



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

Realty vs. personalty —
communication equipment
W9520004 (p. 28)

Services subject to the tax —
bathtub refinishing
W9514003 (p. 31)

✳ **W9520004**, February 28, 1995

Type Tax: Sales and Use

Issue: Realty vs. personalty — communication equipment

Statutes: Sections 77.51(2) and 77.52(1) and (2)(a)10, Wis. Stats. (1991-92)

Wis. Adm. Code: Section Tax 11.68, April 1994 Register

This letter responds to your client's request for a private letter ruling.

Facts

XYZ Company (XYZ) is in the business of installing fiber-optic cable networks for computers, telephones, and other similar technology equipment. The majority of XYZ's clients are commercial although, on occasion, XYZ may contract with other entities.

XYZ is a specialist in voice, data, and fiber optic networks. XYZ designs, implements, and installs state of the art communications networks for large and small businesses, specializing in new installation, as well as reuse of existing cabling to retrofit with a new PBX. The process includes installing cables both inside and outside walls. Installed cabling is subject to being removed with a computer that is being replaced, for example.

XYZ will update existing communications records and provide new records as part of its service.

XYZ will bid on jobs in different manners. Bids may be for

- a lump sum, which includes material and labor
- material and labor separately stated
- labor only

Examples of some of the jobs engaged in by XYZ are as follows:

Example 1:

- Tone and tag phones, including documenting all information
- Install necessary cable rack above new frames
- Install new frames per drawings
- Hardwire 360 pair PX type cables for new switch wallfield and label all cables. Use eight 110 C3s and one 110 C4 for final termination for each cable (assuming bays do not come pre-wired)
- Terminate 8,400 pairs to new wallfield
- Y-tap 8,400 existing house pairs to new cable and re-label
- Cut over after hours
- Materials will be provided by customer

Example 2:

- Run 2 category five plenum 4-pair cables from new IDF to 14 locations per blueprint

- Run one category three plenum 4-pair cable from new IDF to 12 locations per blueprint
- Terminate 28 category five cables to RJ45 category five jacks
- Terminate 12 category three cables to RJ45 category three jacks
- Terminate 28 category five cables to category five JP-patch panel
- Terminate 12 category three cables to 110-AB2-100 terminal block
- Run a 50 pair plenum cable from the 7th floor terminal to the 7th floor computer room
- Terminate both ends of the 50 pair cable to 110-AB2-100 terminal blocks
- Run a 50 pair plenum cable from the basement terminal to the new IDF on 1st floor
- Terminate both ends of the 50 pair cable to 110-AB2-100 terminal blocks
- Test out 50 existing pairs for continuity
- Test all cables for continuity
- Inspect products upon completion and provide modifications if necessary
- All materials provided and labor are to be set forth separately on the invoice

Request

You ask what the proper sales and use tax treatment is with respect to the sales by XYZ to customers of property and services described above.

Ruling

Sales by XYZ

1. The charge for the sale, installation, retrofitting, or inspection in connection with communications networks in business, industrial, or commercial buildings, schools, and hospitals is subject to Wisconsin sales or use tax.
2. The charge to customers for the sale, installation, retrofitting, or inspection up to an outlet in connection with communications networks in apartment buildings, convalescent homes, and similar residential buildings is **not** subject to Wisconsin sales or use tax.
3. The charge to customers for the sale, installation, retrofitting, or inspection from an outlet to the communications equipment (e.g., telephone, computer) in connection with communications networks in apartment buildings, convalescent homes, and similar residential buildings is subject to Wisconsin sales or use tax.

Purchases by XYZ

1. Cable and similar materials purchased by XYZ and transferred to customers with the installation, retrofitting, and inspection of communications networks in business, industrial, or commercial buildings, schools, and hospitals may be purchased by XYZ without Wisconsin sales or use tax as property for resale.
2. Cable and similar materials purchased by XYZ and transferred to customers with the installation, retrofitting, and inspection up to an outlet in connection with

communications networks in apartment buildings, convalescent homes, and similar residential buildings are subject to Wisconsin sales or use tax when purchased by XYZ.

3. Cable and similar materials purchased by XYZ and transferred to customers with the installation, retrofitting, and inspection from an outlet to the communications equipment in connection with communications networks in apartment buildings, convalescent homes, and similar residential buildings may be purchased by XYZ without Wisconsin sales or use tax as property for resale.

Analysis

1. *Sale, Installation, Retrofitting, and Inspection in Business, Industrial, or Commercial Buildings, Schools, and Hospitals*

Sales to customers by XYZ

Section 77.52(1), Wis. Stats. (1991-92), imposes a Wisconsin sales tax on the sale of tangible personal property at retail in Wisconsin.

Section 77.52(2)(a)10, Wis. Stats. (1991-92), imposes a Wisconsin sales tax on the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of tangible personal property.

Section Tax 11.68(6)(a)2, Wis. Adm. Code (April 1994 Register), provides that communication equipment in business, industrial, or commercial buildings, schools, and hospitals retains its character as tangible personal property when installed.

The cabling and related materials sold by XYZ in connection with communications networks are tangible personal property in business, industrial, or commercial buildings, schools, and hospitals. Therefore the sale of the cable in such buildings is subject to Wisconsin sales or use tax under sec. 77.52(1), Wis. Stats. (1991-92). Installation, retrofitting, and inspection of the cable in such buildings is a service subject to tax under sec. 77.52(2)(a)10, Wis. Stats. (1991-92).

Purchases by XYZ

Section 77.51(14)(intro.), Wis. Stats. (1991-92), defines "retail sale," for purposes of imposing Wisconsin sales or use tax, as the transfer of the ownership of, title to, possession of, or enjoyment of tangible personal property or services for use or consumption but not for resale as tangible personal property.

The tangible personal property (e.g., cable) purchased by XYZ for the installation, retrofitting, and inspection of communications networks in business, industrial, or commercial buildings, schools, and hospitals is purchased by XYZ for resale and, therefore, is not subject to sales or use tax under sec. 77.52(1), Wis. Stats. (1991-92).

As provided in sec. 77.52(13) and (14), Wis. Stats. (1991-92), XYZ should provide its supplier with an exemption certificate to purchase tangible personal property without Wisconsin sales or use tax as property for resale.

2. Sale, Installation, Retrofitting, and Inspection in Apartment Buildings, Convalescent Homes, and Similar Residential Buildings

Sales to customers by XYZ

The performance of a real property construction activity is not a transaction subject to the sales tax law (except landscaping). Consequently, the contractor's charges for labor and the materials incorporated into the real property or otherwise consumed in performing the activity are not subject to sales tax to the owner.

Under sec. Tax 11.68(6)(a)2, Wis. Adm. Code (April 1994 Register), communication equipment affixed to the real estate in apartment buildings, convalescent homes, or other residential buildings is not considered to retain its character as tangible personal property when installed and, therefore, is considered real property.

Cable from the outlet point to the communications equipment (e.g., telephone, computer) retains its character as tangible personal property when installed. If there is no outlet point between the power source and the communications equipment, the entire amount of cable is considered to be a real property improvement.

Therefore, the sale of the cable and related materials and charges for installation, retrofitting, and inspection of the cable in such buildings by XYZ up to the outlet point is not subject to Wisconsin sales or use tax under secs. 77.52(1) and 77.52(2)(a)10, Wis.

Stats. (1991-92). However, the sale of the cable and related materials and charges for installation, retrofitting, and inspection of the cable in such buildings by XYZ from the outlet point to the communications equipment is subject to Wisconsin sales or use tax under secs. 77.52(1) and 77.52(2)(a)10, Wis. Stats. (1991-92).

Purchases by XYZ

Section 77.51(2), Wis. Stats. (1991-92), provides that contractors and subcontractors are the consumers of tangible personal property used by them in real property construction activities, and the sales and use tax applies to the sale of tangible personal property to them.

XYZ is the consumer of cable and related materials it uses to install, retrofit, and inspect communications equipment up to the outlet point in apartment buildings, convalescent homes, or other residential buildings (i.e., real property construction activities). Therefore, XYZ's purchases of such cable and related materials are subject to Wisconsin sales or use tax. Purchases by XYZ of cable and related materials transferred to customers with the installation, retrofitting, and inspection from the outlet point to the communications equipment in connection with communications networks in apartment buildings, convalescent homes, or other residential buildings may be purchased by XYZ without tax as property for resale under sec. 77.51(14)(intro.), Wis. Stats. (1991-92). □

✱ **W9514003**, January 17,
1995

Type Tax: Sales and Use

Issue: Services subject to the tax —
bathtub refinishing

Statutes: Section 77.52(2)(a)10,
Wis. Stats. (1991-92)

This letter responds to your request
for a private letter ruling regarding
the Wisconsin sales and use tax
status of bathtub refinishing services.

Facts

Company A is engaged in the busi-
ness of refinishing bathtubs for its
customers. The Internal Revenue
Service has issued an opinion that
refinishing a bathtub is a capital
improvement.

Ruling Request

You have requested a ruling stating
that the refinishing of a bathtub is
not subject to Wisconsin sales tax.

Ruling

The service of bathtub refinishing is
subject to Wisconsin sales or use tax
under sec. 77.52(2)(a)10, Wis. Stats.
(1991-92).

Analysis

Section 77.52(2)(a)10, Wis. Stats.,
imposes Wisconsin sales tax on the
gross receipts from the repair, ser-
vice, alteration, fitting, cleaning,
painting, coating, towing, inspection
or maintenance of tangible personal
property.

For purposes of imposing sales tax
on the service, alteration, repair,
etc., of tangible personal property,
sec. 77.52(2)(a)10, Wis. Stats.,
specifically lists bathroom fixtures
among the items deemed to retain
their character as tangible personal
property. The refinishing of a bath-
tub is a service or alteration to the
bathtub and is subject to sales tax.
The tax applies to refinishing bath-
tubs, even though for federal and
state income tax purposes the refin-
ishing of a bathtub may be consid-
ered a capital improvement. □