What are the automobile dealer's gross receipts for purposes of imposing sales tax?

Answer 1: The dealer's gross receipts are $14,000, which is the $18,000 selling price less the trade-in of $4,000.

Facts and Question 2: Customer B is leasing an automobile from a leasing company. Customer B enters into an agreement to purchase a new vehicle from an automobile dealer for a selling price of $18,000. The dealer agrees to take possession of Customer B's leased vehicle by paying the leasing company the $6,000 still due on the leased vehicle. The value of the leased vehicle is $5,000.

What are the automobile dealer's gross receipts on the sale of the automobile to Customer B for purposes of imposing sales tax, and what are the dealer's sales tax obligations with respect to the leased vehicle?

Answer 2: This sale involves two transactions. With respect to the first transaction involving the sale of the automobile by the dealer to Customer B, the dealer should collect from the customer Wisconsin sales tax and, if applicable, county sales or use tax, based on gross receipts of $18,000. Section 77.51(4)(b)3, Wis. Stats. (1989-90), which allows for the reduction of gross receipts by the amount of a "trade-in," does not apply to this sale because the purchaser (Customer B) does not own the leased automobile. The sale of the vehicle to Customer B by the automobile dealer is a separate transaction from the dealer's purchase of Customer B's old vehicle from the leasing company.

With respect to the second transaction, involving the sale of the leased vehicle by the leasing company to the dealer, if this vehicle is being purchased for resale by the dealer, the dealer should provide the leasing company with a properly completed resale certificate to exempt this sale from sales tax. If the vehicle is not purchased by the dealer for resale, the sale is subject to Wisconsin sales tax and, if applicable, county sales or use tax based on the buy out price of $6,000.

❐

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 issued 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 rulings are included:

W9106001, November 15, 1990

NOTE: This private letter ruling was previously published in *Wisconsin Tax Bulletin* 71, p. 20. It is being published again in its entirety to correct an error that appeared in the analysis. The analysis had stated that providing storage for a motor vehicle was subject to sales tax. Providing storage space for a motor vehicle is not subject to sales tax.

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 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.

❑

W9116002, January 24, 1991

Type Tax: Sales/Use

Statutes: Section 77.54(20)(c)1 and 6, Wis. Stats. (1989-90)

Issue: Exemptions — baked goods consumed off premises

This letter responds to your request for a Private Letter Ruling regarding the sales and use tax status of various sales of baked goods.

Facts

1. Company A is a retailer which sells muffins, cookies and brownies (baked goods) as its primary products.

2. Generally speaking, Company A leases space in enclosed shopping malls for their retail outlets. There are no facilities provided by Company A for seating or food consumption on the leased premises. The lease contracts restrict the sale of all food products in a "to go" or "take out" basis.

3. Depending on the quantity purchased, the product will be enclosed in decorative metal tins, large paper bags, or wrapped in small paper bags.

4. Sales of the baked goods may be made in any quantity. However, the actual sales price of the product is determined by the weight of the product sold, not by the quantity of pieces (i.e., the sales price of a dozen cookies will vary from transaction to transaction as the weight of the cookies varies).

5. Prices of the baked goods runs from $7.49 to $7.99 per pound. There are approximately nine (9) baked goods per pound.

6. The baked goods are not intended to be sold in a "heated" state. They are heated when prepared, but not necessarily prepared to be sold "heated."

7. The following six transaction scenarios are common in the day to day operations of Company A:

   a. A customer purchases one (1) baked good. After the sale is finalized, the customer proceeds to take the item out of the packaging and consumes the item as he/she is walking away from the store. Thus, the item is eaten in the mall corridor, at the common area benches or in another retail outlet. The average price of one (1) baked good is 86¢.

   b. A customer purchases three (3) baked goods. After the sale is finalized the customer proceeds to take one item out of the packaging and consume the item as he/she is walking away from the store. Thus, the item is eaten in the mall corridor, at the common area benches or in another retail outlet. The average price of three (3) baked goods is $2.58.

   c. A customer purchases six (6) or more baked goods. After the sale is finalized, the customer proceeds to take one item out of the packaging and consumes the item as he/she is walking away from the store. Thus, the item is eaten in the mall corridor, at the common area benches or in another retail outlet. The average price of six (6) baked goods is $5.16.

   d. A customer purchases one (1) baked good. Company A does not know whether the item is to be consumed in the enclosed mall or consumed elsewhere.

   e. A customer purchases three (3) baked goods. Company A does not know if any of the items are to be consumed in the enclosed mall or consumed elsewhere.

   f. A customer purchases six (6) or more baked goods. Company A does not know if any of the items are to be consumed in the enclosed mall or consumed elsewhere.

Request

Based on the foregoing, a ruling is requested that, for state sales tax purposes, determines whether any or all of the six specific transactions listed above are subject to sales tax in Wisconsin under sec. 77.54(20), Wis. Stats.

Ruling

The sale of baked goods for "on-premises" consumption is subject to sales and use tax. "Premises" is to be broadly construed and includes the common areas inside a shopping mall. Thus, the sale of baked goods which will be consumed in the common areas of

the mall are subject to sales and use tax. For purposes of this ruling, common areas of the mall are all areas within the mall which are for use by the patrons of any of the retailers located in the mall, including hallways, walkways, benches, rest areas and "food courts" (areas where tables and chairs are provided).

Under the circumstances of the sales as described, a determination by Company A must be made as to when baked goods will be consumed in the common areas of the mall. Several suggested methods of accomplishing this are discussed in the following analysis, however, any method that produces a reasonable result is acceptable.

Analysis

The first issue to resolve is what constitutes the "premises" of Company A. Section 77.54(20)(c)1, Wis. Stats., states;

> " The gross receipts from sales of meals, food, food products and beverages sold by any person, organization or establishment for direct consumption on the premises are taxable ... "

Section 77.54(20)(c)6, Wis. Stats., provides that:

> "For purposes of subd. 1, "premises" shall be construed broadly, and, by way of illustration but not limitation, shall include the lobby, aisles and auditorium of a theater or the seating, aisles and parking area of an arena, rink or stadium or the parking area of a drive-in or outdoor theater. The premises of a caterer with respect to catered meals or beverages shall be the place where served. Vending machine premises shall include the room or area in which located."

First, "premises" is to be broadly construed, and second, with a review of the examples included in the statute, the "premises" of a proprietor include areas which may not be leased or owned by the proprietor, or even under the proprietor's control, nor for exclusive use of the proprietor.

This interpretation is consistent with the position in sec. Tax 11.51(1), Wis. Adm. Code, that the sales and use tax exemption for "food, food products and beverages" found in sec. 77.54(20), Wis. Stats., "... generally exempts all basic food items ... necessary for the home preparation of meals." Bakery items consumed in common areas of the mall are clearly not used in the home preparation of meals.

Given the fact that baked goods sold and consumed in the common areas of the mall are subject to tax; how does Company A determine when baked goods will be consumed in the common areas of the mall?

Any method that Company A chooses that produces a reasonable result would be acceptable.

Suggested methods include:

(a) Asking each patron (before explaining the tax ramifications) if the product will be consumed in the mall or at home. It may be assumed that any bakery product sold not in a bag, but rather in a tissue, will be consumed in the common area of the mall. (The reverse would not necessarily be true.)

(b) A survey of patrons could be conducted and tax reported by Company A based on the results of the survey.

These are only suggested methods of determining on premises consumption. Again, any method that produces a reasonably accurate result would be acceptable.

❐

W9117003, February 5, 1991

Type Tax: Sales/Use

Statutes: Sections 77.51(14)(intro.), 77.52(2)(a)5, (13), and (14), and 77.59(4), Wis. Stats. (1987-88)

Issue: Exemptions — transportation service

This is in response to your request for a Private Letter Ruling concerning chauffeured limousine services.

Facts

Corporation B currently operates and has operated a chauffeured limousine service since June 1988. It has collected and remitted sales tax on its gross receipts from its services since that time.

Corporation B's limousine service consists of one stretched limousine that is provided to the general public complete with a licensed chauffeur for a specified date and time. The corporation owns the limousine and employs chauffeurs to drive the vehicle.

Corporation B's charge to the customer for the limousine is generally structured in one of three different ways:

1) A flat hourly fee, for example $40.00 per hour.
2) A fixed rate for a particular destination, for example, $115.00 one way to O'Hare Airport in Chicago, or $60.00 one way to Madison, Wisconsin.
3) As part of a package, including dinner for two at a restaurant and the limousine ride to and from the restaurant for a fixed package price of $79.95 Sunday through Thursday or $99.95 Friday or Saturday.

The stated prices do not include the tip to the chauffeur or use of the cellular phone at the rate of $1.00 per minute.

Bottles of champagne are available for an additional charge.

Request

Corporation B requests a ruling as to the sales and use taxability of providing this service/rental. In addition, if this is a nontaxable service may Corporation B file a claim for refund for sales taxes paid on this service since its inception in 1988.

Ruling

In general, the service Corporation B provides constitutes a nontaxable transportation service. However, the charge for dinner for two at the restaurant, the use of the cellular phone and charge for champagne are subject to Wisconsin sales tax. A reasonable allocation of the gross receipts must be made between the nontaxable service and taxable sales of dinners, use of cellular phone, and champagne for purposes of imposing Wisconsin sales tax.

The dinners, telephone service, and champagne Corporation B purchases and resells as part of the package may be purchased without Wisconsin sales tax with the use of properly completed resale certificates.

To the extent that any nontaxable transportation services, as identified in this ruling, were previously included in taxable gross receipts and the tax paid, Corporation B may file amended sales and use tax returns and claim a refund of such taxes paid.

Analysis

The first issue to be resolved is whether the taxpayer's operation is the rental of the limousine (tangible personal property) or a charge for providing a service.

Rule Tax 11.29(4), Wis. Adm. Code addresses the distinction.

> "(a) A person who uses the person's own equipment to perform a job and who assumes responsibility for its satisfactory completion shall be performing a service.
>
> (b) A person who furnishes equipment with an operator to perform a job which a lessee supervises and is responsible for the satisfactory completion of, shall be a lessor renting out such equipment. If it is customary or mandatory that the lessee accept an operator with leased equipment, the entire charge is subject to the tax. However, the operator's services shall not be taxable if billed separately and if a lessor customarily gives a lessee the option of taking the equipment without the operator.
>
> (c) Charges for the rental of motor trucks shall be taxable. However, if drivers are provided by the truck's owner to operate the trucks and the public service commission and the department of transportation's division of motor vehicles consider the arrangement a transportation service under statute or under rules adopted by either or both of those state agencies, the charges shall not be taxable."

Rule Tax 11.84(4)(a), Wis. Adm. Code, concerning aircraft states that transporting customers or property for hire is a nontaxable transportation service when the customer only designates the time of departure and destination while the owner retains control over the aircraft in all other respects.

Corporation B's trips clearly are a transportation service rather than the lease of tangible personal property. The driver retains control of the limousine at all times and assumes responsibility for the satisfactory completion of the trip.

Since we have determined that Corporation B is providing a nontaxable service, the second issue is whether it can file a claim for refund for sales taxes paid on the nontaxable transportation service since its inception in 1988.

Section 77.59(4), Wis. Stats. (1987-88), provides that at any time within 4 years after the due date of a taxpayer's income or franchise tax return, a person may file a claim for refund of taxes paid provided the person has not had a determination by the department by office audit or field audit.

Assuming Corporation B reports on a calendar year for income and franchise tax purposes and has not been subject to an office audit or field audit determination by the department, it has until March 15, 1993 to file a claim for taxes paid for 1988.

With respect to the charge for the use of the cellular telephone, sec. 77.52(2)(a)5, Wis. Stats., provides that the sale of telecommunication services of whatever nature, with certain exceptions, are taxable.

With regard to Corporation B's purchase of tangible personal property and taxable services that it resells to its customers, section 77.51(14)(intro.), Wis. Stats., provides that "sale at retail" for purposes of imposing sales tax does not include items for resale. Section 77.52(13) and (14), Wis. Stats., provides for the use of a resale certificate when purchasing tangible personal property or taxable services without tax for resale.

❐

W9121004, March 5, 1991

Type Tax: Sales/Use

Statutes: Sections 77.52(1) and (2)(a) and 77.53(1), Wis. Stats. (1989-90)

Issue: Exemptions — incidental highway construction

This letter responds to your request for a Private Letter Ruling regarding Wisconsin sales and use tax implications of incidental highway construction work.

Facts

Company C is in the business of incidental highway construction work, specifically, traffic control.

Company C contracts with a road building contractor to provide and maintain barricades, temporary traffic signs, and arrow boards which route traffic through a highway construction project. Maintaining barricades and signs includes periodically checking barricades and signs to see that lights are working and making sure barricades are standing. Company C owns the barricades and signs.

Ruling Request

You ask whether the charge to the road building contractor for providing and maintaining the barricades, temporary traffic signs, and arrow boards is subject to Wisconsin sales tax. You also ask whether the purchase of barricades, temporary traffic signs, and arrow boards by Company C is subject to Wisconsin sales or use tax.

Ruling

Company C's charge to a road building contractor for providing and maintaining barricades, temporary traffic signs, and arrow boards which route traffic through a construction project is a charge for traffic control services and is not subject to Wisconsin sales tax. The company must pay Wisconsin sales or use tax on its purchase of barricades, temporary traffic signs, and arrow boards utilized in providing the traffic control services.

Analysis

In general, sec. 77.52(1), Wis. Stats. (1989-90), imposes a sales tax on the sale, lease or rental of tangible personal property at retail. Section 77.52(2)(a), Wis. Stats. (1989-90), imposes the tax on the furnishing of certain services.

Section Tax 11.29(4)(a), Wis Adm. Code, provides:

> "A person who uses the person's own equipment to perform a job and who assumes responsibility for its satisfactory completion shall be performing a service."

Since Company C owns the equipment it provides to the road building contractor and is responsible for maintaining it throughout the construction project, it is considered to be providing a traffic control service.

Section 77.52(2)(a), Wis. Stats. (1989-90), does not include traffic control service as a service that is subject to sales tax. Therefore, the traffic control service is not subject to sales tax.

With respect to the sale of barricades, temporary traffic signs, and arrow boards to Company C, the sale of tangible personal property in Wisconsin is subject to sales tax under sec. 77.52(1), Wis. Stats. (1989-90), unless an exemption applies or the property is purchased for resale.

Since no exemption applies to the sale of this property to Company C and the company is not purchasing the property for resale, the sale of the property is subject to Wisconsin sales tax. If the supplier is not required to charge Wisconsin sales tax because of a lack of sufficient nexus or did not charge Wisconsin sales or use tax, Company C must pay use tax on the sales price of the property under sec. 77.53(1), Wis. Stats. (1989-90).

❐

W9122005, March 11, 1991

Type Tax: Corporation Franchise or Income

Statutes: Sections 71.26(2)(a) and (3)(x) and 71.30(1)(a), Wis. Stats. (1989-90)

Issue: Accounting - 1987 and thereafter — allowable methods

This letter responds to your request for a Private Letter Ruling regarding the use of the reserve method of accounting for bad debts.

Facts

You have stated that ABC Corporation (ABC) is a member of a parent-subsidiary controlled group of corporations as defined in Internal Revenue Code section 1563(a)(1). The average adjusted bases of all assets of the bank are less than $500,000,000; however, the average adjusted bases of all assets of the parent-subsidiary controlled group to which ABC belongs exceed $500,000,000. Therefore, ABC is a large bank as defined in IRC sec. 585(c)(2)(B). For federal purposes, ABC is not allowed to deduct additions to a reserve for bad debts since IRC sec. 585, which allows such deductions, does not apply to large banks.

Ruling Requested

You have requested a ruling that since ABC is required to file a separate company return for Wisconsin purposes because IRC secs. 1501 to 1505, 1551, 1552, 1563, and 1564, relating to consolidated returns, are excluded from the Internal Revenue Code for purposes of determining net income, the determination of whether ABC is a large bank must be made on a separate company basis for Wisconsin purposes. Since the average adjusted bases of all assets of ABC are less than $500,000,000, ABC is not a large bank. Therefore, ABC may maintain use of the reserve method for bad debts on a separate company basis for its Wisconsin return.

Ruling

Although ABC must file a separate company return for Wisconsin purposes, it must use the same method of accounting used for

federal income tax purposes if that method is authorized under the Internal Revenue Code in effect for Wisconsin. Since IRC sec. 585 applies for Wisconsin and ABC is a large bank under IRC sec. 585(c)(2)(B), it is a large bank for Wisconsin purposes. Therefore, ABC may not maintain use of the reserve method of accounting for bad debts.

Analysis

Beginning with the 1987 taxable year, the Wisconsin net income of a corporation is determined under the Internal Revenue Code, with certain modifications. Sec. 71.26(2)(a), Wis. Stats. (1989-90). One of the modifications excludes IRC secs. 1501 to 1505, 1551, 1552, 1563, and 1564, relating to consolidated returns, for the purpose of computing net income. Sec. 71.26(3)(x), Wis. Stats. (1989-90). However, there is no modification in the state statutes for IRC sec. 585, relating to the bad debt deduction allowable to banks. Therefore, this provision is the same for both state and federal purposes.

In addition, sec. 71.30(1)(a), Wis. Stats. (1989-90), requires a corporation to use the same method of accounting used for federal income tax purposes if that method of accounting is authorized under the Internal Revenue Code in effect for Wisconsin.

Internal Revenue Code sec. 585 allows certain banks to use the reserve method of deducting bad debts. However, IRC sec. 585(c)(1) provides that, in the case of a large bank, the section does not apply and no deductions will be allowed for any additions to a reserve for bad debts. Under IRC sec. 585(c)(2), a bank is a large bank if, for the taxable year or for any preceding taxable year beginning after December 31, 1986,

(A) the average adjusted bases of all assets of that bank exceeded $500,000,000, or

(B) the bank was a member of a parent-subsidiary controlled group and the average adjusted bases of all assets of that group exceeded $500,000,000.

Internal Revenue Code sec. 585(c)(5)(A) defines a parent-subsidiary controlled group as any controlled group of corporations described in IRC sec. 1563(a)(1). That Code section describes a parent-subsidiary controlled group as one or more chains of corporations connected through stock ownership with a common parent corporation if —

(A) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one or more of the other corporations, and

(B) the common parent corporation owns stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

Although the definition of a parent-subsidiary controlled group under sec. 1563 affects the determination of whether a bank is a large bank, that Code section does not deny use of the reserve method for deducting bad debts to large banks. It is by virtue of IRC sec. 585 that ABC is a large bank and is disqualified from using the reserve method for bad debts. There is no provision in sec. 585 that limits the disqualification of large banks to those large banks which file consolidated returns under IRC secs. 1501 to 1505, 1551, 1552, 1563, and 1464.

Since ABC may not use the reserve method of deducting bad debts for federal purposes and IRC sec. 585 is not modified for Wisconsin purposes, ABC may not use the reserve method for bad debts for Wisconsin purposes.

❐