

Wis. Adm. Code: Sections Tax 11.54(1)(a), 11.65(1)(a), (b) and (c), (2)(a) and (d), and (3) and 11.67(2)(c), March 1991, June 1991, and April 1990, Registers.

Background: Section 77.52(2)(a)2 and (2m)(a), Wis. Stats. (1989-90), imposes a tax on sales of admissions to amusement, athletic, entertainment, or recreational events or places. Sales of such admissions may be made by health clubs, athletic clubs, schools, municipalities, and other organizations, including organizations which sponsor races and tournaments.

Taxable admissions include receipts from participants and spectators for the following:

Swimming (open swim and lap swim)*

Racquetball*

Squash*

Handball*

Volleyball*

Wallyball*

Tennis*

Golf*

Driving Range*

Basketball*

Baseball and Softball*

Bowling*

Skiing*

Competitions such as races involving running, boating, skiing, biking, and ballooning; weightlifting tournaments; and martial arts tournaments

*Not including lessons

Other *taxable* receipts that may be associated with such admissions include receipts from:

Equipment sales or rental

Parking

Towel, laundry, and locker fees

Meals, food, and beverages

Nontaxable admissions include receipts from, and the use of facilities for:

Aerobics classes

All lessons (swimming, tennis, golf, etc.)

Free weights and machines

Whirlpool, sauna

Running track (other than for races)

Exercycles, lifecycles

Rowing machines

Stepping machines

X-country ski machines

Treadmills

Tanning booths and beds

Massage table/room

Other *nontaxable* receipts that may be associated with recreational or health and fitness facilities or events include receipts from:

Consultation (providing advice and information relating to fitness)

Nursery/child care

Question 1: When a health club, athletic club, or other organization charges a single fee which covers admissions to both taxable and nontaxable facilities, how is the taxability of the gross receipts determined?

Answer 1: The *primary purpose* of the persons paying the fee determines whether sales tax applies to the fee. Primary purpose means more than 50%. The taxability or nontaxability of a single fee applies to all participants paying the single fee. Thus, if an organization determines that its participants spend more than 50% of their overall time using nontaxable facilities, the primary purpose is to obtain access to nontaxable facilities and the single fee is nontaxable. This is true even for those participants who pay the single fee and spend most of their time using taxable facilities.

Organizations charging a single fee for taxable and nontaxable facilities must use a reasonable method of determining the primary purpose of the participants. One reasonable method is a representative survey of participants and their time spent in each facility.

(Note: Organizations must keep adequate records to substantiate how they determine the primary purpose of the participants.)

Example 1: The ABC Health and Fitness Club has two membership plans. The blue card membership (\$30/month) entitles members to use the weight room, swimming pool, running track and exercise machines. A separate fee is charged to blue card members for the use of racquetball courts. The gold card membership (\$40/month) entitles members to use all of the above facilities and also entitles the members to use the racquetball courts with no additional charge.

Based on a survey of blue card members, the club has found that these members spend 30% of their time swimming (free swim or lap swim, no lessons: taxable activity) and the remaining 70% of their time in nontaxable activities including running, exercising, and lifting weights. Since the primary purpose of the blue card members is to use the facilities for nontaxable activities, the club's receipts from all of the blue card memberships are not subject to sales tax.

Based on a survey of gold card members, the club has found that these members spend 75% of their time swimming or playing racquetball (taxable activities) and the remaining 25% of their time in nontaxable activities. Since the primary purpose of the gold card members is to use the facilities for taxable activities, the club's receipts from all of the gold

card memberships are subject to sales tax.

Example 2: The XYZ Health and Fitness Club charges a single fee to its members for the use of tennis courts, racquetball courts, a swimming pool, a running track, and exercise machines. In a study conducted by the club, in which it observed and recorded the use made of each area of the club, it found that 65% of the members' time was spent in taxable activities (playing tennis, racquetball, and swimming) and the remaining 35% of the members' time was spent in nontaxable activities (running and exercising).

Since the primary purpose of the members was to use the facilities for taxable activities, all of the club's membership fees are subject to sales tax.

Question 2: Are separate charges for taxable activities (such as playing racquetball), taxable services, or taxable tangible personal property subject to sales tax?

Answer 2: Yes. Even in situations where the primary purpose of the members is to use the facilities for nontaxable activities and, therefore, the organization's fee has been determined to be nontaxable, any separate charges for taxable activities, services, or property are subject to sales tax.

Example: If the blue card member in Example 1 pays a separate charge for playing racquetball, the club's receipts from these charges are subject to sales tax.

Question 3: The XYZ Health and Fitness Club periodically holds tennis tournaments in which a separate fee is charged. Trophies and prizes are awarded to contestants. Are the club's receipts from the tournaments subject to sales tax?

Answer 3: Yes. Section 77.52(2)(a)2, Wis. Stats. (1989-90), provides for a sales tax on receipts from admissions paid by participants and spectators to athletic or recreational events. Such athletic or recreational events include tennis tournaments.

Question 4: May the XYZ Health and Fitness Club in Question and Answer 3 purchase the trophies and prizes exempt from sales tax, as a purchase for resale?

Answer 4: No. The trophies and prizes awarded to the contestants are incidental to the service provided and are not considered to be resold under sec. 77.52(2m)(a), Wis. Stats. (1989-90). Tax applies to the club's purchases of trophies and prizes.

Question 5: A nonprofit organization sponsors a triathlon (bicycling, swimming, and running race), in which it charges an entry fee of \$20 to participate. The nonprofit organization holds a seller's permit for other sales it makes. Are the nonprofit organization's receipts from the triathlon subject to sales tax?

Answer 5: Yes. The nonprofit organization's receipts from the triathlon are taxable because the event is athletic or recreational.

Note: See Publication 206, "Sales Tax Exemption for Nonprofit Organizations," for an explanation of exemptions which may apply if the nonprofit organization is not required to hold a seller's permit for other sales it makes. □

7 Hotel or Motel Weekend Packages

Statutes: Sections 77.52(2)(a) and (2m)(a) and 77.54(20)(c)1, Wis. Stats. (1989-90)

Wis. Adm. Code: Section Tax 11.48(2), March 1991 Register

Facts and Question: A hotel or motel offers a weekend package for \$100. The package includes one night's lodging, a dinner up to \$15 in value, and a Sunday brunch up to \$8 in value. The \$100 package also includes champagne upon arrival and six roses in the room.

What are the Wisconsin sales and use tax implications of this transaction?

Answer: The total \$100 is subject to Wisconsin sales tax. Section 77.52(2)(a)1, Wis. Stats. (1989-90), provides that the furnishing of rooms or lodging to transients by hotel keepers, motel operators, and others furnishing accommodations to the public is a taxable service. In addition, sec. 77.54(20)(c)1, Wis. Stats. (1989-90), provides that sales of meals sold by any person, organization, or establishment for direct consumption on the premises are taxable.

The hotel or motel is required to pay Wisconsin sales or use tax on its purchase of the champagne and roses. Section Tax 11.48(2)(e), Wis. Adm. Code, provides that hotels, motels, and inns are the consumers of all items used to conduct their business, such as beds, bedding equipment, advertising supplies, and items consumed by the occupants of the room. Purchases by a hotel or motel of these items are taxable.

Note: The hotel's or motel's purchase of other items such as soap, shampoo, toothpaste, toothbrushes, cups, pens, paper, and postcards it provides in its rooms for use by occupants of the rooms is also subject to Wisconsin sales or use tax. □

8 Replacement of Light Bulbs

Statutes: Section 77.52(2)(a)10, Wis. Stats. (1989-90)

Background: Section 77.52(2)(a)10, Wis. Stats. (1989-90), provides that, except when installing tangible personal property which when installed constitutes a real property improvement, the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of tangible personal property is subject to Wisconsin sales or use tax.

For purposes of repair, service, maintenance, etc., office type equipment, including lamps and chandeliers, is deemed by statute to retain its character as tangible personal property.

In the case of *James M. Salmon v. Wisconsin Department of Revenue* (Docket No. S-9178, 11/29/89), the Wisconsin Tax Appeals Commission held that the replacement of light bulbs for commercial customers constituted a service to tangible personal property in the form of "office, restaurant and tavern type equipment, including by way of illustration but not of limitation lamps, chandeliers ..." as these terms are used in sec. 77.52(2)(a)10, Wis. Stats., the gross receipts from which are subject to Wisconsin sales or use tax.

Facts and Question: Company ABC has developed a program where it will replace fully operational inefficient light bulbs in fluorescent fixtures and exit signs in commercial buildings with energy efficient fluorescent bulbs. Company ABC purchases the light bulbs from a supplier without Wisconsin sales or use tax as property for resale. Company ABC has contracted with Company XYZ to install the bulbs.

Is the charge by Company XYZ to Company ABC for installing the high

efficiency light bulbs subject to Wisconsin sales or use tax?

Answer: Yes. The light fixture which holds the light bulb is deemed to be tangible personal property for purposes of repair, maintenance, service, etc. The replacement of the light bulbs is a service to tangible personal property. As such, the charge by Company XYZ for installing the light bulbs is subject to Wisconsin sales or use tax under sec. 77.52(2)(a)10, Wis. Stats. (1989-90). □

9 Transportation Charges by Related Company of Seller of Tangible Personal Property

Statutes: Section 77.51(4)(a)3 and (b)5 and (14r), Wis. Stats. (1989-90)

Wis. Adm. Code: Section Tax 11.94, June 1991 Register

Background: Section 77.51(4)(a)3 and (b)5, Wis. Stats. (1989-90), provides that for purposes of imposing Wisconsin sales tax, gross receipts include the cost of transportation of tangible personal property prior to its sale, but does not include transportation charges separately stated, if the transportation occurs after the sale of the tangible personal property is made to the purchaser.

Section 77.51(14r), provides that a sale or purchase involving transfer of ownership of tangible personal property shall be deemed to have been completed at the time and place when and where possession is transferred by the seller or his agent to the purchaser or his agent, except that a common carrier or the U.S. Postal Service shall be deemed the agent of the seller, regardless of any f.o.b. point and regardless of the method by which freight or postage is paid.

Facts and Question 1: ABC Company (ABC) is a Wisconsin corporation

having its principal place of business in Wisconsin and engaged principally in the sale of coal at retail. ABC is a wholly-owned subsidiary of DEF Company (DEF) which in turn is a wholly-owned subsidiary of XYZ Company (XYZ).

ABC purchases coal mined in Kentucky and pays a common carrier (Railroad) to transport such coal from Kentucky to ABC's Wisconsin facility where such coal is stored until sold to one or more customers (the Customer) of ABC.

ABC and DEF together are parties to a Railroad Transportation Contract with Railroad (the Contract) under which ABC and DEF have agreed to ship under the Contract a certain percentage of tonnage of the coal they originate, cause to be originated, or as to which they act as a transhipper during the term of the contract. The sales price from ABC to the Customer for coal includes a charge for the amount ABC paid Railroad to transport the coal from Kentucky to Wisconsin.

Is the charge by ABC to the Customer for the transportation charges relating to the sale of coal subject to Wisconsin sales or use tax?

Answer 1: Yes. Since the transportation charges occur prior to the sale of the coal to the Customer (i.e., when customer receives the coal at ABC's facility), ABC is subject to Wisconsin sales tax on the transportation charges.

Facts and Question 2: Assume the same facts as in Facts and Question 1, except that ABC assigns its rights and obligations under the Contract to GHI Company (GHI), so that after such assignment, GHI, rather than ABC, will ship coal purchased by ABC via Railroad from Kentucky to ABC's Wisconsin facility. GHI is another wholly-owned subsidiary of

XYZ and is a common carrier licensed by the Interstate Commerce Commission.

The Customer will purchase coal from ABC with possession of the coal passing from ABC to the Customer at ABC's Wisconsin facility. The price for the coal purchased by the Customer from ABC will be established by contract and will exclude any charges for transportation of the coal from Kentucky to Wisconsin. The

Customer will separately contract with GHI for the transportation of the coal from Kentucky to Wisconsin. The Customer will pick up the coal at ABC's Wisconsin facility at which time ABC will invoice the Customer for the coal it picks up. GHI will invoice the Customer for the transportation charges attributable to the coal then purchased by the Customer from ABC. Any increase or decrease in transportation charges shall be borne by the Customer and not ABC.

Is the charge by GHI to the Customer for transportation subject to Wisconsin sales or use tax charges?

Answer 2: Yes. Since the transportation occurred prior to the sale of the coal to the Customer, GHI is subject to Wisconsin sales or use tax on the amount charged to the Customer for transportation charges. It is irrelevant that the transportation charge is billed separately from the coal. □



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 private letter rulings are included:

Sales and Use Taxes

Computer software for disabled individuals

W9214005, January 13, 1992 (p. 19)

Horse training

W9222008, March 5, 1992 (p. 20)

Member incentive program - electric thermal storage units

W9220007, February 26, 1992 (p. 22)

Salary surveys

W9219006, February 17, 1992 (p. 23)

✱ W9214005, January 13, 1992

Type Tax: Sales and Use

Issue: Computer software for disabled individuals

Statutes: Section 77.52(1), Wis. Stats. (1989-90), and section 77.54(22)(a) and (b), as amended by 1991 Wis. Act 39

This letter responds to your request for a private letter ruling regarding the sales and use tax status of Package A, a computer software package to be used by severely handicapped individuals.

Facts

ABC Company, a division of XYZ, Inc., is a provider of medical supplies and equipment in Minnesota. As part of this business, ABC Company is a dealer for the Package A company. Package A is a software product designed to operate on IBM or IBM compatible microcomputers providing people who are severely disabled with written and spoken communications and environmental controls. When installed on a personal computer with a variety of peripheral equipment, it allows the individual tremendous freedom in his daily living. The individual is enabled to perform tasks others normally take for granted, such as turning lights on, dialing a phone, typing a letter, changing a TV channel, etc. Peripheral devices are available, such as a voice synthesizer that verbalizes what the individual has typed into the computer.