



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:

this plan under a salary reduction agreement, and your employer also made contributions to the plan on your behalf. All contributions ceased as of December 1989, when you voluntarily terminated your employment to move to Wisconsin. You became a legal resident of Wisconsin on February 1, 1990.

At the time of termination, you had the option of withdrawing the fund balance or leaving it on deposit with the retirement plan until a future date of your choosing. You elected to leave the funds on deposit.

In 1993, you withdrew the funds due to financial necessity. Under federal Internal Revenue Code (IRC) provisions, these funds will be taxable on your 1993 federal income tax return due in 1994.

Ruling Request

You request a ruling that the proceeds from the retirement fund be exempt from Wisconsin state income tax.

Ruling

Section 71.04(1)(a), Wis. Stats. (1991-92), provides that all income or loss of resident individuals shall follow the residence of the individual. Based on the facts in this case, you were a legal resident of Wisconsin at the time you received the distribution from the retirement plan, and thus the distribution is taxable for Wisconsin income tax purposes.

Analysis

Section 71.04(1)(a), Wis. Stats. (1991-92), provides that all income or

Individual Income Taxes

Retirement pay — situs of income
W9329003, April 28, 1993
(p. 32)

Corporation Franchise and Income Taxes

Exempt organizations — filing requirements
W9337004, June 23, 1993
(p. 33)

Sales and Use Taxes

Waste reduction and recycling —
freon recovery
W9317002, February 1, 1993
(p. 34)

✳ W9329003, April 28, 1993

Type Tax: Individual Income Taxes

Issue: Retirement pay — situs of income

Statutes: Section 71.04(1)(a), Wis. Stats. (1991-92)

This letter is in response to your request for a private letter ruling regarding the taxability of retirement benefits which were based on employ-

ment during a period in which you were not a legal resident of Wisconsin.

Facts

From 1938 to February 1, 1990, you were a legal resident of the state of Florida. From July 1979 through December 1989, you were employed in Florida. During your employment, you were enrolled in a retirement plan. This plan was qualified under sec. 503(b)[sic] of the Internal Revenue Code. You made contributions to

loss of resident individuals shall follow the residence of the individual. This statute is further interpreted in Wisconsin Administrative Code sec. Tax 3.085. This administrative rule provides that employe annuity, pension, profit-sharing or stock bonus plan distributions including self-employed retirement plan distributions and distributions from qualified deferred compensation plans under the Internal Revenue Code received by a person while a resident of Wisconsin shall be subject to the Wisconsin income tax, regardless of whether any of these distributions may be attributable to personal services performed outside Wisconsin.

Therefore, even though none of your funds came from earnings, employment, or any other source within Wisconsin, your retirement plan distribution is taxable to Wisconsin.

You are correct in that, if you had withdrawn the funds upon termination of employment while you were still a resident of Florida, the distribution would not have been subject to Wisconsin tax. However, this is not the case. Because you received your retirement plan distribution while you were a Wisconsin resident, your distribution is subject to Wisconsin tax.

Wisconsin generally follows the federal Internal Revenue Code. Therefore, the amount of the distribution from your retirement plan which will be taxable on your 1993 federal income tax return will also be taxable on your 1993 Wisconsin income tax return (sec. 71.01(6), Wis. Stats. (1991-92)). □

✱ W9337004, June 23, 1993

Type Tax: Corporation Franchise and Income Taxes

Issue: Exempt organizations — filing requirements

Statutes: Section 71.26(1)(a) and (3)(p), Wis. Stats. (1991-92)

This letter responds to your request for a private letter ruling regarding the Wisconsin franchise and income tax return filing requirements.

Facts

ABC Cooperative, Inc. (ABC), was incorporated in 1953 as a cooperative under Chapter 185, Wisconsin Statutes. The Articles of Incorporation provide that it is organized without capital stock. The members of the cooperative are all persons or other entities which purchase telephone services from the cooperative. Upon dissolution, after all debts and liabilities of the cooperative have been paid, and all capital furnished through patronage has been retired, and all membership fees have been repaid, the remaining property and assets of the cooperative shall be distributed among the members and former members in the proportion which the aggregate patronage of each bears to the total patronage of all members.

In the taxable years prior to 1990, the taxpayer was considered an exempt organization under sec. 501(c)(12) of the Internal Revenue Code, and it filed federal Form 990. In December 1990, the Internal Revenue Service issued a Technical Advice Memorandum (TAM 9111001) in connection with an examination of an unrelated telephone cooperative. That TAM held that certain billing and collection revenues which cooperatives received from other telephone companies were not considered member source income. Based on this new interpretation, the requirement of sec. 501(c)(12) that 85% or more of income consists of amounts collected from members would not be satisfied.

Starting with the 1990 taxable year, the taxpayer has filed federal Form 1120.

Even though the taxpayer's tax status has changed for federal tax purposes, there has not been any change in the organization of the cooperative. It is still organized as a Chapter 185 cooperative with the same articles of incorporation.

Request

You have requested a ruling that the taxpayer is exempt from Wisconsin franchise and income tax.

Ruling

ABC is exempt from Wisconsin franchise and income taxation pursuant to sec. 71.26(1)(a), Wis. Stats. (1991-92).

Analysis

Section 71.26(1)(a), Wis. Stats. (1991-92), provides in part that the income of corporations organized under Chapter 185 of the Wisconsin Statutes is exempt from Wisconsin franchise and income taxation.

In addition, sec. 71.26(3)(p), Wis. Stats. (1991-92), provides that, for purposes of computing the income of a corporation, secs. 501 to 511 and 513 to 528 of the Internal Revenue Code, relating to exempt organizations, are excluded, except as they pertain to the definitions of unrelated business taxable income in sec. 512, and replaced by the treatment of exemptions under sec. 71.26(1).

Since the taxpayer is organized as a Chapter 185 cooperative, it is exempt from Wisconsin franchise and income taxation, regardless of whether it is an exempt organization under sec. 501(c)(12) of the Internal Revenue Code. □

✱ W9317002, February 1,
1993

Type Tax: Sales and Use Taxes

Issue: Waste reduction and recycling
— freon recovery

Statutes: Section 77.54(26m), Wis.
Stats. (1991-92)

This letter responds to your request for a private letter ruling regarding the Wisconsin sales or use tax treatment of a freon recovery unit.

Facts

You purchased a freon recovery unit (FRU) in July 1992 from an Illinois supplier. The FRU is used by you in servicing and installing air conditioning units. The FRU is attached to the air conditioning unit to recapture freon from the air conditioning unit. Once the unit reaches maximum capacity, the unit is taken to a distributor who recycles the freon and resells it. Such equipment is required by state and federal law.

The Illinois supplier did not charge Wisconsin state or county sales or use

tax on the sale of the equipment to you. However, you reported and paid Wisconsin use tax on your purchase of the equipment on your Wisconsin sales and use tax return for the quarter ending September 1992.

Request

You ask whether you are entitled to a refund of Wisconsin use tax paid on your purchase of the FRU.

Ruling

Your purchase of the FRU is subject to Wisconsin use tax and, therefore, you are not entitled to a refund of Wisconsin use tax paid on your purchase of the FRU.

Analysis

Section 77.53(1) and (2), Wis. Stats. (1991-92), imposes a use tax on a purchaser for the storage, use, or consumption of tangible personal property, where the Wisconsin sales or use tax has not been previously paid.

Section 77.54(26m), Wis. Stats. (1991-92), provides an exemption

from Wisconsin sales or use tax for the sale of and the storage, use, or consumption of waste reduction or recycling machinery and equipment exclusively and directly used for waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste, or recover energy from solid waste.

In the case of *Wisconsin Department of Revenue vs. Parks-Pioneer Corporation* (6/25/92), the Court of Appeals, District IV, held that lugger boxes used to collect and transport recyclable materials were not used directly in recycling solid waste. Therefore, the exemption from sales and use tax under sec. 77.54(26m), Wis. Stats., did not apply to the lugger boxes.

Since the FRU is used for collection and storage of freon and does not recycle the freon, it is not used directly in recycling solid waste. Therefore, the exemption under sec. 77.54(26m), Wis. Stats. (1991-92), does not apply to use tax paid on your purchase of the FRU. □