



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:

Individual Income Taxes

Capital gains — sale of small business stock

W9419002, February 11, 1994 (p. 27)

Sales and Use Taxes

Exemptions — waste reduction and recycling

W9417001, February 1, 1994 (p. 28)

✱ W9419002, February 11, 1994

Type Tax: Individual Income

Issue: Capital gains — sale of small business stock

Statutes: Sections 71.01(10) and 71.05(6)(b)6, Wis. Stats. (1991-92)

This letter responds to your request for a private letter ruling regarding the capital gains exclusion for small business stock.

Facts

Taxpayer A and Taxpayer B (the "Shareholders") are the only shareholders of XYZ Corporation (XYZ); a Delaware corporation that has its principal place of business in Wisconsin.

XYZ wishes to change its state of incorporation from Delaware to Wisconsin. To accomplish this, a new Wisconsin corporation will be created (the "Wisconsin Corporation"), with the Shareholders as the only shareholders. The Shareholders will be issued stock in the Wisconsin Corporation in the same proportion as their ownership of XYZ in exchange for their agreement to vote to merge XYZ into the Wisconsin Corporation. XYZ will then merge into the Wisconsin Corporation, with the Wisconsin Corporation as the surviving entity. Upon completion of the merger, the Shareholders will own the Wisconsin Corporation in the same proportions as they currently own XYZ. The Shareholders intend that this transaction qualify as a tax-free reorganization under section 368(a)(1)(F) of the Internal Revenue Code. XYZ is a tax-option

corporation under Wisconsin law, and the Wisconsin Corporation will be a tax-option corporation.

XYZ wishes to change its state of incorporation from Delaware to Wisconsin because this state is the primary location of its operations and the recent amendments to Wisconsin's corporate code have eliminated most of the reasons that favored incorporation in Delaware. This change will also simplify XYZ's recordkeeping and other administrative matters and will eliminate the need to pay fees and taxes to Delaware as well as Wisconsin.

Both Taxpayer A and Taxpayer B currently own shares of XYZ common stock. You have stated that 96.7% of Taxpayer A's stock shares and 96.7% of Taxpayer B's stock shares were issued in 1991 (the "Issue Date"), and are eligible to be "small business stock," as that term is defined by sec. 71.01(10), Wis. Stats., if the Shareholders hold those shares for the required five years. If they do so, those shares will be eligible for the small business stock capital gains exclusion stated in sec. 71.05(6)(b)6, Wis. Stats. (the "Exclusion"), as that section read prior to its amendment by 1991 Wisconsin Act 39.

Request

Assuming that the Shareholders' XYZ stock issued on the Issue Date is eligible for the Exclusion, you request a ruling that 96.7% of Taxpayer A's stock shares in the Wisconsin Corporation will be eligible for the Exclusion, if such shares meet all of the requirements of sec. 71.01(10), and 96.7% of Taxpayer

B's stock shares in the Wisconsin Corporation will be eligible for the Exclusion, if such shares meet all of the requirements of sec. 71.01(10). The five-year period that the Shareholders must hold their stock in the Wisconsin Corporation under sec. 71.01(10) begins on the Issue Date rather than on the date the Shareholders acquire the stock in the Wisconsin Corporation.

Ruling

None of Taxpayer A's shares in the Wisconsin Corporation and none of Taxpayer B's shares in the Wisconsin Corporation will qualify for the small business stock capital gains exclusion.

Analysis

For stock issued on or after August 16, 1991, sec. 71.05(6)(b)6, Wis. Stats. (1991-92), provides the following subtraction modification:

For the original purchaser of small business stock that is purchased at the time that the business is incorporated, the amount of net capital gains on small business stock otherwise subject to the tax under s. 71.02 if the taxpayer has not acquired the stock by gift, *has not acquired the stock in a stock-for-stock exchange* and submits with the taxpayer's return a copy of the certification under s. 71.01(10). (Emphasis added.)

Since the Wisconsin Corporation stock will be issued after August 15, 1991, in a stock-for-stock exchange, the Exclusion does not apply to the Shareholders who receive Wisconsin Corporation stock in exchange for their previously owned XYZ stock. The Exclusion does not apply even if the original XYZ shares had qualified as small business stock under sec. 71.01(10), Wis. Stats. □

✱ **W9417001**, February 1, 1994

Type Tax: Sales and Use

Issue: Exemptions — waste reduction and recycling

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

This letter responds to your request for a private letter ruling regarding the Wisconsin sales and use tax treatment of the lease of a road reclaimer/stabilizer.

Facts

ABC Company intends to lease out, on a short-term basis, a road reclaimer/stabilizer with an operator.

Powered by a diesel engine, the 52,000 pound, 525 horsepower reclaimer features four wheel drive and four wheel steering. It has a cutter for depths up to 16 inches below grade and a stabilization rotor that can cut a 20 inch depth in sand and shale. A mixing box is centered under the machine for combining materials with asphalt or soil being reclaimed or stabilized. An automated spray system is attached and delivers additives to the surface being reclaimed for purposes of emulsion or rejuvenation of the materials.

The road reclaimer/stabilizer performs the following functions:

1. Cuts existing asphalt on roadways and grinds it so that it can be used as a base material for a new road surface.
2. Adds and mixes cement, lime, and other stabilizing agents with existing soil on roadways. The result is used as a sub-base in road building.

Without the use of the road reclaimer/stabilizer, unsuitable asphalt and soil on roadways would be removed and disposed of at dump sites.

Request

You ask whether the lease of the road reclaimer/stabilizer with an operator is exempt from Wisconsin sales or use tax under sec. 77.54(5)(c) or (26m), Wis. Stats. (1991-92).

Ruling

The lease of the road reclaimer/stabilizer with an operator is exempt from Wisconsin sales or use tax under sec. 77.54(26m), Wis. Stats. (1991-92). The lessee should provide ABC Company with a properly completed exemption certificate (Form S-207).

Note: An assumption has been made for purposes of this ruling that the lessee is responsible for the satisfactory completion of a job using the road reclaimer/stabilizer. Therefore, as stated in sec. Tax 11.29(4)(b), Wis. Adm. Code, providing the road reclaimer/stabilizer with an operator is the lease of tangible personal property rather than the performance of a service.

Analysis

Section 77.54(26m), Wis. Stats. (1991-92), provides an exemption from Wisconsin sales or use tax for the gross receipts from the sale of waste reduction and 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.

For purposes of this subsection, "solid waste" means garbage, refuse, sludge, or other materials or articles, whether discarded or purchased, resulting from industrial, commercial, mining or agricultural operations, or from domestic use or from public service activities.

A "sale" is defined in sec. 77.51(14)(j), Wis. Stats. (1991-92), to include the granting of possession of tangible personal property by a lessor to a lessee.

The road reclaimer/stabilizer is used exclusively and directly in waste reduction and recycling activities because the road reclaimer/stabilizer reuses the unsuitable asphalt and soil, along with other materials, as road bases in installing new road surfaces. The unsuitable asphalt and soil meet the definition of solid waste because they are materials resulting from commercial operations.

The exemption under sec. 77.54(5)(c), Wis. Stats. (1991-92),

for motor vehicles used in waste reduction and recycling activities does not apply because the road reclaimer/stabilizer is not a motor vehicle. Section Tax 11.83(1), Wis. Adm. Code, provides that "motor vehicle" does not include a self-propelled vehicle which is not designed or used primarily for transportation of persons or property, and is only incidentally operated on a public highway, such as road machinery. □