

costs for the cement inured to the cement suppliers.

During the audit period, the taxpayer stored, used, and consumed in Wisconsin the cement it purchased from its suppliers. The suppliers were retailers of the cement they sold to the taxpayer. Neither the suppliers nor the carriers have given to the taxpayer receipts for the payment of the transportation services with the Wisconsin sales tax separately stated and shown to have been paid. Wisconsin sales tax has not been paid to the taxpayer by either the suppliers or the carriers on the subject transportation charges.

All of the suppliers who sold cement to the taxpayer and all of the carriers who hauled the cement for the taxpayer were engaged in business in Wisconsin. The taxpayer has not paid to the department use tax on the transportation charges it paid to the carriers who hauled the cement from

the suppliers to the taxpayer's construction sites and manufacturing plant.

During the audit period, none of the taxpayer's suppliers had any ownership interest in the carriers. The taxpayer, not the taxpayer's suppliers, bore the risk of loss as the cement was transported by carriers and bore the risk of any increase in price charged by the carriers.

The Commission concluded that transportation charges paid separately to common carriers by the taxpayer for hauling cement purchased by the taxpayer from the taxpayer's suppliers are not included in or added to the cement's "sales price," as that term is defined in sec. 77.51(15)(a), Wis. Stats., and, therefore, not subject to the use tax under sec. 77.53(1), Wis. Stats.

The department has appealed this decision to the Circuit Court. □

DRUG TAXES

— Drug tax — constitutionality. *State of Wisconsin vs. Darryl J. Hall* (Wisconsin Supreme Court, January 24, 1997). The Wisconsin Supreme Court held that the Wisconsin drug tax stamp law is in part unconstitutional (see *Wisconsin Tax Bulletin* 101, April 1997, page 18, for a summary of that decision).

The summary in *Wisconsin Tax Bulletin* 101 stated that it was not known whether the decision would be appealed to the United States Supreme Court. The State did not appeal the decision. □



Tax Releases

"Tax releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. In situations where the facts vary from those given herein, the answers may not apply. Unless otherwise indicated, tax releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.

The following tax release is included:

Sales and Use Taxes

1. Prepackaged Combinations of Food, Food Products, and Beverages Constitute Meals (p. 20)

SALES AND USE TAXES

Note: The following tax release interprets the Wisconsin sales and use tax law as it applies to the 5% state sales and use tax. The 0.5% county and 0.1% stadium sales and use taxes may also apply. For information on sales or purchases that are subject to the county or stadium sales and use tax, refer to Wisconsin Publication 201, *Wisconsin Sales and Use Tax Information*.

1 Prepackaged Combinations of Food, Food Products, and Beverages Constitute Meals

Statutes: Sections 77.54(20), Wis. Stats. (1995-96)

Wis. Adm. Code: Section Tax 11.51(2)(c)5, Wis. Adm. Code, December 1996 Register

Background: Section 77.54(20), Wis. Stats. (1995-96), provides an exemption from Wisconsin sales and use tax for the gross receipts from sales of, and the storage, use or other consumption of certain food, food products, and beverages for human consumption.

An exception to this exemption is found in sec. 77.54(20)(c)2.a, Wis. Stats. (1995-96), which provides that sales of meals and sandwiches are subject to Wisconsin sales or use tax.

The Wisconsin Statutes do not define the terms "meal" or "sandwich." However, sec. Tax 11.51(2)(c)5, Wis. Adm. Code, December 1996 Register, provides some guidance as to what constitutes a meal. This section provides in part that "A meal usually consists of a diversified selection of foods which are not susceptible of consumption in the absence of at least some articles of tableware and which are not conveniently consumed while one is standing or walking."

Facts 1

- ABC Company offers for sale a combination of meat, cheese, and crackers in one package.
- Each packaged combination contains 6-8 crackers, 6-8 slices of cheese, and 6-8 slices of meat.
- The packaged combination is advertised as constituting a meal and is sold for a single price.

Facts 2

- DEF Company offers for sale a combination of meat, cheese, crackers, a fruit drink, and a small candy bar in one package.
- Each packaged combination contains 6-8 crackers, 6-8 slices of cheese, 6-8 slices of meat, a fruit drink, and a small candy bar.
- The packaged combination is advertised as constituting a meal and is sold for a single price.

Facts 3

- GHI Company offers for sale a combination of pizza crusts, shredded cheese, sliced pepperoni, a small package of pizza sauce, a fruit drink, and a small candy bar in one package.

- Each packaged combination contains 3-4 mini pizza crusts, shredded cheese, several slices of pepperoni, a small packet of sauce along with a plastic utensil for spreading the sauce, a fruit drink, and a small candy bar.
- The packaged combination may be eaten heated or unheated.
- The packaged combination is advertised as constituting a meal and is sold for a single price.

Facts 4

- JKL Company offers for sale a combination of a sandwich, a bag of pretzels or potato chips, and cookies in one package.
- The packaged combination is advertised as constituting a meal and is sold for a single price.

Question: Are sales of any of the packaged combinations described in Facts 1 through 4 above subject to Wisconsin sales or use tax?

Answer: Yes. Sales of all of the above described packaged combinations are subject to Wisconsin sales or use tax under sec. 77.54(20)(c)2.a, Wis. Stats. (1995-96), as meals. □