

sale for Wisconsin purposes rather than as a sale of assets. Assuming all three corporations in the above example have a Wisconsin filing requirement, the returns required for Wisconsin are as follows:

Corporation P: A return for the 1989 calendar year is required. The net income (loss) on this return is unaffected by the section 338(h)(10) election.

Corporation T: Two short-period returns, covering the same periods as the federal returns, are required. The taxable year for Wisconsin purposes is the taxable period upon the basis of which the taxpayer computes its income for federal income tax purposes. Sec. 71.22(10), Wis. Stats. (1989-90). The gain on the deemed sale of the assets is subtracted from federal taxable income on the first return, and the assets will not receive a basis adjustment on the second return. Both returns are due on the corresponding federal due date(s), including applicable extensions.

Corporation S: A return for the 1989 calendar year is required. The \$50,000 gain on the sale of the stock of Corporation T is added to federal taxable income to arrive at Wisconsin net income.

QUESTION 5: If a section 338(h)(10) election is made for Wisconsin purposes, must the new target corporation compute depreciation under the law in effect when the old target originally placed the property in service or when the deemed asset purchase occurs?

ANSWER 5: The new target corporation computes depreciation on the stepped-up (or stepped-down) basis of the assets under the law in effect when the deemed purchase occurs. In addition, temporary federal regulations provide that the new target corporation generally may make new elections under IRC sec. 168 without regard to the elections made by the old target. For purposes of the "antichurning" rules, the old target is not a related person with respect to the new target corporation. Temporary Regulation sec. 1.338-4T(1)(2), Question and Answer 2. This treatment also applies for Wisconsin purposes.

QUESTION 6: If a section 338(h)(10) election is made for Wisconsin purposes, what is the post-transaction basis of the assets in the new target corporation's property factor for apportionment purposes?

ANSWER 6: The post-transaction basis of the assets for apportionment purposes is the stepped-up (or stepped-down) basis of the assets in the deemed purchase, computed without regard to accumulated depreciation. Therefore, the year-end balances for owned property on the final Wisconsin return of the old target will differ from the beginning balances for that property on the first Wisconsin return of the new target corporation.

QUESTION 7: If a section 338(h)(10) election is made for Wisconsin purposes, is the gain or loss on the deemed sale of the business assets included in the old target corporation's sales factor for apportionment purposes?

ANSWER 7: The deemed sale of inventory is included in the old target corporation's sales factor. However, the gain or loss on the deemed sale of the old target's other tangible business assets is not included in the sales factor. For purposes of the sales factor, sales include gross receipts from the sale of inventory. Sec. 71.25(9)(e), Wis. Stats. (1989-90). Sales do not include gross receipts and gain or loss from the sale of tangible business assets other than sales of inventory, scrap, or by-products or from the operation of a farm, mine, or quarry. Sec. 71.25(9)(f), Wis. Stats. (1989-90).

QUESTION 8: If a section 338(h)(10) election is made for Wisconsin purposes, is the transaction subject to Wisconsin sales or use taxes?

ANSWER 8: No, the transaction is not subject to Wisconsin sales or use taxes. Wisconsin sales tax is imposed on a retailer's gross receipts from the sale of tangible personal property in Wisconsin, while use tax is imposed on the purchase of tangible personal property stored, used, or consumed in Wisconsin if no state sales or use tax was previously paid. Secs. 77.52(1) and 77.53(1), Wis. Stats. (1989-90). Although treated as the sale of the target corporation's assets for franchise or income tax purposes, the transaction actually is a sale of stock and is treated as such for sales and use tax purposes. Since stock is an intangible asset, the transaction is not subject to Wisconsin sales or use taxes.

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2. Wisconsin Tax Treatment of Qualified REIT Subsidiaries

STATUTES: Section 71.26(2)(b), Wis. Stats. (1989-90)

NOTE: This Tax Release applies for taxable years beginning after December 31, 1986.

BACKGROUND: For taxable years beginning after December 31, 1986, Internal Revenue Code section 856(i) provides that a corporate subsidiary of a real estate investment trust (REIT) is not treated as a separate entity, and all of its assets, liabilities, and items of income, deduction, and credit are treated as attributes of the REIT. This treatment applies to a qualified REIT subsidiary, which is any corporation if 100 percent of the stock of such corporation is held by the REIT at all times during the period the corporation was in existence.

FACTS: REIT and its wholly-owned subsidiary, REITSUB, are both entities which are organized outside Wisconsin and do not transact any business in Wisconsin. REITSUB owns 100 percent of WISC, a corporation which owns real estate in Wisconsin. In addition, REITSUB owns all the stock of other similar corporations in other states.

For federal income tax purposes, REIT, REITSUB, WISC, and the other subsidiaries of REITSUB are required to be treated as part of the REIT itself. Accordingly, REITSUB, WISC, and the other subsidiaries of REITSUB do not have income or loss as separate

entities, since their income and loss is treated as the income or loss of REIT.

QUESTION: What are the reporting requirements of REIT, REITSUB, and WISC for Wisconsin franchise or income tax purposes and how is the income attributable to Wisconsin determined?

ANSWER: For Wisconsin franchise or income tax purposes, REIT, REITSUB, WISC, and the other wholly owned subsidiaries of REITSUB must report as one entity, the same as for federal purposes. The entity must apportion a part of its income to Wisconsin using the standard 3-factor apportionment percentage.

For a corporation, conduit, or common law trust which qualifies as a REIT, net income means the federal real estate investment trust taxable income of the corporation, conduit, or trust as determined under the Internal Revenue Code. Sec. 71.26(2)(b), Wis. Stats. (1989-90). Federal taxable income is determined based on WISC not being treated as a separate entity, REIT being considered the owner of the Wisconsin real estate, and REIT's federal taxable income including the income derived from such real estate.

Therefore, REIT must file, as the taxpayer, using Wisconsin Form 4, and attach any applicable supplemental schedules, including Wisconsin Form 4B, Computation of Wisconsin Apportionment Data.

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3. Wisconsin Treatment of United Kingdom Advance Corporation Tax (ACT) Refunds

STATUTES: Section 71.26(2)(a), Wis. Stats. (1989-90)

NOTE: This Tax Release applies with respect to the 1987 taxable year and thereafter. As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, the Tax Release titled "Taxability of ACT (Advance Corporation Tax) Refunds" which was published in *Wisconsin Tax Bulletin* 44 (October 1985) does not apply to the 1987 taxable year and subsequent taxable years.

FACTS AND QUESTION: The United Kingdom levies the Advance Corporation Tax (ACT) on a corporation upon the payment of a dividend by that corporation to its shareholders. ACT is an advance payment of the corporation's general corporate tax. The Income Tax Convention established between the United States and the United Kingdom provides for a payment of a refund of ACT to qualifying U.S. shareholders. Pursuant to the Income Tax Convention, the Technical Explanation of the Convention, and Revenue Procedure 80-18, the refunded ACT is considered for federal income tax purposes to be a dividend for a U.S. shareholder.

Beginning with the 1987 taxable year, Wisconsin corporate net income is determined under the Internal Revenue Code, with certain modifications. Sec. 71.26(2)(a), Wis. Stats. (1989-90).

As a result of the federalization of Wisconsin's corporate franchise and income tax law, are ACT refunds treated as dividends for Wisconsin purposes for the 1987 taxable year and thereafter?

ANSWER: Yes. For 1987 and subsequent taxable years, ACT refunds are treated as dividends for Wisconsin franchise and income tax purposes to the extent that they are treated as dividends for federal income tax purposes. Wisconsin law does not include any modification which would change the characterization of ACT refunds included in federal gross income; therefore, the same treatment applies for Wisconsin purposes.

As a result of being characterized as dividends, ACT refunds may qualify for the Wisconsin dividends received deduction under sec. 71.26(3)(j), Wis. Stats. (1989-90). This statute permits the deduction of dividends received during the year from payor corporations which meet certain requirements based on the relationship between the payor and the recipient or based on the Wisconsin activity of the payor. For example, a dividend is deductible if paid on common stock and the corporation receiving the dividend owns, directly or indirectly, during the entire taxable year at least 80% of the total combined voting stock of the payor corporation.

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SALES/USE TAXES

1. Compression Hosiery

STATUTES: Section 77.54(22)(f), Wis. Stats. (1989-90)

NOTE: This Tax Release applies only with respect to sales on or after October 1, 1989.

BACKGROUND: Section 77.54(22)(f), Wis. Stats., as created by 1989 Wisconsin Act 31, exempts from sales and use tax "[a]ntiembolism elastic hose and stockings that are prescribed by a physician and sold to the ultimate consumer."

FACTS AND QUESTION: There are generally 4 maladies which are treated by compression hosiery:

- 1) Embolisms - an embolism is an abnormal circulatory condition in which an embolus (a foreign object, a quantity of air or gas or a bit of tissue or tumor) travels through the bloodstream and becomes lodged in a blood vessel.
- 2) Venous insufficiency - deep venous insufficiency is an abnormal circulatory condition characterized by decreased return of the venous blood from the legs to the trunk of the body.
- 3) Varicose veins - varicose veins are tortuous, dilated veins with incompetent valves. They have various causes and are common, especially in women.

- 4) Tired muscles - persons whose leg muscles tire easily or swell wear various types of support hose.

Some stockings used to treat embolisms are lighter in compression (15-20 mg.) than the venous insufficiency stockings (20-30 mg., 30-40 mg., 40-50 mg., and 50-60 mg.). However, some types of stockings may be used to treat more than one of these maladies.

Which types of compression stockings or hose are exempt from sales and use tax under sec. 77.54(22)(f), Wis. Stats.?

ANSWER: To be exempt from sales and use tax under sec. 77.54(22)(f), Wis. Stats., compression stockings must:

- 1) require a prescription to be sold, and
- 2) be specifically prescribed to treat, prevent or stabilize an embolus.

Therefore, compression stockings and elastic hose that are prescribed to treat embolisms are exempt. Compression stockings and hose prescribed to treat venous insufficiency, varicose veins or tired muscles are taxable.

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2. Gross Receipts for Purposes of Wisconsin Sales and Use Tax - Federal Luxury Tax

STATUTES: Section 77.51(4)(a)4, Wis. Stats. (1989-90)

WIS. ADM. CODE: Section Tax 11.26(3)(b), April 1990 Register

BACKGROUND: Effective January 1, 1991, the Revenue Reconciliation Act of 1990 (P.L. 101-508) created a new excise tax imposed on the first retail sale of high-cost cars, boats, aircraft, jewelry, and furs. The tax is equal to 10% of the excess of the sales price over a threshold amount.

QUESTION: Is the 10% luxury tax under secs. 4001 through 4007 of the Internal Revenue Code included in gross receipts or sales price for purposes of imposing Wisconsin sales or use tax?

ANSWER: No. Section 77.51(4)(a)4, Wis. Stats. (1989-90), and sec. Tax 11.26(3)(b), Wis. Adm. Code, provide that "gross receipts" and "sales price" for purposes of imposing Wisconsin sales and use taxes do not include any tax imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or consumer, if measured by a percentage of sales price or gross receipts and if the retailer is required to pay the tax to the governmental unit which levied the tax.

EXAMPLE: Customer A purchases an automobile for \$40,000 from Retailer B. The luxury excise tax to be paid by Customer A to Retailer B is \$1,000 (\$40,000 - \$30,000 threshold amount X 10%).

Gross receipts for purposes of imposing Wisconsin sales tax is \$40,000.

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3. Photographic Services Furnished in Taxable County

STATUTES: Sections 77.52(2)(a)7, 77.71(1) and 77.72(3)(a), Wis. Stats. (1989-90)

BACKGROUND: Section 77.52(2)(a)7, Wis. Stats. (1989-90), provides that the furnishing of photographic services, including the processing, printing and enlarging of film, as well as the service of photographers for the taking, reproducing, and sale of photographs, is subject to Wisconsin sales or use tax.

Section 77.71(1), Wis. Stats. (1989-90), provides that a county sales tax of 1/2% is imposed on the gross receipts from furnishing services described in sec. 77.52(2), Wis. Stats. (1989-90), in a county that has adopted the county tax. For purposes of determining in what county the sale of services takes place, sec. 77.72(3)(a), Wis. Stats. (1989-90), provides that services have a situs at the location where they are furnished.

FACTS AND QUESTION 1: A photographer is hired to take photographs of a wedding that takes place in a taxable county. The photographer processes the film and prints the photographs at his business location in a nontaxable county. The newlyweds take possession of the photographs in a taxable county.

Is the charge by the photographer for providing the photographic services subject to the county sales tax?

ANSWER 1: Yes. This service is considered furnished at the place where the buyer takes possession of the related property (i.e., pictures). Because the buyer takes possession of the photographs in a taxable county, the sale has a situs in a taxable county and the gross receipts from furnishing the photographic services are subject to the county sales tax.

FACTS AND QUESTION 2: Assume the same facts as in Facts and Question 1 except that the newlyweds take possession of the photographs at the photographer's business location in a nontaxable county.

Is the charge by the photographer for providing the photographic services subject to the county sales tax?

ANSWER 2: No. Because the buyer takes possession of the photographs in a nontaxable county, the sale has a situs in a nontaxable county and the gross receipts from furnishing the photographic services are not subject to the county tax.

FACTS AND QUESTION 3: A photographer contracts with a Wisconsin calendar publisher to take photographs of various scenic areas in

Wisconsin. The photographer's place of business is in a nontaxable county. The calendar publisher is located in a taxable county. The photographer delivers the photographs to the calendar publisher. The publisher decides not to use any of the photographs and returns them to the photographer. The photographer bills the publisher \$500 for the photographer's services furnished.

Is the \$500 charge subject to the county sales tax?

ANSWER 3: Yes. This service is considered furnished at the place where the publisher takes possession of the photographs for approval. Because the publisher took possession of the photographs in a taxable county, gross receipts from furnishing the photographic service are subject to the county sales tax.

FACTS AND QUESTION 4: Assume the same facts as in Facts and Question 3 except that the publisher reviews the photographs at the photographer's place of business.

Is the \$500 charge subject to the county sales tax?

ANSWER 4: No. Because the publisher took possession of the photographs for approval in a nontaxable county, gross receipts from furnishing the photographic service are not subject to the county sales tax.



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 "W" is for "Wisconsin," the first two digits are the year the ruling becomes available for publication (80 days after the ruling is issued to the taxpayer), the next two digits are the week of the year, and the last three digits are the number in the series of rulings in that year. 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 Wisconsin Department of Revenue," contains additional information about private letter rulings.

The following ruling is included:

W9106001, November 15, 1990

TYPE TAX: Sales/Use

STATUTES: Sections 77.51(20) and 77.52(1) and (2)(a)2 and 9, Wis. Stats. (1987-88)

ISSUE: Mobile home lot rental

This letter responds to your request for a private letter ruling regarding the rental of mobile home lots for Wisconsin sales and use tax purposes.

FACTS

You own a mobile home. You rent a lot on which your mobile home is affixed in a mobile home park. The mobile home is permanently affixed to the land and is connected to utilities. The rental of the lot includes water and sewer services. No other services or facilities are provided (i.e., electricity, garbage removal, clubhouse, pier, raft, pool, laundry room, picnic tables, playground, or other improvements).

RULING REQUEST

You ask whether the rental of the mobile home lot is subject to Wisconsin sales tax.

RULING

The gross receipts from the rental of mobile home lots, which are not part of a campground facility that offers others services or facilities, are not subject to Wisconsin sales tax.

ANALYSIS

Section 77.52(1), Wis. Stats. (1987-88), provides that a sales tax shall be imposed on the gross receipts from the lease or rental of tangible personal property at retail in Wisconsin. Section 77.51(20), Wis. Stats. (1987-88), defines "tangible personal property" to mean all tangible personal property of every kind and description. Land is commonly known to be real property.

Section 77.52(2)(a)2, Wis. Stats. (1987-88), imposes a sales tax on the sale of admissions to amusement, athletic, entertainment or recreational events or places (such as a campground).

Section 77.52(2)(a)9, Wis. Stats. (1987-88), provides that parking or providing storage space for motor vehicles is subject to sales tax. Motor vehicle is defined in sec. Tax 11.83(1), Wis. Adm. Code, as a self-propelled vehicle designed for and capable of transporting persons or property on a highway.

Because the rental of the lot in question is the rental of real property, rather than tangible personal property, sec. 77.52(1), Wis. Stats. (1987-88), does not apply. Because the fee paid to the mobile home park owner is for rent only and not for recreational services or facilities, sec. 77.52(2)(a)2, Wis. Stats. (1987-88), does not apply. Because the mobile home in question is not a motor vehicle, as defined in sec. Tax 11.83(1), Wis. Adm. Code, sec. 77.52(2)(a)9, Wis. Stats. (1987-88), does not apply. Therefore, the rental of your mobile home lot is not subject to Wisconsin sales tax.

