expenses in connection with the adoption of an eligible child by an employe under an adoption assistance program?

Answer 1: No. Amounts paid or expenses incurred by an employer for qualified adoption expenses under an adoption assistance program that meets the requirements of sec. 137 of the Internal Revenue Code are not subject to Wisconsin income tax withholding. ☐

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*.

4 Admissions — County Fairs

Statutes: Section 77.52(2)(a)2, Wis. Stats. (1997-98)

Background: Effective August 1, 1998, sec. 77.52(2)(a)2, Wis. Stats. (1997-98), provides that admissions to county fairs are not subject to Wisconsin sales or use tax. Questions have been raised as to what fairs and which admissions qualify for this exemption.

Question 1: Does "county fair" include the district fairs held annually in Marathon, Douglas, Wood, LaCrosse, and Chippewa counties?

Answer 1: Yes.

Question 2: Does the fact that a county fair is operated by a 4-H or non-county agricultural society eliminate the county fair from exemption?

Answer 2: No.

Question 3: Does "county fair" include the Wisconsin State Fair in Milwaukee County and the World Dairy Expo?

Answer 3: No.

Question 4: Does "county fair" include a community festival limited to amusement rides, musical performances, food stands, and other fund raising activities?

Answer 4: No.

Question 5: What "county fair" admissions are not subject to Wisconsin sales or use tax under sec. 77.53(2)(a)2, Wis. Stats. (1997-98)?

Answer 5: Admissions that grant access to the county fair grounds are not subject to Wisconsin sales tax under section 77.52(2)(a)2, Wis. Stats. (1997-98) (e.g., main gate admissions). Other admissions once admitted to the fairgrounds, such as charges to enter a beer tent, attend a grandstand entertainment performance, or have access to amusement games and rides are taxable, unless some other exemption or exclusion applies (e.g., occasional sale). ☐

Private Letter Rulings

"Private letter rulings" are written statements issued to a taxpayer by the department, that interpret Wisconsin tax laws based on the taxpayer's specific set of facts. Any taxpayer may rely upon the ruling to the extent the facts are the same as those in the ruling.

The ruling number is interpreted as follows: The "W" is for "Wisconsin"; the first four digits are the year and week the ruling becomes available for publication (80 days after it is issued to the taxpayer); the last three digits are the number in the series of rulings issued that year. The date is the date the ruling was issued.

Certain information that could identify the taxpayer has been deleted. Additional information is available in Wisconsin Publication 111, "How to Get a Private Letter Ruling From the Wisconsin Department of Revenue."

The following private letter rulings are included:

✵ W9853009 ✵

October 12, 1998

Type Tax: Corporation Franchise and Income

Issue: Allocation of Income – situs

Statutes: Section 71.25(5) and (6), Wis. Stats. (1995-96)

Wis. Adm. Code: Section Tax 2.39 (May 1995 Register)

This letter is in response to your private letter ruling request regarding the treatment of a corporation which holds a limited partnership interest in a partnership that has business operations in and outside Wisconsin.

Facts

The taxpayer is a corporation which was organized in Wisconsin in 1967. Since inception, it has had business operations consisting of commercial real estate ownership and rental throughout Wisconsin. The taxpayer itself has no property, payroll, or sales in any other state.

However, in 1973, the taxpayer acquired a 50% limited partnership interest in a partnership whose business operations consist of the operation of several businesses located in another state ("State X") and Wisconsin. Therefore, the partnership has property, payroll, and sales in both of these states. The partnership is Partnership ABC ("ABC").

State X Taxation

For State X corporate income tax purposes, if a partnership is determined to have nexus within the state, then the partnership's corporate partners (whether general or limited) are deemed to be engaged in business in State X. This rule serves to make the corporate partner taxable in State X even though it would not otherwise have nexus with State X. Generally, if the partnership is not part of the corporate partner's unitary business, the corporate partner's share of partnership income is apportioned to State X under the usual income apportionment rules, applied at the partnership level only. However, since its inception in 1973, ABC has been allowed to utilize the separate accounting method to determine its State X source income.

As a result of the above-cited State X rules, the taxpayer was deemed to have nexus in State X for corporate income tax purposes. The taxpayer therefore files a State X income tax return each year, reporting its 50% share of the partnership's income which is specifically allocated to State X under the separate accounting method. None of the taxpayer's other income is subjected to State X income tax under this methodology.

Wisconsin Taxation

As stated previously, the taxpayer's regular business operations (excluding partnership activities) do not cause nexus in any state other than Wisconsin. In addition, Wisconsin appears to automatically treat the ownership of a limited partnership interest as a passive investment, so that the taxpayer's own apportionment factors cannot be adjusted by its share of the partnership's factors. Since separate accounting did not appear to be an option under Wisconsin rules either, the taxpayer has always filed a Wisconsin Form 5. This resulted in 100% of the taxpayer's income being subjected to Wisconsin taxation, including the full amount of its partnership income, a substantial portion of which is also taxed to State X.

Taxable income of the taxpayer for the prior three years was as follows:

	Total Everywhere	State X
1995	x	.521x
1996	y	.509y
1997	z	.386z

The "Total Everywhere" income is the amount that is currently subjected to Wisconsin taxation. Since the income taxed by State X is also included in the amount of income taxed by Wisconsin, the taxpayer's current tax situation results in slightly more than 50% of its total income being subjected to double state taxation.

Request

The taxpayer requests a ruling as to whether some type of relief is available to mitigate the resulting double taxation on that portion of its partnership income apportioned to State X.

(1) *Based upon the other state's finding of nexus.*

If the department were willing to recognize State X's finding of nexus in this particular taxpayer's case, the taxpayer requests a ruling authorizing the taxpayer to either:

a) Reduce its total taxable income by the amount of partnership income that is specifically allocated to State X under the State X taxing scheme, then subject the remaining portion to 100% Wisconsin taxation. This option would completely eliminate the double taxation which currently occurs with respect to State X-taxed income, and would therefore be more equitable and preferred than alternative b, below.

b) Apportion its total taxable income to Wisconsin based upon not only its own three apportionment factors, but also its proportionate share of the partnership's three apportionment factors.

If, for some reason, the department is unwilling or unable to recognize State X's finding of nexus, then the taxpayer asks that the department consider the second alternative below.

(2) *Based upon a finding that the limited partnership interest is not passive.*

Generally, the ownership of only a limited partnership interest severely limits a partner's participation in partnership management. The limited partnership statutes generally, and the partnership agreement specifically, prohibit the limited partner from controlling the partnership's business or acting on behalf of the partnership. However, because this corporate taxpayer has a substantial (50%) interest in the partnership, was a charter partner in the partnership, and has enjoyed a long-standing relationship of mutual respect with the general partner, it is asked to review, approve, and/or provide input in the form of consulting or advisory services regarding the partnership's activities to the general partner. The following are just a few examples of such participation:

- Input regarding potential locations of new hotels
- Input regarding planned capital improvements
- Review of and consultations regarding detailed annual budgets
- Regular phone calls with general partner
- Face-to-face meetings with general partner at least once a year
- Phone conversation with marketing personnel for the partnership
- Review of partnership's monthly financial statements

Documentation in support of the above activities on the part of the corporate partner includes the following:

A. Annual budgetary package sent to the taxpayer for its review and approval. This is the identical package which is sent to the general partners and includes information regarding projected financial performance, marketing plans, detailed capital expenditure proposal, marketing and sales report and insurance report.

B. Example of the occupancy reports, by property, which are sent to the taxpayer for review on a monthly basis.

C. Annual financial statements and calculation of management fee sent to the taxpayer and all general partners for review.

D. Semi-annual calculations of distributions made to both general and limited partners.

E. Sample phone log of calls from Partner P, general partner of ABC, supporting fact that the taxpayer is consulted on a regular basis regarding current business operations and proposed changes.

F. Copies of miscellaneous partnership-related correspondence both to and from the taxpayer.

Based on these activities, it would appear that the taxpayer's partnership interest should not arbitrarily be considered passive simply because it is a limited interest. Although identified as a limited partner in the partnership agreement, this partner has played a nonpassive role with respect to the ability to provide input and approval of both major and trivial business operation issues. Even the general partners themselves do no manage the partnership's day-to-day operations - an outside management team is utilized. As a nonpassive investment, the partnership's factors could be used to adjust the taxpayer's factors, which would at least provide partial relief.

Ruling

If State X considers the taxpayer to have nexus and subjects the taxpayer to State X corporate income tax, Wisconsin will allow the taxpayer to allocate its income under the separate accounting method for Wisconsin corporate franchise or income tax purposes. The taxpayer may reduce its total taxable income by the amount of partnership income that is specifically allocated to State X under the State X taxing scheme. The remainder of the taxpayer's income, including the limited partnership income attributable to Wisconsin, would be subject to Wisconsin franchise or income taxation.

Analysis

Section 71.25(6), Wis. Stats. (1995-96), provides that corporations engaged in business in and outside Wisconsin shall be taxed only on the income derived from business transacted and property located in the state. Section 71.25(5), Wis. Stats. (1995-96), requires corporations engaged in business in and outside Wisconsin to determine their Wisconsin net income using the

apportionment method, except as provided in sec. 71.25(6). Under sec. 71.25(6), Wis. Stats. (1995-96), the amount of income attributable to Wisconsin may be determined by an allocation and separate accounting when the business of the corporation within Wisconsin is not an integral part of a unitary business.

As a general rule, a corporation is not considered to be doing business outside the state unless the same activities in Wisconsin would have subjected it to Wisconsin's franchise or income tax. A corporation that is engaged in business only in Wisconsin but holds a limited partnership interest in a partnership that does business outside Wisconsin is not doing business outside Wisconsin unless the partnership's activities are unitary with the corporate partner's activities.

The passive nature of a limited partnership interest - the complete lack of control of the business - generally prevents the limited partnership's activities from being part of a unitary business enterprise. Under *Sweitzer v. Dept. of Revenue*, 65 Wis. 2d 235 (1974), a limited partnership interest is intangible personal property. Ownership of such a limited partnership interest does not establish nexus with Wisconsin under sec. Tax 2.82, Wis. Adm. Code.

Based on the information provided, the taxpayer's limited partnership interest is a passive investment. The limited partnership agreement submitted specifically prohibits the limited partner from taking any part in the conduct or control of the partnership's business or having any right or authority to act for or on behalf of the partnership. Although there is contact between the general partner and the limited partner, the degree of oversight by the limited partner is similar to that of any prudent investor holding a substantial investment. As a result, the partnership's activities are not unitary with the limited partner's activities and the limited partner is not considered to be engaged in business outside Wisconsin under Wisconsin law.

However, if the taxpayer has nexus with State X under State X law, the department will recognize State X's determination on nexus in the interest of avoiding the overtaxation of the taxpayer and comity between the states. The amount of income attributable to Wisconsin may be determined by an allocation and separate accounting if the taxpayer's business within Wisconsin is not unitary with the partnership's activities. ☐

✵ W9907001 ✵

November 24, 1998

Type Tax: Sales and Use

Issue: Single owner entities – "check-the-box"

Statutes: Sections 77.51(14) and 77.54(5)(b), Wis. Stats. (1995-96), and secs. 77.51(10) and 77.58(3), Wis. Stats., as amended by 1997 Wis. Act 27

Wis. Adm. Code: Section Tax 11.16 (June 1991 Register)

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

Facts

Corporation DEF ("DEF") is a Wisconsin corporation which has elected to be taxed pursuant to subchapter S of the Internal Revenue Code for Wisconsin tax purposes. It is the holder of a Wisconsin seller's permit.

DEF is (and has been for many years) engaged in the business of purchasing and reselling groceries, petroleum products, and miscellaneous other convenience items (hereinafter the "Convenience Business"). Over the last several years, DEF purchased or leased certain tractors, trailers, and trucks and has used such vehicles to transport groceries, petroleum, and other products in an effort to reduce its costs and to make a profit by hauling materials for others. DEF personnel involved in these operations have developed expertise in the handling and hauling of various types of goods and in the maintenance of tractors, trailers, trucks, and other related equipment.

DEF's management believes that it would be in DEF's best interests if it ceased its trucking activities, transferred those activities and other related activities to a newly formed limited liability company which would be wholly owned by DEF. In that way, DEF could concentrate its efforts on the purchase and sale of groceries, petroleum, and other convenience items. Some of the primary benefits which DEF's management believes would enure to DEF as a result of such a restructuring of the business are as follows:

1. DEF would be isolated from the trucking operation, thus, reducing its exposure to possible contingent liabilities, adverse publicity, and exposure to litigation in states in which it does not conduct its Convenience Business (but through which trucks hauling its goods may pass).

2. DEF's management could concentrate their efforts on improving the efficiency and profitability of its Convenience Business without being distracted by having to improve the

efficiency and profitability of the trucking business.

3. The limited liability company could develop increased efficiencies by engaging primarily in "contract" or "common" carriage, could better direct its marketing efforts, increase its customer base, and enhance its profitability.

4. The limited liability company could better develop a specialized management team with greater knowledge of the transportation business, accountability, and control over operations.

5. DEF's own trucking costs could be reduced in the long run because of the efficiencies, improved management accountability, and increased specialization that a separate trucking company would have.

Specifically, in 1998, DEF filed Articles of Organization with the Wisconsin Department of Financial Institutions and created a manager managed Wisconsin limited liability company known as GHI Company, LLC (hereinafter the "LLC"). DEF proposes to transfer to the LLC (or disburse on behalf of the LLC) cash in the amount of nine hundred fifteen ($ 915.00) in exchange for 100% of the membership interests in it. Appropriate elections will be made so that for both federal and State of Wisconsin income and franchise tax purposes the LLC will be ignored and the income and expenses of the LLC will be reported by DEF as if the business of the LLC were a division of DEF.

After the LLC obtains the appropriate common or contract carrier authorities from the United States Department of Transportation, the Wisconsin Department of Transportation (a Licensed Carrier number in the case of Wisconsin), and the Department of Transportation of any other states which may require such licenses, DEF proposes to transfer to the LLC its ownership interests in the trucks, tractors, trailers, and related equipment used by it in connection with the hauling of its goods, as well as any leases it may have for such items. (All of these items will hereinafter be referred to as "Transportation Equipment".)

All of the Transportation Equipment owned directly by DEF would be transferred to the LLC free and clear of any liens and encumbrances, and the LLC would assume no debt of DEF in connection with such transfers. The LLC would either (i) assume the leases with regard to any leased Transportation Equipment transferred to it and make payment for all amounts due under those leases after the date of the transfer to it or (ii), in some instances, purchase the equipment covered by the lease rather than make payment on the lease.

All of the transfers would be accomplished by the appropriate corporate resolutions, assignments, bills of sale, and other required documentation, and the transfers are proposed to be made effective January 1, 1999 (or as soon thereafter as the appropriate authorities are received and licenses obtained by the LLC to operate as a common or contract carrier). As DEF already would have 100% of the membership interests in the LLC as a result of its earlier cash payment, no new LLC interests would be issued. [Most of this Transportation Equipment is of a type referred to in sec. 77.54(5)(b), Wis. Stats. (1995-96), and sec. Tax 11.16, Wis. Adm. Code, and is proposed to be used by the LLC "exclusively as common or contract carriers," as that term is used in sec. 77.54(5)(b), Wis. Stats. (1995-96), (the equipment of this type which will be used in this manner is referred to hereinafter as "Exempt Transportation Equipment"), however, it is proposed that some of the transferred equipment will be used for other purposes or is of a type which is not described in sec. 77.54(5)(b), Wis. Stats. (1995-96). Whether actually required or not, at the time of the transfer of the Transportation Equipment, the LLC would deliver to DEF a Wisconsin Certificate of Exemption (Form S-207 or other suitable form) which pertains to all of the Exempt Transportation Equipment. To the extent that any of the leased Exempt Transportation Equipment is purchased by the LLC from the lessor of such equipment, a Wisconsin Certificate of Exemption (Form S-207 or other suitable form) will be provided to the lessor(s).]

After receiving title to and possession of the Transportation Equipment, the LLC would provide services to DEF and other customers as a common or contract carrier and would provide other types of services to DEF and other customers relating to the handling or hauling of goods and the maintenance or repair of equipment of the type used by it. The LLC would maintain its own bank accounts, obtain its own Wisconsin Seller's Permit (having a common number but different suffix than that held by DEF), employ its own personnel, and acquire such additional assets as it may need to carry on its business. At the time of the transfer of the Transportation Equipment to the LLC, DEF would cease to carry on such activities on its own behalf, would contract for such services from the LLC, and thereafter would continue to operate its Convenience Business.

Because of various federal, Wisconsin, and other state statutes and regulations requiring DEF to report

the income and expenses of the LLC on its income or franchise tax returns, and to report, collect, and/or pay over various withholding, sales, and other taxes pertaining to the business of the LLC, the LLC will contract with DEF to have DEF (or the two entities jointly) provide the LLC with various accounting, payroll, tax, personnel record keeping, and other administrative functions for which the LLC will pay to DEF fair and reasonable compensation, taking into consideration the legal responsibility they each have with regard to such matters.

Request

You request that a ruling be issued, that the following statements are true:

1. DEF and the LLC will be treated as separate taxable entities for Wisconsin sales tax purposes (other than for purposes of the reporting and collecting of sales taxes) and "the transfer of the ownership of, title to, possession of, or enjoyment of tangible personal property or services" between these two entities will be taxed in the same manner and to the same extent that they would be if the LLC were not a single-owner entity disregarded as a separate entity under Internal Revenue Code section 7701(as in effect at the time of this request).

2. The transfer of the Exempt Transportation Equipment [that is, the equipment of the type referred to in sec. 77.54(5)(b), Wis. Stats. (1995-96), which will be used by the LLC in the manner required by sec. 77.54(5)(b), Wis. Stats. (1995-96)] from DEF to the LLC on January 1, 1999 (or as soon thereafter as appropriate authorities and licenses are received by the LLC) will constitute a transfer which does not produce any Wisconsin sales tax liability for either DEF or the LLC.

3. In connection with any sales tax statute or regulation in which the existence of an agency relationship between DEF and the LLC is relevant [and particularly determinations to be made regarding sec. 77.54(5)(b), Wis. Stats. (1995-96)], the existence of contracts between (or joint efforts on the part of) DEF and the LLC regarding the providing of accounting, payroll, tax, personnel record keeping, and other administrative functions reasonably needed to comply with or operate under the various state and federal regulations applicable to "single-owner entities disregarded as a separate entity under Internal Revenue Code section 7701"(as in effect at the time of this request) will not be treated by the Department as evidence of any agency relationship between DEF and the LLC.

Ruling

Statements 1, 2, and 3 above are true.

Analysis:

1. Various income and franchise tax statutes were amended and created by 1997 Wisconsin Act 27 to adopt federal provisions that allow qualified subchapter S subsidiaries and certain single-owner entities, such as an LLC with only one member, to be disregarded as separate entities for Wisconsin income or franchise tax purposes.

   As part of this same legislation, two sales and use tax provisions were amended as described below:

   a. The definition of "person" in sec. 77.51(10), Wis. Stats. (1995-96), was amended to include single-owner entities disregarded as separate entities under ch. 71, Wis. Stats.

   b. Section 77.58(3)(a), Wis. Stats., was amended to provide that the owner of a qualified subchapter S subsidiary or single-owner entity disregarded as a separate entity for Wisconsin income or franchise tax purposes must report taxable sales and purchases of the disregarded entity on the owner's sales and use tax return.

   No sales and use tax provisions, other than a. and b. above, were amended or created to state that a qualified subchapter S subsidiary or single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes is also disregarded as a separate entity for Wisconsin for sales and use tax purposes. Therefore, for sales and use tax purposes other than reporting and collecting sales and use tax, the LLC is an entity separate from DEF. The transfer of ownership to, possession of, title to, or enjoyment of property between these separate legal entities is a "sale" as the term is defined in sec. 77.51(14), Wis. Stats. (1995-96).

2. Section 77.54(5)(b), Wis. Stats. (1995-96), provides a sales and use tax exemption for the gross receipts from the sale of and the storage, use, or other consumption of:

"Motor trucks, truck tractors, road tractors, buses, trailers and semitrailers, and accessories, attachments, parts, supplies and materials therefor, sold to common or contract carriers who use such motor trucks, truck tractors, road tractors, buses, trailers and semitrailers exclusively as common or contract carriers, including the urban mass transportation of passengers as defined in s. 71.38."

The transfer of qualifying equipment (motor trucks, truck tractors, etc.) which is used by the LLC exclusively as a common or contract carrier qualifies for the exemption provided in sec. 77.54(5)(b), Wis. Stats. (1995-96).

3. The existence of contracts between, or joint efforts on the part of, DEF and the LLC that are limited to those functions reasonably needed to comply with or operate under state and federal regulations applicable to "single-owner entities disregarded as a separate entity under Internal Revenue Code section 7701" (as in effect at the time of your request) will not be treated by the Department as evidence of any agency relationship between DEF and the LLC for Wisconsin sales and use tax purposes. □