



## 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:

### Sales and Use Taxes

Admissions - recreational facility  
W 0147008 (p. 34)

Service enterprises - information services  
Incidental  
W 0142007 (p. 35)

### \* W 0147008 \*

**August 31, 2001**

**Type Tax:** Sales and Use Taxes

**Issue:** Admissions - recreational facility

**Statutes:** Section 77.52(2)(a), Wis. Stats. (1999-00)

This letter responds to your request for a private letter ruling regarding the sales and use tax status of shareholder contributions to the ABC Company. Thank you for the additional information you provided in your letters.

#### **Facts, as stated in your request:**

ABC Company (“The Club”) owns sports fields in a Wisconsin County at which it plays approximately 12

competitive games per year. The Club also scrimmages on those fields.

The Club consists of approximately eight shareholders, who own the field, and approximately five non-shareholders. The Club charges dues to the non-owners, for the right to play on the field. These receipts are not sufficient to pay the expenses associated with the field, including real estate taxes, insurance, and maintenance. Accordingly, the shareholders contribute annually to pay the Club’s expenses. The owner contributions are not related to their right to use the field individually since, as owners, they can use the fields as they see fit.

Active shareholders, to wit, those that participate in the sport, are expected to make contributions for the Club’s operating expenses; all shareholders would be expected to contribute to any major capital expenditures. Absent a precedent, the Club does not know what would happen if a shareholder failed to make the contribution.

Shareholders can use the fields as they see fit, including scrimmages and competitive games. They can and do also use the field to engage in Activity D and Activity E, exercise their dogs, host picnics and provide family or customer entertainment – and any other conceivable use for a flat, open field with a picnic area.

An excerpt from the Club’s Board minutes of Date X, reads as follows:

“Board reiterated that the grounds fees are only charged to non-shareholders; and that shareholders have the right to use the field at any time for any purpose.”

#### **Request:**

Is the ABC Company required to collect a sales tax on the amounts received from owners?

#### **Ruling:**

Yes.

#### **Analysis:**

Section 77.52(2)(a)2, Wis. Stats. (1999-00), imposes sales tax on the gross receipts from:

“The sale of admissions to amusement, athletic, entertainment or recreational events or places except county fairs...and the furnishing, for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational devices or facilities, including the sale or furnishing of use of recreational facilities on a periodic basis or other recreational rights, including but not limited to membership rights, vacation services and club memberships.”

Section Tax 11.65(1)(b), Wis. Adm. Code (June 1991 Register), provides that the sales tax applies to the gross receipts of organizations which have as an objective the supplying of amusement, athletic, entertainment, or recreational facilities to their members. The proceeds received from initiation fees, special assessments, dues, and stock sales of clubs supplying amusement, athletic, entertainment, or recreational facilities to members are charges for the privilege of obtaining access to the clubs and are taxable receipts of the clubs.

Because the sports fields are primarily used as amusement, entertainment, athletic, or recreational facilities, and the amounts contributed by the shareholders to the Club are “dues, fees or other considerations” for the privilege of having access to the sports field (i.e., shareholders are expected to contribute for the Club's operating expenses and major capital expenditures for the right to use the field; non-shareholders pay dues for the right to play on the field), the amounts are subject to tax under sec. 77.52(2)(a)2, Wis. Stats. (1999-00). [☞](#)

\* W 0142007 \*

**June 28, 2001**

**Type Tax:** Sales and Use Taxes

**Issue:** Service enterprises - information services  
Incidental

**Statutes:** Section 77.51(13)(e), Wis. Stats. (1999-00)

This letter responds to your request for a private letter ruling, and your subsequent correspondence.

**Facts:**

- XYZ Company (“XYZ”) is a privately held investment services firm with its headquarters in another state.

- XYZ has an office located in a City in Wisconsin.
- The TUV Company (“TUV”) web site provides persons visiting the web site with access to charts, spreadsheets, and other financial information for no fee. Other products and services, such as “The TUV Professional Service,” are offered to customers for a fee.
- XYZ subscribes to The TUV Professional Service (“TPS”).
- XYZ pays a monthly subscriber fee to TUV, which is a licensing fee that allows XYZ access to information from TUV's web site. Upon subscribing, TUV sends an application program to XYZ electronically over telephone lines. This application program gives XYZ authority to use and access to TUV's web site information. XYZ can then electronically access the TUV information from XYZ's own computer(s) at XYZ's business site.
- XYZ also rents a computer keyboard and flat-panel computer monitor from TUV. The keyboard is similar to a common personal computer keyboard, except for special additional keys not found on the common keyboard. Such keys are used to more quickly access certain information on the TUV system. Similarly, the flat-panel monitor is set up for specific information or applications desired by the user.
- XYZ's rental of the keyboard and monitor are optional. XYZ is not required to use either of these items in order to fully utilize the online services, nor does XYZ rent these items for purposes other than using the TUV service.
- TUV's billing system does not separately state the cost of the TPS and the equipment rental. XYZ estimates that the equipment rental represents less than 4% of the total charge to XYZ.

**Request:**

1. Is TUV's charge to XYZ for the TPS subject to Wisconsin sales or use tax?
2. Is TUV's rental of the keyboard and monitor subject to Wisconsin sales or use tax, or is the rental incidental to the TPS service provided?
3. If it is determined by the Wisconsin Department of Revenue that XYZ's rental of tangible personal

property is subject to Wisconsin sales and use tax *and* TUV is unable to separately state the invoice for such amounts, is it the conclusion of the Wisconsin Department of Revenue that all such amounts are subject to Wisconsin sales and use tax?

#### Ruling:

1. TUV's charge to XYZ for the TPS, with the exception of the optional charge for the keyboard and monitor, is not subject to Wisconsin sales or use tax. TUV's charge for the keyboard and/or monitor is subject to Wisconsin sales and use tax.
2. TUV's rental of the keyboard and monitor is subject to Wisconsin sales and use tax.
3. TUV's charge for 1) the TPS, and 2) the keyboard and monitor are two separate sales. While the department may presume that the entire charge is taxable because taxable and nontaxable receipts are not separately stated, if TUV can show what portion of the selling price is not taxable, an allocation may be done to determine the taxable portion. Although TUV charges XYZ one fee for both sales, only TUV's sale (i.e., rental) of the keyboard and monitor is subject to sales and use tax.

#### Analysis:

##### 1. Access to Database

Providing information via electronic access to a database is not a service that is specifically subject to tax under sec. 77.52(2)(a), Wis. Stats. (1999-00).

##### 2. Lease or Incidental Transfer

Section Tax 11.67(1), Wis. Adm. Code (April 2000 Register), states that "(w)hen a transaction involves the transfer of tangible personal property along with the performance of a service, the true objective of the purchaser shall determine whether the transaction is a sale of tangible personal property or the performance of a service with the transfer of property being merely incidental to the performance of the service. If the objective of the purchaser is to obtain the personal prop-

erty, a taxable sale of that property is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved even though, as an incidence to the service, some tangible personal property may be transferred."

In *Wisconsin Department of Revenue v. Dow Jones & Company, Inc.*, Wisconsin Court of Appeals, January 26, 1989 (CCH 203-024), the Court concluded that equipment charges for teleprinters provided to subscribers of a news service were incidental to the service of providing hard-copy news releases. Therefore, the equipment charges were not subject to sales tax. The Court found that the teleprinter was only incidental to providing hard-copy news since it was the only manner in which a subscriber could obtain the service.

The lease or rental of tangible personal property (i.e., keyboard and monitor) in Wisconsin is subject to Wisconsin sales or use tax. TUV's optional rental of the keyboard and monitor to XYZ is a separate sale from its sale of the TPS service.

##### 3. Single Charge

TUV receives consideration for its rental of the equipment; however, TUV's invoice does not separately state the two sales.

Section Tax 11.67(2)(c), Wis. Adm. Code (April 2000 Register), provides that "(i)f there is a single charge for providing both taxable and nontaxable services, the entire charge is subject to the tax, unless it is determined by the department that another method, such as allocation or primary purpose of the transaction, more accurately reflects the tax...."

Similarly, when a nontaxable service and tangible personal property not transferred incidentally with the service are sold for a single price, the amount subject to tax can be computed as follows:

TUV's price for the TPS service and equipment rental  
 Less: Amount that TUV would charge for the TPS service without the equipment rental  
 Equals: Amount of consideration that TUV receives for the equipment rental (taxable). [✎](#)