



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

Exemptions — governmental units — fundraising
W9639005 (p. 42)

Resale, purchase for — electric-ity or steam generator
W9648006 (p. 43)

✱ W9639005, July 8, 1996

Type Tax: Sales and Use

Issue: Exemptions — governmental units — fundraising

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

Wis. Adm. Code: Section Tax 11.35(1)(d) (June 1991 Register)

This letter responds to your request for a private letter ruling regarding the Wisconsin sales tax treatment of the gross receipts the XYZ Organization (Organization) will be receiving from parking and camping fees charged at the ABC Event (Event).

Per your original request and the additional information you provided to the department in your subsequent letter, the facts are as follows:

Facts

- The Organization is a part of the Town of XYZ.
- The Town of XYZ (which includes the Organization) does not hold a Wisconsin seller’s permit.
- The Town of XYZ (which includes the Organization) does not make any sales of tangible personal property or taxable services, other than those sales made at the Event and at one one-day fundraiser which benefits the Organization.
- The Town of XYZ (which includes the Organization) is not the organizer or promoter of the Event.
- Company A, a separate legal entity which is not a part of the Town of

XYZ, organizes and promotes the Event.

- Admission to the Event is limited to those persons who have purchased tickets from Company A.
- The Town of XYZ (which includes the Organization) does not receive any of the admissions paid to Company A by persons attending the Event.
- In addition to paying the admission to Company A, some persons attending the Event pay an additional fee for camping and parking at the Event.
- There are three different types of camping fees — Reserved Main Grounds, Open Main Grounds, and Overflow.
- The “Reserved Main Grounds” camping fees are collected by Company A. Company A pays the Wisconsin sales tax on these fees and also pays a portion of these fees to the Organization.
- The Organization collects the “Open Main Grounds” and “Overflow” camping fees. These fees are kept by the Organization.
- The Organization also collects the parking fees during the Event. These fees are kept by the Organization.

Request

You ask whether the Organization is required to collect Wisconsin sales tax on the receipts from: (1) the “Open Main Grounds” camping fees, (2) the “Overflow” camping fees, and (3) the parking fees, which the Organization collects during the Event.

Ruling

Based on the Facts above, the Organization is not required to collect Wisconsin sales tax on their gross receipts received from (1) the "Open Main Grounds" camping fees, (2) the "Overflow" camping fees, and (3) the parking fees, which the Organization collects during the Event.

Analysis

Section 77.54(7m), Wis. Stats. (1993-94), provides an exemption from sales tax for "Occasional sales of tangible personal property or services, including but not limited to admissions or tickets to an event; by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization; not involving entertainment for which payment in the aggregate exceeds \$300 for performing or as reimbursement of expenses unless access to the event may be obtained without payment of a direct or indirect admission fee conducted by the organization if the organization is not engaged in a trade or business and is not required to have a seller's permit. For purposes of this subsection, an organization is engaged in a trade or business and is required to have a seller's permit if its sales of tangible personal property and services, not including sales of tickets to events, and its events occur on more than 20 days during the year, unless its receipts do not exceed \$15,000 during the year..."

Section Tax 11.35(1)(d), Wis. Adm. Code, June 1991 Register, provides that "...A governmental unit described in s. 77.54(9a)(a) through (e), Stats., is considered a 'similar organization'..." for purposes of the exemption provided in sec. 77.54(7m), Wis. Stats. (1993-94).

Since the Organization is part of the Town of XYZ, it is part of a governmental unit and therefore is a "similar organization" for purposes of the occasional sales exemption provided in sec. 77.54(7m), Wis. Stats. (1993-94).

The gross receipts the Organization receives from (1) "Open Main Grounds" camping fees, (2) "Overflow" camping fees, and (3) parking fees, are not subject to Wisconsin sales tax because the Town of XYZ (which includes the Organization), meets all of the following conditions:

- 1) The Town of XYZ is not engaged in a trade or business. The Town of XYZ is not engaged in a trade or business if it meets at least one of the following:
 - a) 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, or
 - b) 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.
- 2) Entertainment is not involved at an event for which payment in the aggregate exceeds \$300, unless access to the event may be obtained without the payment of a direct or indirect admission to the organization conducting the event.
- 3) The organization does not have or is not required to have a Wisconsin seller's permit, except for conducting bingo.

Condition 1 above is met because the Town of XYZ (which includes the Organization), does not make sales of taxable tangible personal property or hold events involving entertainment for which an admission is charged on 20 days or more during the calendar year.

Condition 2 is met because the Town of XYZ (which includes the Organization), is not the organization "conducting" the Event. Company A is the

organization conducting the Event. Since the Town of XYZ (which includes the Organization) is not the organization charging the admission to the Event, and does not receive any portion of the admissions to the Event, the Organization is **not** the organization conducting the event which includes entertainment, for which payment in the aggregate exceeds \$300 for performing or for reimbursement of expenses.

Condition 3 is met because the Town of XYZ (which includes the Organization), based on the facts provided in this ruling, does not hold and is not required to hold a Wisconsin seller's permit.

✳ **W9648006**, September 10, 1996

Type Tax: Sales and Use

Issue: Resale, purchase for — electricity or steam generator

Statutes: Sections 77.52(2)(a)10 and 77.54(9a), Wis. Stats. (1993-94)

Wis. Adm. Code: Sections Tax 11.57(4)(b) (April 1993 Register), and 11.68(4)(b) and (6)(a) (April 1994 Register)

This letter responds to your request for a private letter ruling.

Facts

Company ABC (Company) is a limited liability company. Company has entered into a contract with the Wisconsin State Agency X (State) to perform a turnkey construction project under which Company will design and build a replacement generator (Generator) for the Company DEF Plant (Plant) in Wisconsin.

Company will purchase a Generator from a vendor. Title to the Genera-

tor will pass from the vendor to Company. Company will install Generator. When the work is finished and the Generator is fully operational, Company will provide the State with a bill of sale for the Generator, passing title to the State. Company will be responsible for training State personnel to operate the Generator, preparing an operating manual, and working out all bugs in the system before the project is complete and Company receives final payment.

Processing functions performed at the Plant are as follows. Boilers at the Plant produce steam. A portion of the steam produced is used to heat buildings at State Agency B (Agency). The remaining portion of the steam is diverted to the Generator to produce electricity. The electricity is routed to substations at Agency for use by Agency.

Request

You ask the following questions:

1. Is the sale of the Generator by the vendor to Company a sale of tangible personal property not subject to Wisconsin sales or use tax because it is for resale as tangible personal property?
2. Is the sale of the Generator by Company to the State a sale of tangible personal property exempt from Wisconsin sales or use tax under sec. 77.54(9a), Wis. Stats. (1993-94)?

Ruling

1. The sale of the Generator by the vendor to Company is a sale of tangible personal property not subject to Wisconsin sales or use tax because it is for resale as tangible personal property.

Company is not engaged in real property construction when it

installs the Generator for the State. The Generator remains tangible personal property upon installation.

2. The sale and installation of the Generator by Company to the State is exempt from Wisconsin sales or use tax.

Analysis

1. Section 77.52(1), Wis. Stats. (1993-94), imposes a Wisconsin sales tax on the sale of tangible personal property at retail in Wisconsin.

Section 77.51(14)(intro.), Wis. Stats. (1993-94), provides that a "retail sale" does not include the sale of tangible personal property that will be resold as tangible personal property.

Section Tax 11.68(4)(b), Wis. Adm. Code (April 1994 Register), provides that when property is installed primarily to provide service to a building or structure and is essential to the use of the building or structure, it is a real property improvement. However, when similar property is installed in a manufacturing plant to perform a processing function, it may, as machinery, retain its status as personal property.

Section Tax 11.68(6)(a)4, Wis. Adm. Code, further provides that the following property remains tangible personal property after installation: machinery, including safety attachments, equipment, tools, appliances, process piping, and wiring, used exclusively by manufacturers, processors and others performing a processing function with the items.

Section Tax 11.57(4)(b), Wis. Adm. Code (April 1993 Regis-

ter), provides that the sale of a steam generator and other machines and equipment exclusively and directly used in manufacturing electricity or steam are exempt from Wisconsin sales or use tax.

The Generator purchased by Company is used to perform a processing function (i.e., manufacturing electricity) and remains tangible personal property after installation. Since the Generator will be sold as tangible personal property by Company, the sale of that Generator by the vendor to Company is not a retail sale, as defined in sec. 77.51(14)(intro.), Wis. Stats. (1993-94), and is not subject to Wisconsin sales or use tax.

Company should provide the vendor with a properly completed resale certificate.

2. Section 77.54(9a)(a), Wis. Stats. (1993-94), provides an exemption from Wisconsin sales or use tax for sales of tangible personal property or taxable services to the state of Wisconsin or any agency thereof.

Section 77.52(2)(a)10, Wis. Stats. (1993-94), provides, in part, that the service to tangible personal property is subject to Wisconsin sales or use tax unless the property being serviced is exempt from Wisconsin sales or use tax.

The sale of the Generator to the State is a sale of tangible personal property to an agency of the state of Wisconsin and, therefore, is exempt from tax. The service to the Generator (i.e., installation) is not subject to Wisconsin sales or use tax because the property being serviced (i.e., Generator) is exempt from tax. □