

Wisconsin sales or use tax. A mobile home exceeding 45 feet in length is considered a primary housing unit.

Facts and Question 1: Company ABC is a plumbing contractor. Company ABC will winterize and dewinterize Individual D's cottage in Wisconsin for a charge of \$50.

Winterizing the cottage consists of:

- A. Draining the water in the cottage's water heater.
- B. Opening all water faucets in the cottage to allow water to drain.
- C. Attaching a hose to the water heater and blowing air into the water heater that travels through the plumbing system in the cottage. Most of the water remaining in the pipes drains out the faucets.
- D. Once it appears that no water is dripping from the faucets, anti-freeze is poured into the sinks, toilet bowls, and tanks to prevent freezing of any water remaining in the pipes.

Dewinterizing the cottage consists of:

- A. Closing all the water faucets prior to the water being turned on by the local utility.

B. Once the water is turned on by the local utility, the water pipes within the plumbing system of the cottage are checked for any water leaks.

Is the charge by Company ABC for winterizing and dewinterizing Individual D's cottage subject to Wisconsin sale tax?

Answer 1: No. Although Company ABC does provide service to tangible personal property when winterizing and dewinterizing the cottage (water heater, sinks, faucets, toilets), the primary purpose of the service is to ensure that no water is left in the pipes within the plumbing system (real property) that could cause damage. Because the service is to real property, it is not subject to Wisconsin sales tax.

Facts and Question 2: Assume the same facts as in Facts and Question 1 except that the winterizing and dewinterizing service is performed on a mobile home, not exceeding 45 feet in length, located on land in Wisconsin owned by someone other than the mobile home owner.

Is the charge by Company ABC for winterizing and dewinterizing the mobile home subject to Wisconsin sales tax?

Answer 2: Yes. The entire mobile home, including the plumbing system,

is tangible personal property for purposes of repair, service, maintenance, etc. Therefore, Company ABC is performing a service to tangible personal property which is subject to Wisconsin sales tax under sec. 77.52(2)(a)10, Wis. Stats. (1989-90).

Note: If the mobile home was located on land owned by the mobile home owner, and was permanently affixed to the real estate, the winterizing and dewinterizing service is to real property and is not subject to Wisconsin sales or use tax.

Facts and Question 3: Assume the same facts as in Facts and Question 1 except that the winterizing and dewinterizing service is performed on a mobile home exceeding 45 feet in length, located on land in Wisconsin owned by someone other than the mobile home owner.

Is the charge by Company ABC for winterizing and dewinterizing the mobile home subject to Wisconsin sales tax?

Answer 3: No. Although the mobile home is tangible personal property, the sale of the mobile home, because it would be used and qualifies as a primary housing unit, is exempt from Wisconsin sales tax under sec. 77.54(31), Wis. Stats. (1989-90). Therefore, any service to the mobile home is exempt from Wisconsin sales tax as provided in sec. 77.52(2)(a)10, Wis Stats. (1989-90). □



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

Exemptions — transportation service

W9238011, June 29, 1992
(p. 30)

Leases and rental — tangible personal property in non-exempt use

W9226010, April 2, 1992
(p. 31)

Fiduciary

Nonresident trusts — jurisdiction

W9224009, March 19, 1992 (p. 32)

✳ W9238011, June 29, 1992

Note: This private letter ruling supersedes private letter ruling W9117003 dated February 5, 1991, which appeared in *Wisconsin Tax Bulletin* 72, p. 23, due to a change in position with respect to charges for the use of a cellular telephone.

Type Tax: Sales and Use

Issue: Exemptions — transportation service

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

This is in response to your request for a private letter ruling concerning chauffeured limousine services and supersedes the private letter ruling to you dated February 5, 1991.

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 and charge for champagne are subject to Wisconsin sales tax. The charge for the use of the cellular telephone is nontaxable. A reasonable allocation of the gross receipts must be made between the nontaxable transportation and telephone services and taxable sales of dinners and champagne for purposes of imposing Wisconsin sales tax.

The dinners 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 and cellular telephone 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 desig-

nates 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 four 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, the Wisconsin Public Service Commission considers limousine service providers consumers of the telephone services provided by telephone companies, rather than retailers of the telephone services they provide to their customers. The charge to the limousine service by the telephone company is subject to Wisconsin sales or use tax under sec. 77.52(2)(a)5, Wis. Stats. The charge by the limousine service to its customer is not subject to Wisconsin sales or use tax.

With regard to Corporation B's purchase of tangible personal property (meals and champagne) 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. □

✳ W9226010, April 2, 1992

Type tax: Sales and Use

Issue: Leases and rental — tangible personal property in non-exempt use

Statutes: Sections 77.51(4)(a) and (14)(j) and 77.52(1), Wis. Stats. (1989-90)

This letter responds to your request for a private letter ruling regarding gross receipts for purposes of imposing Wisconsin sales tax.

Facts

ABC Company has entered into an agreement to lease certain computer equipment from a retailer registered to collect Wisconsin sales and use taxes. The lease provides for monthly payments on the financed equipment cost plus sales tax.

The lease agreement also provides that the “Lessee shall promptly reimburse Lessor for, or shall pay directly if so requested by Lessor, as additional Rent, all taxes, charges, and fees imposed or levied by any governmental body or agency upon or in connection with the purchase, ownership, leasing, possession, use or relocation of the Equipment . . .” In this instance, the lessor pays the personal property tax to the taxing agency and

in turn bills ABC Company for the amount of personal property tax.

Request

You ask the following:

1. Is the lessor correct in imposing Wisconsin sales tax on the charge to ABC Company for personal property tax paid by the lessor on computer equipment leased to ABC Company?
2. Do gross receipts for purposes of imposing Wisconsin sales tax include personal property taxes of leased property if ABC Company pays the taxes directly to the municipality?

Ruling

1. The lessor is correct in imposing Wisconsin sales tax on the charge to ABC Company for personal property taxes paid by the lessor on computer equipment being leased to ABC Company.
2. If the personal property tax is assessed and levied against the lessor by the taxing agency, ABC Company's payment of the tax is includable in the lessor's gross receipts, regardless of whether ABC Company pays the tax to the lessor or directly to the taxing agency. However, if the tax is assessed and levied against ABC Company, it is not includable in the lessor's gross receipts for purposes of computing its Wisconsin sales tax liability.

Analysis

Section 77.52(1), Wis. Stats. (1989-90), imposes a 5% sales tax on a retailer's gross receipts from the sale, lease, or rental of tangible personal property sold, leased, or rented at retail in Wisconsin.

Section 77.51(4)(a)(intro.) and 2, Wis. Stats. (1989-90), provides that "gross receipts" means the total amount of the sale, lease, or rental price from sales at retail of tangible personal property without any deduction for the cost of the materials used, labor or service cost, interest paid, or any other expense.

Under sec. 77.51(14)(j), Wis. Stats. (1989-90), "sale at retail" includes the lease of tangible personal property.

The personal property taxes paid by the lessor and passed on to the lessee or paid directly to the taxing agency by the lessee are an "expense" that may not be deducted from a lessor's lease price.

If the personal property taxes were assessed and levied on ABC Company, the tax paid by ABC Company does not fall within the definition of gross receipts of the lessor for purposes of imposing Wisconsin sales or use tax.

This position has been published in a tax release which appeared in *Wisconsin Tax Bulletin* 22, page 9, issued in April 1981. □

✳ W9224009, March 19, 1992

Type Tax: Fiduciary

Issue: Nonresident trusts — jurisdiction

Statutes: Section 71.14(1), (2) and (3), Wis. Stats. (1989-90)

This letter responds to the request for a private letter ruling regarding the income tax impact of changing the corporate trustee of the referenced trusts from Florida to Wisconsin.

Facts

There are presently the following trusts:

Trust No. 1: ABC Trust f/b/o GHI.

Primary Beneficiary: GHI, a resident of Florida.

Trust No. 2: ABC Trust f/b/o JKL.

Primary Beneficiary: JKL, a Wisconsin resident.

Trust No. 3: ABC Trust f/b/o MNO.

Primary Beneficiary: MNO, a Wisconsin resident.

Trust No. 4: DEF Residual Trust f/b/o GHI.

Primary Beneficiary: GHI, a resident of Florida.

Trust No. 5: DEF Residual Trust f/b/o JKL.

Primary Beneficiary: JKL, a Wisconsin resident.

Trust No. 6: DEF Residual Trust f/b/o MNO.

Primary Beneficiary: MNO, a Wisconsin resident.

The above trusts were created by ABC and DEF who, prior to their deaths, were Florida residents. The trusts were revocable at creation but became irrevocable on the decedents' deaths. Each trust specifically provides that it be construed and regulated by the laws of the State of Florida.

The corporate trustee or co-trustee of all the above trusts is XYZ Bank of Florida. Presently all decisions, administration, and records are in the state of Florida. The decedents' daughter, PQR, a Wisconsin resident,

is co-trustee of her mother's three trusts.

It is presently planned to change the corporate trustee, and UVW Trust Company of Wisconsin, is being considered as the new trustee.

Request

On behalf of the trusts, the request asks for a determination of the income tax impact if the Florida trusts are moved to a Wisconsin corporate trustee for administration and investment.

Ruling

A trust administered in Wisconsin, without regard to where or how

initially created, is subject to Wisconsin income tax.

Analysis

Section 71.14, Wis. Stats. (1989-90), establishes income situs for estates and trusts. Section 71.14(1), Wis. Stats., provides that an estate is resident in the state where the decedent was domiciled. Section 71.14(2), Wis. Stats., as amended in 1989, pertains to trusts created by decedents. More specifically, the 1989 amendment clarifies that sub. (2) pertains only to trusts created by a Wisconsin resident decedent. The trust created by a Wisconsin decedent is considered resident in Wisconsin until it is transferred by the court having jurisdiction under sec. 72.27,

Wis. Stats. (1989-90). Section 71.14(3), Wis. Stats., provides that all other trusts are resident where the trust is being administered.

The trusts, here under review, were created by Florida decedents and are presently administered in Florida. Under sec. 71.14(3), Wis. Stats., Wisconsin lacks nexus to tax the trusts. If and when the trusts are administered in Wisconsin, without regard to when created or where located, the trusts will be subject to Wisconsin income tax under sec. 71.14(3), Wis. Stats. □