



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 — manufacturing,
video production, duplication
W9714001 (p. 21)

Fiduciary Taxes

Trusts — residency
W9722002 (p. 22)

✱ **W9714001**, January 9, 1997

Type Tax: Sales and Use

Issue: Exemptions — manufacturing, video production, duplication

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

Wis. Adm. Code: Section Tax 11.39 (October 1995 Register)

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

Facts

ABC Corporation (ABC) is in the business of producing video tapes. It records an event with a camera. The video tape created by such recording (source tape) is loaded into a computer. The computer and software are used to edit the source tape, including deleting unwanted material and adding graphics, text, and audio. The resulting product is called a master tape.

From the master tape, duplicates are made. If a customer requests a large quantity of duplicates, the master is sent to a duplication facility.

Request

You ask whether ABC is subject to Wisconsin sales or use tax on equipment (e.g., computer and software) it purchases and uses in producing video tapes.

Ruling

Machinery and equipment used **exclusively** and **directly** in editing a source tape to create a master tape and duplicating the master tape to create multiple copies of the master tape, as described in the facts above, are exempt from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1993-94). Machinery and equipment used in recording the event on video tape (i.e., creating the source tape) are subject to Wisconsin sales or use tax.

Analysis

Section 77.54(6)(a), Wis. Stats. (1993-94), provides, in part, an exemption from Wisconsin sales or use tax for machines and specific processing equipment exclusively and directly 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.

ABC, when it edits a source tape to create a master tape by deleting unwanted material and adding graphics, text, and audio, and when it duplicates the master tape to create multiple copies of the master tape, is using machinery to create a product with a different form, use, and name from the source tape it begins with. This process is popularly regarded as manufacturing.

However, sec. Tax 11.39(4)(r)8, Wis. Adm. Code (October 1995 Register), provides that persons engaged in the business of photography are not considered manufacturers. In addition, the Wisconsin Tax Appeals Commission held in the case of *Associated Wedding Photographers, Inc. v. Wisconsin Department of Revenue* (January 19, 1976, CCH 201-203), that a professional wedding photographer was not engaged in manufacturing tangible personal property. Video taping is a form of photography and is not considered to be manufacturing, as the term is defined in sec. 77.54 (6m), Wis. Stats. (1993-94). □

✱ **W9722002**, March 12, 1997

Type Tax: Fiduciary

Issue: Trusts – residency

Statutes: Sections 71.04 and 71.14, Wis. Stats. (1995-96)

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

Facts

In 1945, Grantor A irrevocably created a number of trusts under a single trust agreement. Article IX of the trust agreement provided for the establishment of five separate trusts, including one for the benefit of Grantor A's then wife, Mrs. A, and one for Grantor A's daughter, Ms. AB.

In 1987, the XYZ County Circuit Court partitioned the Mrs. A Trust into the Ms. AC Partition Trust, the Mr. A, Jr. Partition Trust and the Ms. ABC Partition Trust. Only the Ms. ABC Partition Trust and the Ms. AB Trust (hereinafter referred to collectively as the "ABC Trusts") are the subject of the ruling request.

Article I of the Trust Agreement provides that the ABC Trusts shall each terminate thirty (30) years after the death of the last survivor of the individuals therein listed; provided, however, that if the ABC Trusts do not hold any stock or securities of the DEF Company, the Trustees of the ABC Trusts, in their unfettered discretion, may terminate the ABC Trusts at any time after the death of the person for whose primary benefit the ABC Trusts were made. The person for whose primary benefit the ABC Trusts were made was Ms. ABC, who died a resident of Virginia in 1993. Prior to Ms. ABC's death, the ABC Trusts sold all of the DEF Company stock held by them. Such sale took place in 1985 to GHI Company. Article X of the Trust Agreement provides that the income beneficiaries of the ABC Trusts may receive income in the "unfettered discretion" of the Trustees; otherwise, the income can be accumulated. The ABC Trusts do not permit the invasion of principal for the benefit of their income beneficiaries; and Article XV specifically indicates that the net income of the ABC Trusts does not include profits from the sale, exchange or other disposition of securities or investments. Upon the termination of the ABC Trusts, the then assets of the ABC Trusts are to be distributed to the issue of Ms. ABC.

Article VII of the Trust Agreement allows the Trustees to appoint a trust company or bank having trust company powers to serve as a trustee of the ABC Trusts at such time as the ABC Trusts do not own any stock, securities or other interest in the DEF Company. Article VII of the Trust Agreement also provides with respect to a corporate Trustee:

"Any such corporate Trustee appointed hereunder shall have all the rights, powers and duties

herein conferred upon the individual Trustees in so far as they are applicable to the property remaining in trust. If such corporate Trustee is appointed Trustee as aforesaid with respect to a particular Trust or Trusts, then the custody, collection accounting and distribution of assets and income of the particular Trust or Trusts shall reside with such corporate Trustee."

Article VII also indicates that the Trustees of the ABC Trusts need not be residents of the State of Wisconsin. By the 1988 order of the Honorable JKL in XYZ County Circuit Court Case No. XXXX, the following individuals were named as successor Trustees of the Trusts:

- Trustee 1
- Trustee 2
- Trustee 3
- Trustee 4
- Trustee 5

Solely Trustee 1 and Trustee 5 are Wisconsin residents. Trustee 4, pursuant to Article XIV(P) of the Trust Agreement was authorized by the other co-Trustees of the ABC Trusts to be the managing trustee. The records of the ABC Trusts have been maintained at Trustee 4's office in Virginia, with copies of some records maintained at the offices of the DEF Company in Wisconsin. The ABC Trusts also maintained an Investment Agency Agreement with the MNO Trust Company of Wisconsin which acted as a custodian for the ABC Trusts. Trustee meetings of the ABC Trusts have been held in Florida, Virginia and California.

In order to address the Trustees' concerns regarding the effect of the Rule against Perpetuities on the ABC Trusts, and in order to address state income tax concerns, including the

reduction of such taxes, the Trustees have undertaken the following actions:

1. PQR Bank, South Dakota was elected as a co-Trustee in 1996. PQR Bank, as a corporate fiduciary, under Article VII of the Trust Agreement assumed custody of all of the assets of the ABC Trusts.
2. PQR Bank established two separate trust accounts for each of the Trusts comprising the ABC Trusts.
3. Separate checking accounts for each of the ABC Trusts have been opened at PQR Bank and PQR Bank will be writing all checks on behalf of the ABC Trusts.
4. The ABC Trusts, moved their offices to South Dakota and rent such property under a year to year lease which commenced in 1996.
5. All copies of records of the ABC Trusts maintained at the DEF Company have been transferred to the South Dakota office.
6. All of the investment decisions of the ABC Trusts will continue to be made outside of Wisconsin and all of the business of the ABC Trusts will be conducted outside of Wisconsin.
7. The ABC Trusts terminated their Investment Agency Agreement with the MNO Trust Company in Wisconsin and have entered into an Investment Agency Agreement with the MNO Trust Company of Florida to assist the Trustees in a custodial capacity. The Investment Agency Agreement was added in 1996.

Request

Based on the facts presented, you ask if the ABC Trusts will be subject to Wisconsin income tax for the 1997 calendar year and subsequent years.

Ruling

Based on the actions taken by the Trustees during 1996 (these actions are described in items 1 through 7 listed above), the ABC Trusts are no longer administered in Wisconsin and, as a result, are considered nonresident trusts. A nonresident trust is subject to Wisconsin income tax only on income derived from Wisconsin sources. Income from Wisconsin sources includes income or gain from:

- a. Real or tangible personal property located within the state,
- b. A business, trade, profession or occupation carried on within the state, including a corporation taxed under Subchapter S of the Internal Revenue Code,
- c. Personal or professional services performed within the state either as an individual or a member of a partnership, and
- d. Income received from the Wisconsin state lottery or a multistate lottery if the winning lottery ticket or lottery share was purchased from a Wisconsin retailer.

Income a nonresident trust derives from land contracts, mortgages, stocks, bonds and securities, or from the sale of similar intangible personal property, follows the residence of the trust and is not subject to Wisconsin income tax.

Analysis

Section 71.14, Wis. Stats. (1995-96), establishes residency for estates and trusts. Section 71.14(3), Wis. Stats., provides, with exceptions not relevant to this ruling, that trusts created by contract, declaration of trust or implication of law shall be considered resident at the place where the trust is being administered.

In its ruling in *Sally L. Pabst, et al., Trustees v. Wisconsin Department of Taxation*, 19 Wis. 2d 313 (1963), the Wisconsin Supreme Court stated:

“we now conclude that the statutory word “administered” as applied to an *inter vivos* trust of intangibles means simply conducting the business of the trust. The problem of determining whether such a trust is administered in Wisconsin may be made more difficult when the business of the trust is partly conducted in other states as well as in Wisconsin. In such a situation, a proper application of the statute would appear to require the conclusion that the trust is being administered in Wisconsin within the meaning of the statute if the major portion of the trust business is conducted in Wisconsin.” (Pabst at 321).

Based on the facts presented in the request for this ruling, little or no business of the ABC Trusts is conducted in Wisconsin.

Section 71.04, Wis. Stats. (1995-96), establishes income tax situs for income received by trusts. More specifically, sec. 71.04(1), Wis. Stats., provides:

- (1) Income or loss of nonresident trusts from business, not requir-

- ing apportionment under sec. 71.04(4), (10) or (11), shall follow the situs of the business from which derived.
- (2) All items of income, loss and deductions of nonresident trusts derived from a tax-option corporation not requiring apportionment under sec. 71.04(9), Wis. Stats., shall follow the situs of the business of the corporation from which derived.
- (3) Income or loss of nonresident trusts derived from rentals and royalties from real estate or tangible personal property, or from the operation of any farm, mine or quarry, or from the sale of real property or tangible personal property shall follow the situs of the property from which derived.
- (4) A nonresident limited partner's distributive share of partnership income shall follow the situs of the business.
- (5) A nonresident limited liability company member's distributive share of limited liability company income shall follow the situs of the business.
- (6) Income of nonresident trusts from the state lottery under Chapter 565, Wis. Stats., is taxable by Wisconsin.
- (7) Income of nonresident trusts from any multistate lottery under Chapter 565, Wis. Stats., is taxable by Wisconsin, but only if the winning lottery ticket or lottery share was purchased from a retailer, as defined in sec. 565.01(6), Wis. Stats., located in Wisconsin or from the Wisconsin Department of Revenue.
- (8) Income of nonresident trusts from pari-mutuel winnings or purses under Chapter 562, Wis. Stats., is taxable by Wisconsin.
- (9) All other income or loss of nonresident trusts, including income or loss derived from land contracts, mortgages, stocks, bonds and securities or from the sale of similar intangible personal property, shall follow the residence of the trust, except as provided in sec. 71.04(1)(b) and (9), Wis. Stats. □