



## 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:

### Corporation Franchise and Income Taxes

Reorganizations — 1987 and thereafter  
W9524005 (p. 40)

### Sales and Use Taxes

Exempt organizations' purchases — out-of-state organizations  
Occasional sales — nonprofit organizations  
W9531007 (p. 42)

Telecommunication services — prepaid telephone calling cards  
W9526006 (p. 44)

✱ **W9524005**, March 24, 1995

**Type Tax:** Corporation Franchise and Income

**Issue:** Reorganizations — 1987 and thereafter

**Statutes:** Sections 71.22(4) and 71.26(2) and (3), Wis. Stats. (1993-94)

This letter is in response to your request for a private letter ruling with respect to the Wisconsin franchise or income tax consequences of a proposed transaction under sections 368(a)(1)(D) and 355 of the Internal Revenue Code (IRC).

### Facts

Corporation A is an accrual basis Wisconsin holding company filing consolidated federal income tax returns on a calendar year basis. Corporation A is the common parent of an affiliated group of corporations which includes, among others, Corporation B, a first-tier holding company, which holds all of the stock of Association D ("Distributing").

Distributing is an accrual basis national banking association headquartered in Wisconsin, subject to regulatory authority by the Office of the Comptroller (OCC). Distributing is engaged in the banking business and in the credit card business.

Corporation A, Corporation B, and Distributing each files a separate Wisconsin corporation franchise tax return.

The banking business includes the receipt of deposits, the granting of all types of loans (including business and

consumer loans), together with the offering of various financial services offered by regulated financial institutions. The credit card business involves the issuing of nationally accepted credit cards together with the credit evaluation, collection, and other systems necessary to support that activity. It also involves the solicitation of merchants to accept these credit cards from their customers, and services necessary to provide support to those merchants.

The following transactions are proposed:

- (1) Distributing will transfer the assets of the credit card business, subject to liabilities, to Association C ("Controlled"), a newly formed national banking association headquartered in Illinois, in exchange for all of the shares of the only class of stock of Controlled.
- (2) Distributing will distribute all of the stock owned by Distributing in Controlled to its sole shareholder, Corporation B.

The business purpose of the transaction is to enable the credit card business to compete more effectively with other national credit card businesses. The state in which Controlled will be headquartered has laws similar to those available in states in which other national credit card issuers are located. Federal law prohibits Distributing from owning a controlling interest in another bank. Therefore, in order to achieve the desired purpose, it is necessary to spin off Controlled to Corporation B, a bank holding company which is allowed to hold the stock of banks.

## Request

You have requested that the following rulings be issued:

1. If the transfer by Distributing to Controlled of the credit card business solely in exchange for all of the stock of Controlled and the assumption of certain liabilities, followed by the distribution of the Controlled stock to Corporation B, qualifies as a reorganization within the meaning of IRC sec. 368(a)(1)(D) and Distributing and Controlled each qualifies as "a party to a reorganization" within the meaning of IRC sec. 368(b) for federal income tax purposes, IRC sec. 368(a)(1)(D) and (b) will also apply for Wisconsin franchise or income tax purposes.
2. If no gain or loss is recognized to Distributing upon the transfer of assets, subject to liabilities, to Controlled in exchange for Controlled stock under IRC secs. 361(a) and 357(a) for federal income tax purposes, IRC secs. 361(a) and 357(a) will also apply for Wisconsin franchise or income tax purposes.
3. If no gain or loss is recognized to Controlled on the receipt of the assets in exchange for Controlled stock, under IRC sec. 1032(a), for federal income tax purposes, IRC sec. 1032(a) will apply for Wisconsin franchise or income tax purposes.
4. If the basis of the assets received by Controlled is the same as the basis of such assets in the hands of Distributing immediately prior to the transaction described above under IRC sec. 362(b) for federal income tax purposes, IRC sec. 362(b) will also apply to their Wisconsin tax bases.
5. If the holding period of the Distributing assets received by Controlled includes the period during which such assets were held by Distributing under IRC sec. 1223(2) for federal income tax purposes, IRC sec. 1223(2) will also apply for Wisconsin franchise or income tax purposes.
6. If no gain or loss is recognized by, and no amount is included in the income of, Distributing upon the distribution of all its stock in Controlled to Corporation B under IRC sec. 361(c) for federal income tax purposes, IRC sec. 361(c) will also apply for Wisconsin franchise or income tax purposes.
7. If no gain or loss is recognized by, and no amount is included in the income of, Corporation B upon the receipt of Controlled stock under IRC sec. 355(a)(1) for federal income tax purposes, IRC sec. 355(a)(1) will also apply for Wisconsin franchise or income tax purposes.
8. If the basis of the stock of Controlled and Distributing in the hands of Corporation B after the distribution is, in each instance, the same as the aggregate basis of the Distributing stock held immediately before the distribution, allocated in proportion to the fair market value of each, in accordance with sec. 1.358-2(a)(2) of the Income Tax Regulations under IRC sec. 358(a) and (b)(1) for federal income tax purposes, that same treatment will apply for Wisconsin franchise or income tax purposes.
9. If the holding period of the Controlled stock received by Corporation B includes the holding period of the Distributing stock with respect to which the distribution will be made, provided that the Distributing stock is held as a capital asset on the date of the exchange, under IRC sec. 1223(1) for federal income tax purposes, IRC sec. 1223(1) will also apply for Wisconsin franchise or income tax purposes.
10. If, as provided in IRC sec. 312(h), proper allocation of earnings and profits between Distributing and Controlled is made under sec. 1.312-10(a) of the Income Tax Regulations for federal income tax purposes, IRC sec. 312(h) will also apply for Wisconsin income tax purposes.

## Ruling

1. If the transfer by Distributing to Controlled of the credit card business solely in exchange for all of the stock of Controlled and the assumption of certain liabilities, followed by the distribution of the Controlled stock to Corporation B, qualifies as a reorganization within the meaning of IRC sec. 368(a)(1)(D) and Distributing and Controlled each qualifies as "a party to a reorganization" within the meaning of IRC sec. 368(b) for federal income tax purposes, IRC sec. 368(a)(1)(D) and (b) will also apply for Wisconsin franchise or income tax purposes.
2. If no gain or loss is recognized to Distributing upon the transfer of assets, subject to liabilities, to Controlled in exchange for Controlled stock under IRC secs. 361(a) and 357(a) for federal income tax purposes, IRC secs. 361(a) and 357(a) will also apply for Wisconsin franchise or income tax purposes.
3. If no gain or loss is recognized to Controlled on the receipt of the assets in exchange for Controlled stock, under IRC sec.

1032(a), for federal income tax purposes, IRC sec. 1032(a) will apply for Wisconsin franchise or income tax purposes.

4. If the basis of the assets received by Controlled is the same as the basis of such assets in the hands of Distributing immediately prior to the transaction described above under IRC sec. 362(b) for federal income tax purposes, IRC sec. 362(b) will also apply to their Wisconsin tax bases.
5. If the holding period of the Distributing assets received by Controlled includes the period during which such assets were held by Distributing under IRC sec. 1223(2) for federal income tax purposes, IRC sec. 1223(2) will also apply for Wisconsin franchise or income tax purposes.
6. If no gain or loss is recognized by, and no amount is included in the income of, Distributing upon the distribution of all its stock in Controlled to Corporation B under IRC sec. 361(c) for federal income tax purposes, IRC sec. 361(c) will also apply for Wisconsin franchise or income tax purposes.
7. If no gain or loss is recognized by, and no amount is included in the income of, Corporation B upon the receipt of Controlled stock under IRC sec. 355(a)(1) for federal income tax purposes, IRC sec. 355(a)(1) will also apply for Wisconsin franchise or income tax purposes.
8. If the basis of the stock of Controlled and Distributing in the hands of Corporation B after the distribution is, in each instance, the same as the aggregate basis of the Distributing stock held immediately before the distribu-

tion, allocated in proportion to the fair market value of each, in accordance with sec. 1.358-2(a)(2) of the Income Tax Regulations under IRC sec. 358(a) and (b)(1) for federal income tax purposes, that same treatment will apply for Wisconsin franchise or income tax purposes.

9. If the holding period of the Controlled stock received by Corporation B includes the holding period of the Distributing stock with respect to which the distribution will be made, provided that the Distributing stock is held as a capital asset on the date of the exchange, under IRC sec. 1223(1) for federal income tax purposes, IRC sec. 1223(1) will also apply for Wisconsin franchise or income tax purposes.
10. If, as provided in IRC sec. 312(h), proper allocation of earnings and profits between Distributing and Controlled is made under sec. 1.312-10(a) of the Income Tax Regulations for federal income tax purposes, IRC sec. 312(h) will also apply for Wisconsin income tax purposes.

#### Analysis

The Wisconsin net income of a corporation is determined under the Internal Revenue Code, as defined in sec. 71.22(4), Wis. Stats. (1993-94), with certain modifications. Internal Revenue Code secs. 312, 355, 357, 358, 361, 362, 368, 1032, and 1223 are not excluded from the Internal Revenue Code in effect for Wisconsin purposes, nor are these Code sections modified in sec. 71.26(3), Wis. Stats. (1993-94). Therefore, these Internal Revenue Code sections will apply to the three separate Wisconsin taxpayers involved in the reorganization. □

✴ **W9531007**, May 12, 1995

**Type Tax:** Sales and Use

**Issue:** Exempt organizations' purchases — out-of-state organizations; Occasional sales — nonprofit organizations

**Statutes:** Section 77.54(7m) and (9a)(f), Wis. Stats. (1993-94)

**Wis. Adm. Code:** Sections Tax 11.14 (March 1991 Register), Tax 11.35 (June 1991 Register), Tax 11.67 (November 1993 Register), and Tax 11.87 (December 1992 Register)

This letter responds to your request for a private letter ruling regarding the Wisconsin sales and use tax implications relating to purchases of meals at the Organization NP forum, and sales of materials, club supplies and clothing at this event.

#### Facts

Organization NP (the organization) is a nonprofit organization incorporated under a nonprofit Act of another state. The organization is organized and operated exclusively to further and support charitable, educational and scientific purposes. The organization does not hold a Wisconsin seller's permit, nor does it hold a Wisconsin Certificate of Exempt Status.

The organization, as part of its mission, is sponsoring educational seminars (the forum) in Wisconsin in 1996. The organization will hire motivational and educational speakers for the forum. Speakers at the forum will include both volunteers and professionals.

Attendees pay a fee of \$110 to \$140 for registration, which includes three or four meals. The organization also sells various club supplies provided

by its parent organization and clothing articles identified with the organization's logo. The club supplies and clothing articles are available only to persons who are registered for the forum. The organization's sales of club supplies and clothing articles would approximate \$50,000 over a single three-day period.

The organization provides service club members with this educational opportunity just once a year and each year it is in a different state or province. The organization does not make any sales of tangible personal property or taxable services in Wisconsin, other than those sales described above.

### Ruling Request

1. Are the organization's purchases of meals and other items in Wisconsin while presenting its forum subject to sales tax?
2. Is the organization required to register as a retailer in Wisconsin and collect sales tax on its sales of club supplies and clothing articles to attendees at the event?

### Ruling

1. The organization's purchases of meals in Wisconsin are exempt from Wisconsin sales and use tax, provided that (a) the retailer of the meals issues the billings or invoices in the organization's name, and (b) the organization provides a certificate of exemption, Form S-207, to the retailer. The organization may purchase the club supplies and clothing which it will resell at the forum exempt from Wisconsin sales and use tax by providing its suppliers with properly completed resale certificates, Form S-205.
2. The organization is not required to register as a retailer in Wisconsin and collect sales tax on its

sales of club supplies and clothing articles to attendees at the forum. (This answer assumes that the forum does not involve entertainment for which payment in the aggregate exceeds \$300 for performing or reimbursement of expenses.)

### Analysis

#### 1. Sales to Organization

Section 77.54(9a)(intro.) and (f), Wis. Stats. (1993-94), provides an exemption from Wisconsin sales and use tax for "The gross receipts from sales to, and the storage by, use by or other consumption of tangible personal property and taxable services by ... Any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes ... no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation."

Section Tax 11.67(1), Wis. Adm. Code, November 1993 Register, provides that when a transaction involves the transfer of tangible personal property along with the performance of a service, the true objective of the purchaser determines whether the transaction is a sale of tangible personal property or the performance of a service with the transfer of property being merely incidental to the performance of the service.

Because the objective of the attendees at the forum is to attend the educational seminars, the organization is considered the consumer of and not a reseller of the meals provided at the forum. Because the organization is organized and operated exclusively to further and support charitable,

educational and scientific purposes, the organization's purchases are exempt from Wisconsin sales and use tax under sec. 77.54(9a)(f), Wis. Stats. (1993-94).

Section Tax 11.87(2)(k)3, Wis. Adm. Code, December 1992 Register, provides that sales of food and beverages to an exempt organization are not subject to tax provided all of the following conditions are met:

- a. The retailer issues the billing or invoice for the food and beverages in the name of the exempt organization.
- b. The Certificate of Exempt Status number of the exempt organization is entered on the retailer's copy of the billing or invoice.
- c. The retailer keeps a copy of the documents described in conditions a. and b. above.

Because the organization is located outside Wisconsin and does not hold a Wisconsin Certificate of Exempt Status, it may provide the retailer of the meals with a properly completed certificate of exemption, Form S-207, to meet condition b. above, as provided in sec. Tax 11.14(7)(a)4, Wis. Adm. Code, March 1991 Register.

Because the organization will resell the club supplies and clothing, the organization may purchase such items exempt from Wisconsin sales and use tax by providing its suppliers with properly completed resale certificates, Form S-205.

The retailer must keep a copy of the billing or invoice and a copy of the certificate of exemption received from the organization.

## 2. Sales of Clothing and Supplies by Organization

Section 77.54(7m), Wis. Stats. (1993-94), provides that a non-profit organization's sales qualify as exempt occasional sales if it meets all of the following standards:

- a. The organization is not engaged in a trade or business. A nonprofit organization is not engaged in a trade or business if it meets at least one of the following:
  - 1) Its sales of otherwise taxable tangible personal property or services or its events occur on 20 days or less during the calendar year, regardless of the dollar amount of sales.
  - 2) Its taxable gross receipts for the calendar year are \$15,000 or less, regardless of the number of days on which its sales or events occur. Nontaxable gross receipts are not included for purposes of the \$15,000 gross receipts test.
- b. Entertainment is not involved.
- c. The organization does not have or is not required to have a Wisconsin seller's permit, except for conducting bingo.

As provided in sec. Tax 11.35(1)(b), Wis. Adm. Code, June 1991 Register, "entertainment" means entertainment provided at an admission event by all persons or groups who are paid in the aggregate \$300 or more per

event by all persons for performing, for reimbursement of expenses, or for prize money.

As provided in sec. Tax 11.35(1)(c), Wis. Adm. Code, June 1991 Register, "gross receipts" means gross receipts as defined in sec. 77.51(4), Wis. Stats., from all sales of otherwise taxable tangible personal property and services after subtracting allowable exemptions.

Assuming that the forum does not involve entertainment, the organization qualifies for exemption from sales and use tax on its sales of club supplies and clothing to attendees at the forum because its Wisconsin sales are made on less than 20 days.

For purposes of the exemption provided in sec. 77.54(7m), Wis. Stats. (1993-94), the organization's educational and motivational speakers are not considered entertainment. □

✱ **W9526006**, April 12, 1995

### Type Tax: Sales and Use

**Issue:** Telecommunication services — prepaid telephone calling cards

**Statutes:** Sections 77.51(14)(intro.), (17m) and (21m) and 77.52(1) and (2)(a)5, Wis. Stats. (1991-92)

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

### Facts

ABC Corporation (ABC) is the owner and operator of convenience stores located throughout the United States.

ABC has entered into contracts with registered telecommunications service

providers to sell "units" of long distance telephone service. Each unit represents one minute of long distance telephone service. These units will be packaged by the telecommunications service provider in the form of telephone cards. Each card will have a value of 15, 30, or 60 units (minutes) of long distance service.

ABC will purchase a block of units from the telecommunications service provider for an agreed upon amount. The telecommunications service provider will provide the telephone cards to ABC. The telephone cards will identify the telecommunications service provider furnishing the telephone service. The amount charged by ABC to a customer for a telephone card will be determined by ABC.

The purchaser of the telephone card, to use the service, dials an access number printed on the card. The access number may be reached from any phone in the United States. The access line will be provided by the telecommunications service provider's own or underlying service network. The telecommunications service provider may or may not provide the switch (platform) through which the prepaid call is routed and rated and call details are recorded.

When the switch is accessed, the caller will be requested to enter a validation code. Upon successful validation, the caller will enter the telephone number of the party they wish to call. The switch will complete the connection and begin to meter time. Upon completion of the call, the caller will be given the amount of units or dollars worth of services used and remaining on the card by means of a real-time on-line rating system.

ABC will not know whether the telephone card is used by the purchaser and, if used, where the telephone call, using the telephone card, originated or terminated.

## Request

You ask the following questions:

1. Is the sale of prepaid telephone cards by ABC subject to Wisconsin sales or use tax or is the telecommunications service provider subject to Wisconsin sales or use tax with respect to the transactions described above?
2. If the sale of the prepaid telephone cards by ABC is subject to Wisconsin sales or use tax, is ABC selling tangible personal property or telecommunications services?
3. If the sale of prepaid telephone cards by ABC is subject to Wisconsin sales or use tax, is a sales or use tax also imposed when the telephone card is used by the purchaser?
4. If the telecommunications service provider is subject to Wisconsin sales or use tax on its sales of the telephone service, is the amount subject to tax the amount ABC pays the telecommunications service provider or the amount the purchaser pays ABC for the telephone card?

## Ruling

The sale of telephone cards by ABC is not subject to Wisconsin sales or use tax. The telecommunications service provider is subject to Wisconsin sales or use tax on the furnishing of the telecommunications services through the use of the telephone card, measured by the gross receipts received from ABC.

It is not necessary to address questions 2 and 3 of your request because the sale of the prepaid telephone cards by ABC is not subject to Wisconsin sales or use tax.

## Analysis

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), Wis. Stats. (1991-92), imposes a Wisconsin sales tax on the sale of certain services. Specifically, sec. 77.52(2)(a)5, Wis. Stats. (1991-92), provides that the sale of telecommunications services, not including services paid for by the insertion of coins in a coin-operated telephone, is subject to Wisconsin sales or use tax if the service originates in Wisconsin and is charged to a service address in Wisconsin, regardless of where that charge is billed or paid.

Section 77.51(21m), Wis. Stats. (1991-92), provides in part that "telecommunications services" means sending messages and information transmitted through the use of local, toll, and wide-area telephone service.

Section 77.51(17m), Wis. Stats. (1991-92), provides in part that "services address" means the location of the telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a buyer.

"Sale at retail" is defined in sec. 77.51(14)(intro.), Wis. Stats. (1991-92), 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 or services.

The sale of the telephone card by ABC is the sale of an intangible right. The sale of an intangible is not subject to Wisconsin sales or use tax under sec. 77.52(1) or (2)(a), Wis. Stats. (1991-92).

The telecommunications service provider is selling telephone services and is responsible for Wisconsin sales or use tax on the sale of those telephone services that originate in Wisconsin and are charged to a service address in Wisconsin. The telephone call made using the telephone card originates at the location where the person dials the access number on the card and enters the validation number. The service address is the location of the telephone equipment where the call is made using the telephone card, which is also the location where the person dials the access number on the card and enters the validation number.

The gross receipts subject to Wisconsin sales or use tax are the amounts received by the telecommunications service provider from ABC for telephone services that originate in Wisconsin and are charged to a service address in Wisconsin. The sale of the services takes place when the purchaser of the telephone card uses the telephone card to make a telephone call.

**Example:** ABC pays a telecommunications service provider \$10 for a 30 minute telephone card. ABC sells the telephone card to Individual A for \$12. Using the telephone card, Individual A makes a 30 minute telephone call from a telephone located in Wisconsin.

The \$12 charge by ABC to Individual A for the telephone card is not subject to Wisconsin sales or use tax. The \$10 charge by the telecommunications service provider to ABC is subject to Wisconsin sales or use tax at the time the telecommunications service provider furnishes the telephone service to Individual A. □