purposes of the sales tax the return shall show the gross receipts of the seller during the preceding reporting period. ... The return shall also show the amount of the taxes for the period covered by the return and such other information as the department deems necessary for the proper administration of this subchapter."

Company A is the "retailer" and "seller" of the intraLATA toll service and the tax is therefore imposed on it. Being the retailer, it is required to obtain a permit from the Department of Revenue, to pay over the taxes at regular intervals, and to file returns. These are obligations expressly imposed upon the "retailer" under the statutes.

Any one of the LECs could act as a duly authorized agent filing a separate return for Company A under sec. 77.58(3)(a), Wis. Stats., but would have to include Company A's gross receipts from all sources, not just those receipts for the intraLATA toll service being billed by that particular LEC.

There is no statutory authority or provisions that would allow each billing LEC to include that portion of Company A's gross receipts that it is billing to its customers on its (the LEC's) own sales and use tax return.

In addition, based on the facts and circumstances presented, the billing LEC is not purchasing the intraLATA toll service from Company A and then reselling that service to its customers. The LEC is simply billing its customer on behalf of Company A for the convenience of its customers, thus, the LEC may not purchase the intraLATA toll service extax for resale.



W9040008, July 17, 1990

Type Tax: Corporation Franchise or Income Tax

Statutes: Section 71.26(2)(a) and (3), Wis. Stats. (1987-88)

Issue: Corporate Reorganization

This letter responds to your request for a private letter ruling regarding the Wisconsin corporate franchise or income tax effect of a proposed corporate reorganization.

Facts

Corporation A received a favorable private letter ruling, dated November 23, 1988, from the Internal Revenue Service (the "November 1988 Letter Ruling"). The November 1988 Letter Ruling states that the transactions described therein constitute a Section 368(a)(1)(D) reorganization with no gain or loss recognized to the Class A and Class B common shareholders pursuant to Section 355(a)(1) of the Internal Revenue Code of 1986, as amended ("IRC").

On December 9, 1988, the Wisconsin Department of Revenue issued correspondence (the "December 1988 Correspondence") which states that the November 1988 Letter Ruling issued by the Internal Revenue Service will also apply for Wisconsin corporate franchise and income tax purposes. The December 1988 Correspondence was based on sec. 71.26(2)(a) and (3), Wis. Stats. (1987-88), which provides that Wisconsin net income of a corporation is determined under the IRC with certain modifications. The modifications made to the IRC by the Wisconsin Statutes did not include any of the operative sections cited in the November 1988 Letter Ruling.

On June 6, 1989, a supplemental ruling request was filed with the Internal Revenue Service requesting that the proposed transaction described therein would have no effect on the November 1988 Letter Ruling and would qualify as a Section 368(a)(1)(A) reorganization. On October 25, 1989, the Internal Revenue Service issued a favorable private letter ruling (the "October 1989 Letter Ruling") stating that the proposed transaction described therein will have no effect on the November 1988 Letter Ruling and will qualify as a reorganization under section 368(a)(1)(A) of the IRC.

Ruling Request

You request that the proposed transaction described in the October 1989 Letter Ruling will have no effect on the December 1988 Correspondence and will not result in any Wisconsin corporate franchise or income tax, because Wisconsin net income of a corporation is determined under the IRC and the operative sections cited in the October 1989 Letter Ruling are not modified by the Wisconsin Statutes.

Ruling

The proposed transaction described in the October 1989 Letter Ruling will have no effect on the December 1988 Correspondence and will qualify for the same treatment for Wisconsin as provided for federally under the IRC, with the possible exception of the treatment of tax attributes under Sections 381, 382 and 383 of the IRC.

Analysis

Section 71.26(2)(a) and (3), Wis. Stats. (1987-88), provides that Wisconsin net income of a corporation is determined under the IRC

with certain modifications. The modifications made to the IRC by the Wisconsin Statutes do not include any modifications to Sections 311, 312, 354, 355, 357, 358, 361, 362, 368, 1023, 1032 or 1248, among many others. Since the Internal Revenue Service has ruled on the application of such IRC sections to the proposed transactions, and since such IRC sections are not modified for Wisconsin corporate franchise and income tax purposes, the October 1989 Letter Ruling issued by the Internal Revenue Service will also apply for Wisconsin as it relates to such IRC sections.

Section 71.26(3)(n), Wis. Stats. (1987-88), modifies Sections 381, 382 and 383 of the IRC so that they apply to the Wisconsin net business loss carryforward and the Wisconsin credits instead of the federal credits and federal net operating losses. Accordingly, to the extent that the October 1989 Letter Ruling relates to the carryover of such tax attributes, the ruling may have to be modified for Wisconsin to utilize the Wisconsin credits and the Wisconsin net business loss carryforward.

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