

The \$3,000 is not excludable under sec. Tax 14.03(5)(a)4, Wis. Adm. Code, because the proceeds were not received as a result of a disability or loss of limb, nor were they received as a beneficiary of another person's life insurance policy. (Note: The \$2,000 of premiums that Claimant B paid for the term insurance portion of the policy are not considered in the computation of income on Schedule H, since that portion of the policy did not generate a cash value; the proceeds were entirely attributable to the annuity portion.)

## SALES AND USE TAXES

**Note:** The following tax releases interpret the Wisconsin sales and use tax law as it applies to the 5% state sales and use tax. The ½% county sales and use tax may also apply. For information on sales or purchases that are subject to the county sales and use tax, refer to the January 1995 issue of the *Sales and Use Tax Report*. A copy can be found in *Wisconsin Tax Bulletin* 90 (January 1995), pages 39 to 42.

### 4 Exemption Certificates — Facsimile (FAX) and Other Electronic Transmittals

**Statutes:** Sections 77.52(13) and (14) and 77.61(9), Wis. Stats. (1993-94)

**Wis. Adm. Code:** Section Tax 11.14(2)(b) and (3)(b), June 1995 Register and Section Tax 11.92(l)(b), December 1992 Register

**Introduction:** This tax release sets forth various types of exemption certificates which the department will accept in lieu of original paper exemption certificates.

**Background:** Section 77.52(13), Wis. Stats. (1993-94), provides that all receipts are subject to tax until the contrary is established and the burden of proving that a sale of tangible personal property or a taxable service is not a "taxable" sale is on the person who makes the sale. One of the ways a seller may prove that a sale is not a "taxable" sale is to obtain a properly completed exemption certificate from the purchaser.

Section 77.52(14), Wis. Stats. (1993-94) and sec. Tax 11.14(2)(b) and (3)(b), Wis. Adm. Code, June 1995 Register, provide, in part, that exemption certificates which support exempt sales must contain all of the following:

- 1) Name and address of the purchaser
- 2) General character of the property or service sold by the purchaser
- 3) Basis for the claimed exemption
- 4) Date and signature of the purchaser.

There is no requirement that the exemption certificate provided to a seller must be on a form designed by the Wisconsin Department of Revenue. A substitute exemption certificate may be used if it contains all of the information listed in 1 through 4 above and is in a form approved by the Wisconsin Department of Revenue.

Section Tax 11.92(l)(b), Wis. Adm. Code, December 1992 Register, provides that the documents necessary to support the claimed exemptions from Wisconsin sales and use tax (e.g., exemption certificates) shall be maintained in a manner in which they can be readily related to the transaction for which the exemption is sought.

### Facsimile (FAX) Exemption Certificates

**Question 1:** May a seller accept properly completed exemption certificates transmitted via facsimile (FAX) in lieu of original paper exemption certificates?

**Answer 1:** Yes.

### Exemption Certificates Containing Computer Generated Signatures

"Computer generated signature," as used in this tax release, is a signature which is obtained from a customer and stored by electronic means in a computer or on other media for retrieval at a later date.

**Question 2:** May a seller accept properly completed exemption certificates containing signatures which are generated and stored by electronic means (e.g., by computer) in lieu of original paper exemption certificates?

**Answer 2:** Yes.

**Note:** Persons who want to use some other form of electronically generated and transmitted exemption certificates must receive approval from the department, prior to implementing the use of such certificates. Approval requests, along with a sample of the certificate to be generated by your system and an explanation of the system, should be sent to:

Wisconsin Department of Revenue  
Attn: Audit Technical Services Unit  
P.O. Box 8906  
Madison, WI 53708-8906.

### 5 Photofinishing Machinery and Equipment

**Statutes:** Section 77.54(6)(a) and (6m), Wis. Stats. (1993-94)

**Wis. Adm. Code:** Section Tax 11.39, April 1994 Register

**Introduction:** This tax release discusses whether a photofinishing operation is manufacturing and illustrates that the process is manufacturing even when performed as part of a retail operation.

**Background:** Section 77.54(6)(a), Wis. Stats. (1993-94), provides, in part, an exemption for machines and specific processing equipment used by a manufacturer in manufacturing tangible personal property.

Section 77.54(6m), Wis. Stats. (1993-94), defines "manufacturing" to mean "the production by machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing."

"Photofinishing" for purposes of this tax release consists of the following processes performed by a business through the use of machines:

1. The process begins with a roll or cartridge of exposed photographic film. The photographic film consists of a clear, flexible plastic which is coated with a light-sensitive emulsion. When a photograph is taken, absorbed light produces chemical reactions with a silver compound, which form a negative latent image.
2. The exposed film is treated in a solution known as a "developer," which converts the latent image into a visible negative.
3. The film is placed in a chemical bath called "bleach," which stops the developer action.
4. The film is washed to remove the developer and bleach chemicals.
5. The film is placed in a fixing bath. The purpose of the bath is

to remove the unexposed silver compound and metallic silver image bleached in step 3.

6. The film is washed to remove the processing chemicals from the emulsion. At this point, the negative can be described as somewhat orange in color with the color images in reverse, or negative, of what they should be for viewing.
7. A printer is used to expose the negative image onto photographic paper. The printing is accomplished by sending light rays through the negative onto the paper, which is coated with silver halide grains.
8. Color developer acts upon the exposed silver halide grains creating a black and white silver image.
9. Color development compounds combine and react with colorless dye couplers to create a color dye image.
10. Bleach and fix solutions remove the black and white image leaving behind only the color dye image.
11. The result is photographic prints that are packaged in an envelope with the negatives.

**Note:** The department has determined, based on evidence it reviewed, including an opinion of an expert as to whether the process of photofinishing was popularly regarded as manufacturing, that the described photofinishing operation met the six requirements under sec. 77.54(6m), Wis. Stats. (1993-94).

**Facts and Question 1:** Company A operates a retail outlet which provides photographic services (i.e., photography and photofinishing) and sells photographic supplies (e.g., cameras

and related equipment, film, photo albums, and frames).

Customers enter a small counter area to drop off film, pick up prints, and purchase equipment and supplies. The photofinishing process takes place in a separate room which contains 7 machines operated by 4 employees. There is also a room where photographs are taken.

Machines used in the photofinishing process include:

- Developer
- Printer
- Printer and enlarger of photographs from picture or slide negatives
- Negative producer from positive.

Are these machines, if used exclusively and directly by Company A in its photofinishing operation, subject to Wisconsin sales or use tax?

**Answer 1:** No. The machines are exempt from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1993-94).

**Facts and Question 2:** Company B operates a large grocery store. Included in the grocery store is a photo department.

The photo department provides photofinishing services and sells photographic supplies, including film, albums, and frames.

Company B employs 6 people in the photofinishing area. Duties performed include prepping the film for developing, operating 2 machines that process the exposed film into negatives, operating 2 machines that print the photographs, and packaging the completed prints.

Are the machines and equipment, if used exclusively in prepping the exposed film, developing negatives, creating prints, and packaging prints, subject to Wisconsin sales or use tax?

**Answer 2:** No. The machines are exempt from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1993-94).

**Facts and Question 3:** Company C operates an express photofinishing business in a store within a shopping mall.

At the front of the store is a counter where exposed film is accepted for processing and finished prints are delivered to customers. Behind the counter is a machine used to develop the film into negatives and a machine for creating prints from the negatives. A small area at the back of the store is used for storage.

Company C has one employe on duty at a time who accepts film from customers, operates the machines, and delivers prints to customers.

Is the machinery, if used to exclusively and directly by Company C to develop negatives and print photographs, subject to Wisconsin sales or use tax?

**Answer 3:** No. The machines are exempt from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1993-94). □

## 6 Snow-Making for a Ski Hill

**Statutes:** Section 77.54(2), (6)(a) and (6m), Wis. Stats. (1993-94)

**Wis. Adm. Code:** Section Tax 11.39, April 1994 Register

**Introduction:** This tax release discusses whether the making of snow

for a ski hill is considered manufacturing.

**Background:** Section 77.54(6)(a), Wis. Stats. (1993-94), provides, in part, an exemption for machines and specific processing equipment used by a manufacturer in manufacturing tangible personal property.

Section 77.54(6m), Wis. Stats. (1993-94), defines "manufacturing" to mean "the production by machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing."

Section Tax 11.39(2), Wis. Adm. Code (April 1994 Register), provides, in part, that manufacturing includes the conveyance of raw materials and supplies from plant inventory to the work point of the same plant, conveyance of work in progress directly from one manufacturing operation to another in the same plant, and the conveyance of finished products to the point of first storage on the plant premises.

Section 77.54(2), Wis. Stats. (1993-94), provides, in part, an exemption for tangible personal property consumed, destroyed, or losing its identity in the manufacture of tangible personal property destined for sale.

**Facts:** Company A is a recreational service business which provides, during the winter months, a downhill skiing facility in Wisconsin. Company A's gross receipts are from sales of lift tickets, rentals of ski equipment, locker fees, and related services.

An insufficient amount of natural snow falls to cover ski areas owned by Company A. As a result, Company A makes snow to maintain viable ski hills. Approximately 80% of the snow covering Company A's ski hill is made by Company A. Company A

does not sell any of the snow it makes.

The snow-making process is as follows:

- Pumps in a pump house system pull water from a cooling pond and combine it with a clay compound. The clay compound, purchased in bulk form, is a naturally-occurring protein derived from bacteria. The clay compound raises the freezing point of water making it possible to produce snow in less than ideal winter conditions.
- The water and clay mixture is directed uphill through a piping system to an upper pump house. In the upper pump house, turbine water pumps pull the water and clay mixture uphill.
- Strainers adjacent to the pumps remove sticks, stones, fish parts, leaves, and other substances from the water and clay mixture.
- The water and clay mixture travels out of a hydrant, through a flexible hose, into the snow-making machine which has been conveyed to the site by a truck or forklift.
- The snow-making machine provides a high volume airstream by means of an electric motor-driven propeller mounted on a ducted blower.
- Water droplets of controlled size and temperature from the snow machine are injected into the airstream and super cool into particles of ice.
- The particles of ice pass with the airstream to nozzles and are expelled from a ducted fan in a dense cloud. As the dense cloud expands, it entraps cold air. Each particle changes to snow.

- “Snow cats” spread the snow made that has fallen on the ski hill, as required.

**Question 1:** Is the making of snow by Company A manufacturing under sec. 77.54(6m), Wis. Stats. (1993-94)?

**Answer 1:** Yes. The snow-making process meets the definition of manufacturing in sec. 77.54(6m), Wis. Stats. (1993-94). Company A uses machinery and equipment to produce snow which is different in form, use, and name from the existing water and clay compound raw materials. The process is popularly regarded as manufacturing by persons in the snow-making industry.

**Question 2:** In the snow-making process described in the Facts, when does the manufacturing process of producing snow begin and end for purposes of determining what machinery and equipment qualifies for exemption from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1993-94)?

**Answer 2:** The snow manufacturing process begins with the mixing of the water from the cooling pond with the clay compound and includes the conveyance of the water from the pond and clay compound from inventory to the point of mixing. The process ends when the snow produced falls on the ski hill.

Machinery and equipment used exclusively and directly within this process is exempt from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1993-94).

**Question 3:** Is the clay compound used to make snow subject to Wisconsin sales or use tax?

**Answer 3:** Yes. The clay compound is tangible personal property, the sale of which is subject to Wisconsin sales tax under sec. 77.52(1), Wis. Stats. (1993-94). The exemption under sec. 77.54(2), Wis. Stats. (1993-94), relating to tangible personal property consumed, destroyed, or losing its identity in the manufacture of tangible personal property, does not apply because the snow manufactured by Company A is not destined for sale. □

## EXCISE, OCCUPATIONAL TAXES

### 7 Statute of Limitations for Adjustments to Cigarette, Tobacco Products, Fermented Malt Beverages (Beer), Intoxicating Liquor and Wine, Motor Vehicle Fuel, Alternate Fuels, and General Aviation Fuel Tax Reports

**Statutes:** Secs. 71.77, 78.70(7), 139.092, 139.39(6) and 139.83, Wis. Stats. (1993-94)

**Background:** Section 71.77(2), Wis. Stats. (1993-94), provides that notice of assessment of additional tax must be given within four years of the date the income or franchise tax return was filed. Section 71.77(8), Wis. Stats. (1993-94), provides that a return filed before the due date is considered as filed on the due date.

Various provisions in the Wisconsin Statutes relating to cigarette, tobacco products, fermented malt beverages (beer), intoxicating liquor and wine, motor vehicle fuel, alternate fuels, and general aviation fuel taxes refer to sec. 71.77, Wis. Stats. (1993-94). Sections 78.70(7), 139.092, 139.39(6), and 139.83, Wis. Stats. (1993-94), provide that sec. 71.77 as

it applies to the taxes under Chapter 71 applies to the cigarette, tobacco products, fermented malt beverages (beer), intoxicating liquor and wine, motor vehicle fuel, alternate fuels, and general aviation fuel taxes.

**Question:** Does the four-year statute of limitations period for assessing additional cigarette, tobacco products, fermented malt beverages (beer), intoxicating liquor and wine, motor vehicle fuel, alternate fuels, and general aviation fuel taxes begin on (1) the date the income or franchise tax return of a taxpayer was filed or (2) the date the cigarette, tobacco products, fermented malt beverages (beer), intoxicating liquor and wine, motor vehicle fuel, alternate fuels, or general aviation fuel tax report was filed?

**Answer:** The four-year statute of limitations begins the dates the cigarette, tobacco products, fermented malt beverages (beer), intoxicating liquor and wine, motor vehicle fuel, alternate fuels, or general aviation fuel tax report was filed. Reports filed before the due date are considered as filed on the due date.

**Example:** A taxpayer's January 1992 fuel tax report was due February 20, 1992.

- The department has until February 20, 1996, to adjust a January 1992 fuel tax report filed on February 20, 1992.
- The department has until February 20, 1996, to adjust a January 1992 fuel tax report filed before February 20, 1992.
- The department has until March 1, 1996, to adjust a January 1992 fuel tax report filed late on March 1, 1992. □