



# Wisconsin Department of Revenue

## **TAX BULLETIN**

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### In This Issue

	Page
Net Operating Loss Carryforwards For Individuals, Estates, and Trusts .....	1
Wisconsin Preparing For New Cigarette Tax Stamp.....	1
Non-Motorized Campers Purchased by Nonresidents of Wisconsin .....	2
Buyers: How to Speed Up Your Claim for Refund of Sales or Use Tax .....	3
Sales Tax Treatment of Credit Card "Swipe" Fees .....	4
Limousine Fee .....	5
Report on Litigation .....	9
Tax Releases.....	11
Private Letter Rulings.....	20

### **Net Operating Loss Carryforwards For Individuals, Estates, and Trusts**

In *Wisconsin Tax Bulletin* 178 (January 2013), the department indicated it had reversed its position concerning the carryforward of a net business loss from a return filed by a corporation after the four-year statute of limitations expired. This change in position applies to the carryforward of a net operating loss (NOL) by an individual, estate, or trust.

**Example 1:** Individual A, a full-year resident of Wisconsin, is subject to Wisconsin income tax during 2006 and was required to file a 2006 Wisconsin income tax return by April 15, 2007. Individual A filed a 2006 Wisconsin income tax return on July 1, 2012. The return shows an NOL of \$30,000. Individual A may carry forward the \$30,000 NOL from the 2006 return.

**Example 2:** Individual B, a full-year resident of Wisconsin, timely filed a 2006 Wisconsin income tax return and paid Wisconsin tax of \$5,000. After the statute of limitations for 2006 expired, Individual B determines that an error was made in computing business deductions and a \$10,000 NOL was actually incurred for the 2006 year. Individual B may not claim a refund for the tax paid in 2006, but may carry forward the \$10,000 NOL. [↗](#)

### **Wisconsin Preparing For New Cigarette Tax Stamp**

The Wisconsin Department of Revenue (DOR) has completed the first step in implementing a new cigarette stamp. It has awarded Sekuworks LLC, an Ohio-based company, the contract to print heat applied cigarette tax stamps for authorized Wisconsin cigarette distributors. DOR will soon begin working with each Wisconsin cigarette distributor on a transition plan. Distributors will continue to order and use existing stamps until advised that the new stamps should be used.

The stamp has been redesigned to reduce the risk of reproduction and make it clearly identifiable as a Wisconsin stamp. Besides the different color, the tribal stamp will also have a wavy black ribbon (not shown) border to help distinguish it from the non-tribal stamp.

## 200% SCALE



Please email [stanley.hook@revenue.wi.gov](mailto:stanley.hook@revenue.wi.gov) or call (608) 261-8985 if you have questions regarding the implementation of the new stamp. [↗](#)

## Non-Motorized Campers Purchased by Nonresidents of Wisconsin

### Sales by Dealers & Other Retailers:

A Wisconsin retailer is required to collect the Wisconsin 5% state sales tax if the nonresident takes possession of the camper in Wisconsin. There is no Wisconsin sales tax exemption that applies to an individual's purchase of the non-motorized camper.

The retailer is also required to collect the 0.5% county, 0.5% football stadium, and 0.1% baseball stadium taxes as follows:

- Recreational Vehicle<sup>1</sup> (e.g., travel trailer or fifth-wheel trailer) - The retailer must collect county and stadium taxes based on where the nonresident will customarily keep the camper in Wisconsin. If the nonresident will not customarily keep the camper in Wisconsin, the retailer is not required to collect the county and stadium taxes.
- Camping Trailer<sup>2</sup> (e.g., pop-up camper, tent camper), or truck camper (e.g., a slide-in truck camper) - The retailer must collect county and stadium tax based on where the nonresident takes possession of the camper from the retailer in Wisconsin. If the nonresident takes possession in a Wisconsin county that does not impose a county or stadium tax, the retailer is not required to collect the county and stadium taxes.

**Note:** The nonresident purchaser owes county or stadium use tax if, after taking possession from the retailer, the camper is transported and used/stored by the nonresident in a taxable county. In this case, the retailer may voluntarily collect the county or stadium use tax due by the nonresident.

### Sales by a Private Party:

An individual is not required to collect the Wisconsin state, county or stadium taxes when selling his/her personal camper.

The nonresident owes the applicable Wisconsin state, county, or stadium use taxes if the camper is first stored or used in Wisconsin.

**Exception:** If the nonresident does not register or title the camper with the Wisconsin Department of Transportation (WDOT) and is not required to register or title the camper with the WDOT, the nonresident does not owe Wisconsin state, county, or stadium use tax when purchasing from a seller who does not have and is not required to have a Wisconsin seller's permit.

**Example (1):** Individual, a resident of Minnesota, purchases a "recreational vehicle" from Dealer in La Crosse, Wisconsin for \$22,000. Individual will use the camper for personal use in Minnesota. Individual picks up the camper at Dealer's La Crosse location. Dealer is required to charge and collect the 5% Wisconsin state sales tax of \$1,100. No county or stadium district sales or use tax applies since the camper will not customarily be kept at a location in Wisconsin.

**Example (2):** Same facts as Example (1), except that Dealer will deliver the camper to Individual at Individual's residence in La Crescent, Minnesota. In this case, the sale occurs in Minnesota and Wisconsin state and local sales taxes do not apply to the sale.

**Example (3):** Individual A, a resident of Minnesota, purchases a "camping trailer" from Individual B, a Wisconsin resident, for \$15,000. Individual B used the camper for personal use and is not a dealer in campers. Individual B is not required to charge and collect Wisconsin sales tax on the sale of the camper. Individual A takes possession of the camper in Vernon County, Wisconsin. Individual A will keep the camper at a campground in La Crosse County, Wisconsin and will register the camper in Wisconsin at the La Crosse WDOT service center. Individual A must pay Wisconsin use tax of \$750 and Vernon County use tax of \$75 to the WDOT at the time of registration of the camper. Vernon County use tax applies since Individual A took possession of the "camper trailer" in Vernon County.

**Example (4):** Individual C, an Iowa resident, purchases a "camping trailer" from Individual D, a Wisconsin resident, for \$8,000. Individual C is required to register the camper with the WDOT. Individual D used the camper for personal use and is not a dealer in non-motorized campers. Individual D is not required to charge and collect Wisconsin sales tax on the sale of the camper. Individual C takes possession of the camper in Crawford County, Wisconsin. Individual C transports the camper back to Iowa where Individual C will keep the camper. Individual C owes Wisconsin state and Crawford County sales or use tax on its purchase of the camper. Crawford County use tax applies since Individual C took possession of the "camping trailer" in Crawford County.

**Example (5):** Same facts as Example (4), except Individual C does not, and is not required to, register the "camping trailer" with the WDOT. In this case, Individual C does not owe any Wisconsin state or county sales or use tax.

**1 "Recreational vehicle" as defined in sec. 340.01(48r), Wis. Stats., means a vehicle that is designed to be towed upon a highway by a motor vehicle, that is equipped and used, or intended to be used, primarily for temporary or recreational human habitation, that has walls of rigid construction, and that does not exceed 45 feet in length.**

**2 "Camping trailer" means a vehicle with a collapsible or folding structure designed for human habitation and towed upon a highway by a motor vehicle.** [☞](#)

## **Buyers: How to Speed Up Your Claim for Refund of Sales or Use Tax**

When claiming a refund, it is important that you provide enough information for us to verify your claim. This will ensure a fast and accurate processing of your refund.

### **Information That May Be Needed**

- Proof of payment and copies of invoices
- Chart of Accounts and identification of the accounts to which the items were charged
- Purchase orders or contracts related to items claimed for exemption

- Detailed description of items claimed for exemption, including:
  - How the items are used
  - The period the tax was accrued on the items
  - The exemption that applies and relevant statutes

#### **Additional Information That May Be Needed for Fuel and/or Electricity Claims**

- Utility study or explanation of how you determined the claimed percentage
- Description of equipment powered by the fuel/electricity
- Documentation showing that the equipment powered by the fuel/electricity is exempt

#### **Penalty That May Apply**

Wisconsin law prohibits filing an incorrect and excessive claim. You should determine that the items claimed are exempt before you submit the claim.

If you request a refund on clearly taxable items, the claim may be considered to be negligently filed and a penalty may apply. A person who negligently files an incorrect and excessive claim is subject to a penalty of 25% of the difference between the amount claimed and the amount that should have been claimed (sec. 77.60 (12), Wis. Stats (2011-12)).

**Example:** John Doe files a claim for refund of sales tax paid on purchases. The claim includes items that are exempt from sales and use taxes; however, the claim also includes items that are clearly taxable based on examples in a Department of Revenue publication. The amount claimed is \$30,000 of tax and the amount that should have been claimed is \$1,400. John Doe filed an incorrect and excessive claim for refund and is, therefore, subject to the 25% negligence penalty. The penalty is \$7,150 ( $\$30,000 - \$1,400 = \$28,600 \times 25\% = \$7,150$ ).

A person who files a fraudulent claim is subject to a penalty of 100% of the difference between the amount claimed and the amount that should have been claimed.

If you have any questions, please contact us at:

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 Audit Bureau – Sales & Use Tax  
 PO Box 8906  
 Madison, WI 53708-8906  
 (608) 264-4219

[DORSalesandUse@revenue.wi.gov](mailto:DORSalesandUse@revenue.wi.gov) 

### **Sales Tax Treatment of Credit Card "Swipe" Fees**

Beginning January 27, 2013, a retailer may charge a "swipe" fee to a customer using certain credit cards for payment.

If the product or service being sold is taxable and the retailer chooses to charge a "swipe" fee, sales or use tax applies to the total amount charged by the retailer for the product or service, which includes the amount being charged for the "swipe" fee.

**Example:** Individual purchases a new television for \$599 at Retailer's store. Individual pays using a credit card. Retailer charges Individual a 2% "swipe" fee on the \$599 selling price. Retailer's taxable receipts from the sale of the television are computed as follows:

Selling price of television	\$599.00
"Swipe" fee charged by Retailer ( $\$599 \times .02$ )	11.98
Taxable receipts	<u>\$610.98</u>

If the credit card is being used to pay for both taxable and nontaxable products or services, the retailer may allocate the "swipe" fee between the taxable and nontaxable purchases. In this case, the sales tax applies to the total amount charged for the taxable products or services, which includes the "swipe" fee charged on the taxable products or services.

**Example:** Individual goes to Grocery Store and purchases exempt food items in the amount of \$65 and taxable items in the amount of \$28. Individual pays using a credit card. Grocery Store charges Individual a 2% "swipe" fee on the \$93 total selling price. Grocery Store's taxable receipts are determined as follows:

Selling price of taxable items	\$ 28.00
"Swipe" fee on taxable items (\$28 X .02)	.56
Taxable receipts	<u>\$ 28.56</u> <a href="#">↗</a>

## Limousine Fee

Limousine service, which includes the use of a limousine with a driver, is a transportation service that is not subject to Wisconsin sales or use tax. A 5% limousine fee is, however, imposed on the charge for providing a limousine with a driver in Wisconsin.

### *What types of vehicles are subject to the limousine fee?*

"Limousine" means a passenger automobile for which all of the following apply:

- It has a capacity of 10 or fewer persons, not including the driver;
- It has a minimum of five seats behind the driver;
- It is operated for hire on an hourly basis; and
- It is operated under a prearranged contract for the transportation of passengers on public roads and highways along a route under the control of the person who hires the vehicle and not over a defined regular route.

"Limousine" does not include any of the following:

- Taxicabs;
- Hotel or airport shuttles or buses;
- Buses employed solely in transporting school children or teachers;
- Vehicles owned and operated without charge or remuneration by a business entity for its own purposes;
- Vehicles used in car pools or van pools;
- Public agency vehicles that are not operated as a commercial venture;
- Vehicles operated as part of the employment transit assistance program under sec. 106.26, Wis. Stats.;
- Ambulances; or
- Any vehicle that is used exclusively in the business of funeral directing.

### **Examples:**

- A passenger vehicle that seats seven behind the driver may be a "limousine," because it is a passenger automobile that has a capacity of 10 or fewer persons, not including the driver, and has a minimum of five seats behind the driver.
- A vehicle that has a capacity of 13 is not a "limousine," because it does not have a capacity of 10 or fewer persons.

- A stretch SUV that is registered with the Wisconsin Department of Transportation (DOT) as a truck is not a “limousine,” because it is not a passenger automobile.
- A luxury sedan that seats three behind the driver is not a “limousine,” because it seats less than five behind the driver.
- A van that is registered with the DOT as an automobile and seats eight may be a “limousine,” because it is a passenger automobile that has a capacity of 10 or fewer persons, not including the driver, and has a minimum of five seats behind the driver.
- A hotel or airport shuttle or bus owned and operated by the hotel or airport for its own purposes (without charge or remuneration) is not a “limousine.”

*Example:* Hotel owns a passenger van that it uses to provide complimentary transportation for its customers from the airport to the hotel and back to the airport. The passenger van is not a “limousine,” because it is owned and operated by the hotel for its own purposes.

- A vehicle that provides third-party transportation services from an airport to hotels may be a “limousine” if the services are not provided over a set route or at set times.

*Example:* Company provides a limousine service to hotel customers who wish to travel from their hotel to the airport and vice versa. Company does not have a set route it follows nor does it provide this service at set times per day. Company may provide service to that hotel on three days in one week and may not have another customer from that hotel for several weeks. The limousine with driver provided by Company is not an airport or hotel shuttle, because limousine services are not provided at frequent regular intervals over a set route. Therefore, charges to the hotel or customer for the limousine with driver are subject to the 5% limousine fee.

#### *When is the service provided in Wisconsin?*

A limousine with driver is considered provided in Wisconsin if the customer is picked up by the limousine provider in Wisconsin.

*Example 1:* Company is hired to pick up a customer at his home in Madison, Wisconsin and take him by limousine to O’Hare International Airport in Chicago. The charge for limousine service from Madison to Chicago is subject to the 5% limousine fee.

*Example 2:* Company is hired to pick up a customer at O’Hare International Airport in Chicago and take him by limousine to his home in Madison, Wisconsin. The charge for limousine service from Chicago to Madison is not subject to the 5% limousine fee.

*Example 3:* Company is hired to pick up a customer at her home in Milwaukee, Wisconsin, take her by limousine to a theater performance in Chicago, Illinois, and after the performance, return her to her home in Wisconsin. The charge for limousine service is subject to the 5% limousine fee.

#### *When is limousine service provided on an hourly basis?*

A limousine whose service is subject to the fee is a passenger vehicle that is operated for hire on an hourly basis. An hourly basis may include a flat fee that is based on knowledge of how long a trip will take. A service in which the fee is based *solely* on mileage is not taxable, if all of the following apply:

1. The service provider does not know the destination before the trip;
2. There is no minimum number of hours for rental; **and**
3. The customer controls whether the vehicle is driven or not (i.e., customers may have the vehicle parked for unlimited periods of time, with no mileage or other charges applying during such time).

**Example 1:** Company owns a limousine that it provides with a driver at the request of Customer. Customer hires Company to provide limousine service for four hours for Customer's wedding. Company will bring the wedding party to the wedding, to the dinner, and then to the reception, and Company will wait at each location for the wedding party. Company will not be available to other customers during these four hours. Company is providing limousine service on an hourly basis and subject to the 5% fee.

**Example 2:** Company owns a limousine that it provides with a driver at the request of Customer. Rather than charging a per hour fee, a customer with a known destination is charged a flat fee. The flat fee has been determined, in part, based on experience of how long the trip will take. Company is providing limousine service on an hourly basis and subject to the 5% fee.

**Example 3:** Company owns a limousine that it provides with a driver at the request of a customer. Customer hires Company to take her shopping. Company charges Customer solely based on mileage (i.e., number of miles driven times a set mileage rate). Company does not charge based on the length of time it takes to travel the miles, nor does Company charge Customer for waiting while Customer shops. Company is not providing limousine service on an hourly basis and is not subject to the 5% fee.

#### ***What charges are subject to the limousine fee?***

The amount of a limousine service's charge that is subject to the 5% limousine fee includes the total amount received for the services. Mandatory charges for fuel, fuel surcharges, parking, and gratuities are included in the amount that is subject to the fee. A gratuity or tip provided by a customer to an employee that is entirely voluntarily, solely at the customer's discretion, is not subject to the fee.

Mandatory cleaning fees are also subject to the fee. However, additional charges for cleaning and repairs for excessive damage are not subject to the limousine fee if the cleaning and/or repairs occur after the limousine service is provided.

#### ***Are there exemptions that apply to the limousine fee?***

Rentals to the following are exempt from the limousine fee:

1. The federal government
2. A federally recognized American Indian Tribe or Band in Wisconsin
3. A Wisconsin state agency, county, city, village, town, public school, or school district (CAUTION: This exemption does not apply to a state agency, county, city, village, town, public school, or school district from another state.
4. A nonprofit organization that is organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals and holds a Certificate of Exempt Status (CES) issued by the Wisconsin Department of Revenue\*

Limousine services must support their exempt sales with one of the following:

- a. Obtaining a purchase order or similar written document from the exempt entity identifying the exempt entity as the purchaser.
- b. Obtaining a fully completed exemption certificate from the exempt entity (for example, [Form S-211](#) or [Form S-211-SST](#)).
- c. Recording the exempt entity's Certificate of Exempt Status (CES) number on the invoice.\*

\*A Wisconsin nonprofit organization in 4. may not claim the exemption without a CES number. An out-of-state organization that is organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, qualifies for exemption on its purchases to the same extent that a Wisconsin organization would qualify. The out-of-state organization does not need a Wisconsin CES number; however, it must provide the seller with a fully completed exemption certificate ([Form S-211](#) or [Form S-211-SST](#)) indicating that it qualifies for exemption under sec. 77.54(9a)(f), Wis. Stats. [↗](#)



## Report on Litigation

Summarized below are recent significant Wisconsin Tax Appeals Commission (WTAC) and Wisconsin Court decisions. The last paragraph of each decision indicates whether the case has been appealed to a higher Court.

The following decisions are included:

<b>Sales and Use Tax</b>	
Estoppel	
<i>King's Enterprises of Wausau, Inc.</i> .....	9
Admissions – Entertainment events	
<i>Cellar Door North Central, Inc.</i> .....	9
<b>Sales and Use and Franchise Tax</b>	
Appeal – manufacturing sales tax credit	
<i>Primera Foods Corporation</i> .....	10

### SALES AND USE TAX

**Estoppel.** *King's Enterprises of Wausau, Inc. vs. Wisconsin Department of Revenue* (Dane County Circuit Court, January 16, 2013).

This is a judicial review of a Wisconsin Tax Appeals Commission decision dated May 11, 2012. For a summary of the Commission's decision, see Wisconsin Tax Bulletin 177, [page 7](#).

In this case the taxpayer contends that the Department of Revenue is equitably estopped from collecting back taxes based on advice from the department that such sales were exempt from tax.

The Circuit Court noted the lack of a DOR employee as a witness, no written documentation, inconsistent testimony with credibility issues, DOR publications indicating such sales were taxable, a record indicating the employee who said the sales were tax exempt was a Department of Motor Vehicles employee – not a DOR employee, and a long-time published DOR position that such sales were taxable.

For these reasons the Circuit Court found that the Commission reasonably concluded that DOR was not equitably estopped from collecting the taxes at issue.

At the time of publication it is not known whether the taxpayer will appeal this decision.

**Admissions – entertainment events.** *Cellar Door North Central, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, January 22, 2013).

The issue in this case is whether a Wisconsin corporation co-promoting entertainment events is liable for sales tax on sales of concert admissions and merchandise.

The Department of Revenue issued a sales tax assessment to Cellar Door for sales tax on the sale of merchandise and admissions, including facilities fees and service charges, for entertainment events held at the Riverside Theatre.

Cellar Door and Riverside Theatre had entered into a co-promoting agreement in which both parties had the right to manage and control the presentation of entertainment events. Net revenue or losses were split equally between the two parties. Cellar Door was individually responsible for ticketing. It set ticket prices and received ticket sale proceeds.

In a separate management and consulting agreement between Cellar Door and Riverside Theatre, Cellar Door assumed control and management of Riverside Theatre's day-to-day box office operations. As a result, people who worked in the Riverside Theatre box office became employees of Cellar Door.

The department issued a sales and use tax assessment to co-promoter Riverside Theatre on items that were alternatively assessed to Cellar Door. Riverside Theatre's assessment went delinquent and the department determined their sales tax liability was uncollectible.

The Commission rejected Cellar Door's argument that concert promotion services were not among the services taxed under sec. [77.52\(2\)\(a\)2.](#), Wis. Stats. Based on the evidence, the Commission stated it was clear Cellar Door charged admissions to the concert events in question. Sales of such admissions and merchandise are taxable under Wisconsin law.

The Commission also rejected the argument that the Department could not impose liability for unremitted sales tax to both Cellar Door and Riverside Theatre. The department is authorized to do so under sec. [77.59\(9m\)](#), Wis. Stats.

The Commission concluded that Cellar Door was a retailer under sec. [77.51\(13\)](#), Wis. Stats., who is liable under sec. [77.52\(1\) and \(2\)](#), Wis. Stats., and did sell merchandise and admissions to concerts. Therefore, the assessments against Cellar Door were proper and correct.

The taxpayer has appealed this decision to the Circuit Court.

## SALES AND USE AND FRANCHISE TAX

**✦ Appeal – manufacturing sales tax credit.** *Primera Foods Corporation vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 14, 2013).

At issue in this case is whether the taxpayer 1) owes penalties on its sales and use tax assessment, 2) is entitled to an offset on its franchise and sales and use tax assessments, and 3) is entitled to a manufacturing sales tax credit on prior natural gas purchases.

The taxpayer purchased natural gas which was used in manufacturing tangible personal property and did not report or pay sales tax on its purchases of natural gas. After an audit the taxpayer admitted it was liable for sales and use tax on those purchases. The taxpayer filed amended corporate franchise or income tax returns claiming tax credits on the unpaid sales tax liability.

The Commission found 1) the taxpayer was entitled to a manufacturing sales tax credit for the periods at issue. The imposition of the negligence penalty was not correct because after the manufacturing sales tax credit was applied to the taxpayer's tax returns, there was no sales tax owing, 2) it was unnecessary to take an "equitable recoupment" offset because the manufacturing sales tax credit zeroed out any use tax due on natural gas purchases for the periods at issue, and 3) the taxpayer was entitled to a manufacturing sales tax credit on the natural gas purchases.

The department has filed a petition for rehearing.



## 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 in a tax release, the answers may not apply. Unless otherwise indicated, tax releases apply for all periods open to adjustment, and all references to section numbers are to the Wisconsin Statutes. (Caution: Tax releases reflect the position of the Wisconsin Department of Revenue, of laws enacted by the Wisconsin Legislature as of the date published in this Bulletin. Laws enacted after that date, new administrative rules, and court decisions may change the answers in a tax release.)

The following tax releases are included:

### Sales and Use Tax

1. Inspection Services..... 11

### Corporation Franchise and Income Tax

2. Manufacturing and Agriculture Credit ..... 14

### Fermented Malt Beverage Tax

3. Fermented Malt Beverage Out-Of-State  
Shippers' Permits..... 18

## SALES AND USE TAX

### 1 Inspection Services

**Statutes:** [Section 77.52\(2\)\(a\)10.](#) and [\(ag\)](#), Wis. Stats. (2011-12)

**Wis. Adm. Code:** Section [Tax 11.67\(2\)\(c\)](#), Wis. Adm. Code (November 2010 Register)

**Introduction:** This tax release explains when a service is taxable as an "inspection" service.

**Background:** A service is not subject to Wisconsin sales and use taxes unless the service is specifically listed in the law as a taxable service. For example, [sec. 77.52\(2\)\(a\)10.](#), Wis. Stats. (2011-12), imposes tax on the repair, service, alteration, fitting, cleaning, painting, coating, towing, **inspection**, and maintenance of all items of tangible personal property or items, property, or goods under [sec. 77.52\(1\)\(b\)](#), [\(c\)](#), or [\(d\)](#), Wis. Stats. (2011-12), unless, at the time of such service, a sale of the type of property, item, or good serviced would have been exempt to the customer from tax.

A taxable "inspection" service is a service which is performed to determine whether tangible personal property or an item, property, or good is functioning properly or is in need of repair, service, alteration, fitting, cleaning, painting, coating, towing, or maintenance.

Taxable inspection services do not include services performed to determine the physical or chemical properties or make-up of tangible personal property. These services are often referred to as "testing" services. The tax treatment is based on the actual service that is performed, rather than whether the seller or purchaser refers to the service as "inspection" or "testing."

The following examples are provided to illustrate this tax treatment:

- Example 1:** Building mold
- Example 2:** Trace gases from equipment
- Example 3:** Water quality
- Example 4:** Equipment annual evaluation
- Example 5:** Metallurgical analysis
- Example 6:** Door security system
- Example 7:** Fire alarm
- Example 8:** Mineral properties
- Example 9:** Emissions
- Example 10:** Concrete hardness
- Example 11:** Products for resale
- Example 12:** Speedometer
- Example 13:** Soil
- Example 14:** Soil analysis kit

**Example 1:** Company is hired to check for mold in a building. Checking for mold consists of placing a Petri dish in the room or area being tested to collect a sample of any mold contained in the air.

*The service is an inspection of real property (i.e., the building). The inspection of real property is not subject to tax.*

**Example 2:** Company is hired to ensure that no medical gases are leaking into a room or area from medical gas system equipment (tangible personal property). In order to determine that no medical gases are leaking, Company checks the air in the room or area to determine whether the air contains such gases. Although the service consists of checking the air, the purpose of checking the air is to determine if the medical gas system equipment is functioning properly (i.e., not releasing contaminants into the air).

*The service is an inspection to determine whether an item of tangible personal property (i.e., medical gas system equipment) is functioning properly and the service is subject to tax.*

**Example 3:** Company is hired to check well water to ensure that the water is suitable for drinking (i.e., the water does not contain contaminants). Company takes a sample of the well water and sends it to a laboratory for testing.

*The service of testing the water to determine the physical or chemical properties or make-up of the water is a nontaxable testing service.*

**Note:** If Company is hired to inspect and repair (if needed) the well to ensure that the well is not allowing contaminants into the water, Company's charge is not taxable. The well is real property, and the service of inspecting real property is not taxable.

**Example 4:** Company is hired to provide an annual evaluation of a piece of medical diagnostic equipment. The evaluation is required by the federal Food and Drug Administration to ensure that the equipment provides consistent and quality results.

*The service is an inspection to determine if tangible personal property (i.e., medical diagnostic equipment) is functioning properly and is subject to tax.*

**Example 5:** Company is hired to determine which metals are contained within a product and the characteristics of each metal. The customer is provided with a metallurgical analysis report detailing which metals are contained within the product, the structure of the metal(s), and thickness.

*The service of testing the metals to determine the physical or chemical properties or make-up of the metals is a nontaxable testing service.*

**Example 6:** Company is hired to evaluate whether a security door access system is functioning properly. The system allows persons access to a building (i.e., unlocks the door) when an authorized person scans his or her identification card. The system is permanently affixed to the building and was real property when installed in the building.

*The service is an inspection to determine if real property (i.e., security door access system) is functioning properly. The inspection of real property is not subject to tax.*

**Example 7:** Company is hired to evaluate whether a fire alarm system is functioning properly. The system is permanently affixed to the building and was real property when installed in the building.

*The service is an inspection to determine if tangible personal property (i.e., fire alarm system) is functioning properly and is subject to tax. Although the fire alarm system was real property when installed, the law deems a fire alarm system to retain its character as tangible personal property for purposes of repair or other service, such as inspection.*

**Example 8:** Company is hired to determine which types of minerals are present in certain rocks that have been severed from the earth. The rocks are tangible personal property once they are severed from the earth.

*The service of testing the rocks to determine the physical or chemical properties or make-up of the rocks (i.e., determine which minerals are present in the rocks) is a nontaxable testing service.*

**Example 9:** Company performs emissions testing on private motor vehicles. The Wisconsin Department of Transportation certifies and contracts with Company to do the testing. The individuals whose vehicles are tested do not pay to have their vehicle's emissions tested.

*The service is an inspection to determine if tangible personal property (i.e., the motor vehicle) is functioning properly. Although the inspection is a taxable service, Company's charge is not taxable because the Wisconsin Department of Transportation is exempt from Wisconsin sales tax on its purchases.*

**Example 10:** Company is hired to test fresh concrete as it is poured in various places on a construction job site. Company takes samples from concrete trucks and tests the samples at the site to determine the strength of the concrete by determining the make-up of the concrete (i.e., the chemical properties of the concrete). Other concrete samples are taken off-site to be tested later.

*The service of testing the concrete to determine the physical or chemical properties or make-up of the concrete is a nontaxable testing service.*

**Example 11:** Company is hired by Wholesaler to ensure that the products that Wholesaler purchases are not broken or damaged. Wholesaler will then sell the acceptable products to its customers.

*The service is an inspection to determine if tangible personal property (i.e., the product) is functioning properly. Since Wholesaler's purchase of the products is exempt from tax (i.e., for resale), the inspection of the exempt products is also exempt from tax. In order to buy the inspection service without tax, Wholesaler must provide Company with a fully completed exemption certificate claiming resale.*

**Example 12:** Company is hired by Customer to check the accuracy of Customer's automobile speedometer. Company checks whether the readings given by the speedometer are accurate.

*The service is an inspection to determine if tangible personal property (i.e., the speedometer) is functioning properly and is subject to tax.*

**Example 13:** Farmer brings a sample of soil into Laboratory and tells Laboratory what Farmer is planning to grow. Laboratory analyzes soil for its mineral content and acidity and provides Farmer with a written report describing the soil and recommending actions for Farmer to take.

*The laboratory soil analysis service is a nontaxable testing service.*

**Example 14:** Customer purchases a soil analysis kit from a store. The kit includes instructions for collecting a soil sample, a hand tool for collecting the sample, a container to put the soil sample in, and a pre-paid mailer for sending the sample to a laboratory. Once the soil sample is collected, Customer sends the sample to the laboratory. The laboratory analyzes the soil and sends Customer a report describing the soil and recommending actions for Customer to take. No additional charge is made for the analysis and report.

*The laboratory soil analysis service is a nontaxable testing service. Although some tangible personal property (i.e., tool, container, and mailer) is transferred to Customer, the true object of the service is to receive the soil analysis (i.e., nontaxable service).*

## CORPORATION FRANCHISE AND INCOME TAX

### 2 Manufacturing and Agriculture Credit

**Statute:** Section [71.28\(5n\)](#), Wis. Stats. (2011-12).

**Background:** Section [71.28\(5n\)](#), Wis. Stats. (2011-12), provides that for taxable years beginning on or after January 1, 2013, a manufacturing and agriculture credit may be computed by multiplying the eligible qualified production activities income derived from property located in Wisconsin, by the credit rate in effect for the taxable year.

The credit is computed as follows:

	Production gross receipts <sup>1</sup>
Less:	Cost of goods sold <sup>2</sup>
	Direct costs <sup>3</sup>
	Indirect Costs <sup>4</sup> multiplied by production gross receipts factor <sup>5</sup>
=	Qualified production activities income <sup>6</sup>
	Multiplied by manufacturing property factor <sup>7</sup> or agriculture property factor <sup>8</sup>
=	Eligible qualified production activities income <sup>9</sup>
	Multiplied by credit rate in effect for the taxable year <sup>10</sup>
	Total credit

<sup>1</sup> Production gross receipts are the receipts from the lease, rental, license, sale, exchange, or other disposition of qualified production property. Footnotes 7 and 8 describe qualified production property.

<sup>2</sup> Cost of goods sold are the production costs associated with the production gross receipts.

<sup>3</sup> Direct costs are the costs associated with the production gross receipts and include all the claimant's ordinary and necessary expenses paid or incurred during the taxable year to carry on a trade or business that are deductible under [section 162](#) of the Internal Revenue Code and identified as direct costs in the claimant's managerial or cost accounting records.

<sup>4</sup> Indirect costs are the costs associated with the production gross receipts and include all the claimant's ordinary and necessary expenses paid or incurred during the taxable year to carry on a trade or business that are deductible under [section 162](#) of the Internal Revenue Code, other than cost of goods sold and direct costs, and identified as indirect costs in the claimant's managerial or cost accounting records.

- <sup>5</sup> The production gross receipts factor is a fraction consisting of the production gross receipts (numerator) divided by the gross income from all sources except those specifically excluded under the Internal Revenue Code or excluded under Wisconsin law (denominator). Items included in the denominator include: gross sales, gross dividends, gross interest income, gross rents, gross royalties, the gross sales price from the disposition of capital and business assets, gross income from pass-through entities, and all other gross receipts that are included in income before apportionment.
- <sup>6</sup> Qualified production activities income does not include any of the following:
- Income from film production
  - Income from producing, transmitting, or distributing electricity, natural gas, or potable water
  - Income from constructing real property
  - Income from engineering or architectural services performed with respect to constructing real property
  - Income from the sale of food and beverages prepared by the claimant at a retail establishment
  - Income from the lease, rental, license, sale, exchange, or other disposition of land

- <sup>7</sup> The manufacturing property factor is the average value of the claimant's real and personal property assessed under [s. 70.995](#), Wis. Stats., that is owned or rented and used in Wisconsin by the claimant to manufacture qualified production property (numerator), divided by the average value of all the claimant's real and personal property owned or rented during the taxable year and used by the claimant to manufacture qualified production property (denominator).

Qualified production property is tangible personal property manufactured in whole or in part by the claimant on property that is assessed as manufacturing property under [s. 70.995](#), Wis. Stats.

The property owned by the claimant is valued at its original cost and property rented by the claimant is valued at an amount equal to the annual rent paid by the claimant, less any annual rental received by the claimant for sub-rentals, multiplied by 8.

The average value of the property is determined by averaging the values at the beginning and ending of the taxable year.

- <sup>8</sup> The agriculture property factor is the average value of the claimant's real property and improvements assessed under [s. 70.32\(2\)\(a\)4.](#), Wis. Stats., that is owned or rented and used in Wisconsin by the claimant during the taxable year to produce, grow, or extract qualified production property (numerator) divided by the average value of all the claimant's real property and improvements owned or rented during the taxable year and used by the claimant to produce, grow, or extract qualified production property.

Qualified production property is tangible personal property produced, grown, or extracted in whole or in part by the claimant on or from property assessed as agricultural property under [s. 70.32\(2\)\(a\)4.](#), Wis. Stats.

The property owned by the claimant is valued at its original cost and property rented by the claimant is valued at an amount equal to the annual rental paid by the claimant, less any annual rental received by the claimant from sub-rentals, multiplied by 8.

The average value of the property is determined by averaging the values at the beginning and ending of the taxable year.

- <sup>9</sup> The amount of the eligible qualified production activities income that a claimant may claim in computing the credit is the lesser of the following:
- The eligible qualified production activities income determined using the computation above
  - Income apportioned to this state under [s. 71.25 \(5\)](#), [\(6\)](#), and [\(6m\)](#).
  - Income determined to be taxable under [s. 71.255 \(2\)](#).

<sup>10</sup> The manufacturing and agriculture credit rate is as follows:

- 1.875% for taxable years beginning on or after January 1, 2013 and before January 1, 2014.
- 3.75% for taxable years beginning on or after January 1, 2014 and before January 1, 2015.
- 5.526% for taxable years beginning on or after January 1, 2015 and before January 1, 2016.
- 7.5% for taxable years beginning on or after January 1, 2016.

**Facts:** Corporation A is in the business of manufacturing and installing asphalt roadways. Corporation A operates two divisions: An asphalt manufacturing division and a construction division. The asphalt manufacturing division manufactures asphalt on property located in Wisconsin that is assessed as manufacturing property under [sec. 70.995, Wis. Stats. \(2011-12\)](#), and sells it to the construction division. The construction division installs the asphalt for a city located in Wisconsin. Corporation A maintains separate records of the gross receipts and expenses from the sale of manufactured asphalt by the asphalt manufacturing division to the construction division. In addition, the sales price of the asphalt charged to the construction division is at arms-length because the pricing is the same that Corporation A charges unrelated third parties for the same asphalt.

**Question:** Can Corporation A claim the Wisconsin manufacturing and agriculture credit based on the qualified production activities income derived from asphalt the manufacturing division manufactures and sells to the construction division?

**Answer and Analysis:** Corporation A may claim the Wisconsin manufacturing and agriculture credit based on the qualified production activities income received from the asphalt that the asphalt division manufactures; however, the qualified production activities income used in the computation of the credit may only include the income allocated to the manufacturing of the asphalt and cannot include any income allocated to installing the asphalt.

In order to qualify for the manufacturing and agriculture credit, a claimant must derive qualified production activities income from the sale, lease, rental, license, exchange, or other disposition of tangible personal property that is located in Wisconsin and assessed as manufacturing or agricultural. However, qualified production activities income does not include income from any of the following activities: film production; producing, transmitting, or distributing electricity, natural gas, or portable water; constructing real property, engineering or architectural services performed with respect to constructing real property; food and beverages prepared by the claimant at a retail establishment; and income from the lease, rental, license, sale, exchange, or other disposition of land.

The installation of the asphalt by the construction division creates real property because installing asphalt is considered to be an improvement to the land. [Section 70.03, Wis. Stats. \(2011-12\)](#), provides, in part, that “real property,” “real estate” and “land,” when used in chapters 70 to 76, 78 and 79, include not only the land itself but all buildings and improvements thereon, and all fixtures and rights and privileges appertaining thereto. Because constructing real property is an activity that does not qualify for the manufacturing and agriculture credit, the qualified production activities income that is allocated to the installation of the asphalt may not be used in computing the manufacturing and agriculture credit.

**Note:** Property assessed as manufacturing property under [sec. 70.995, Wis. Stats.](#), can vary from year to year, so the eligibility criteria to claim the manufacturing and agriculture credit found in [sec. 71.28\(5n\)\(a\), Wis. Stats.](#), will need to be reviewed each year in order to determine if the credit can be claimed.

**Applicable Statute:** Section [71.28\(5n\)](#), Wis. Stats. (2011-12):

Manufacturing and agriculture credit.

(a) Definitions. In this subsection:

1. "Agriculture property factor" means a fraction, the numerator of which is the average value of the claimant's real property and improvements assessed under s. [70.32 \(2\) \(a\) 4.](#), owned or rented and used in this state by the claimant during the taxable year to produce, grow, or extract qualified production property, and the denominator of which is the average value of all of the claimant's real property and improvements owned or rented during the taxable year and used by the claimant to produce, grow, or extract qualified production property.

2. "Claimant" means a person who files a claim under this subsection.
3. "Direct costs" includes all of the claimant's ordinary and necessary expenses paid or incurred during the taxable year in carrying on the trade or business that are deductible under section [162](#) of the Internal Revenue Code and identified as direct costs in the claimant's managerial or cost accounting records.
4. "Indirect costs" includes all of the claimant's ordinary and necessary expenses paid or incurred during the taxable year in carrying on the trade or business that are deductible under section [162](#) of the Internal Revenue Code, other than cost of goods sold and direct costs, and identified as indirect costs in the claimant's managerial or cost accounting records.
5. a. "Manufacturing property factor" means a fraction, the numerator of which is the average value of the claimant's real and personal property assessed under s. [70.995](#), owned or rented and used in this state by the claimant during the taxable year to manufacture qualified production property, and the denominator of which is the average value of all the claimant's real and personal property owned or rented during the taxable year and used by the claimant to manufacture qualified production property.
  - b. For purposes of subd. 5. a., property owned by the claimant is valued at its original cost and property rented by the claimant is valued at an amount equal to the annual rental paid by the claimant, less any annual rental received by the claimant from sub-rentals, multiplied by 8
  - c. For purposes of subd. 5. a., the average value of property is determined by averaging the values at the beginning and ending of the taxable year, except that the secretary of revenue may require the averaging of monthly values during the taxable year, if such averaging is reasonably required to properly reflect the average value of the claimant's property.
6. "Production gross receipts" means gross receipts from the lease, rental, license, sale, exchange, or other disposition of qualified production property.
7. "Production gross receipts factor" means a fraction, the numerator of which is production gross receipts and the denominator of which is all gross income from whatever source, except for those items specifically excluded under the Internal Revenue Code as adopted by this state and otherwise excluded under Wisconsin law. For purposes of the denominator, income includes gross sales, gross dividends, gross interest income, gross rents, gross royalties, the gross sales price from the disposition of capital assets and business assets, gross income from pass-through entities, and all other gross receipts that are included in income, before apportionment for Wisconsin tax purposes under s. [71.25 \(6\)](#).
8. "Qualified production activities income" means the amount of the claimant's production gross receipts for the taxable year that exceeds the sum of the cost of goods sold that are allocable to such receipts, the direct costs that are allocable to such receipts, and the indirect costs multiplied by the production gross receipts factor. "Qualified production activities income" does not include any of the following:
  - a. Income from film production.
  - b. Income from producing, transmitting, or distributing electricity, natural gas, or potable water.
  - c. Income from constructing real property.
  - d. Income from engineering or architectural services performed with respect to constructing real property.
  - e. Income from the sale of food and beverages prepared by the claimant at a retail establishment.
  - f. Income from the lease, rental, license, sale, exchange, or other disposition of land.
9. "Qualified production property" means either of the following:
  - a. Tangible personal property manufactured in whole or in part by the claimant on property that is assessed as manufacturing property under s. [70.995](#).

- b. Tangible personal property produced, grown, or extracted in whole or in part by the claimant on or from property assessed as agricultural property under s. [70.32 \(2\) \(a\) 4](#).

**(b) Filing claims.** Subject to the limitations provided in this subsection, a claimant may claim as a credit against the tax imposed under s. [71.23](#), up to the amount of the tax, an amount equal to one of the following percentages of the claimant's eligible qualified production activities income in the taxable year:

1. For taxable years beginning after December 31, 2012, and before January 1, 2014, 1.875 percent.
2. For taxable years beginning after December 31, 2013, and before January 1, 2015, 3.75 percent.
3. For taxable years beginning after December 31, 2014, and before January 1, 2016, 5.526 percent.
4. For taxable years beginning after December 31, 2015, 7.5 percent.

**(c) Limitations.** Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their share of the income described under par. (b). A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interests.

**(d) Administration.**

1. Subsection [\(4\) \(e\)](#) to [\(h\)](#), as it applies to the credit under sub. [\(4\)](#), applies to the credit under this subsection.
2. Except as provided in subd. 3., for purposes of determining a claimant's eligible qualified production activities income under this subsection, the claimant shall multiply the claimant's qualified production activities income from property manufactured by the claimant by the manufacturing property factor and qualified production activities income from property produced, grown, or extracted by the claimant by the agriculture property factor.
3. The amount of the eligible qualified production activities income that a claimant may claim in computing the credit under par. (b) is the lesser of the following:
  - a. The eligible qualified production activities income determined under subd. 2.
  - b. Income apportioned to this state under s. [71.25 \(5\)](#), [\(6\)](#), and [\(6m\)](#).
  - c. Income determined to be taxable under s. [71.255 \(2\)](#).

## FERMENTED MALT BEVERAGE TAX

### 3 Fermented Malt Beverage Out-of-State Shippers' Permits

**Statutes:** Sections [125.01](#), [125.30\(1\)](#) and [\(3\)](#), Wis. Stats. (2011-12)

**Background:** 2011 Wisconsin Act 32 amended Chapter 125 regarding the regulation of alcohol beverage production, storage, distribution and sale in Wisconsin. The stated purpose of Chapter 125 as outlined in sec. 125.01, Wis. Stats., is the Legislature's support for the 3-tier system of alcohol regulation. Section 125.30(3), Wis. Stats., provides that out-of-state shippers' permits may be issued only to a person who holds a valid certificate under sec. 73.03(50), who is qualified under sec. 125.04(5), who does not maintain an office or street address in this state, and who is the primary source of supply for the brand of fermented malt beverages. In keeping with the Legislature's support for the 3-tier system of alcohol regulation, out-of-state shippers' permits will not be issued to any person who maintains an office or street address in Wisconsin used in the wholesale or retail sale of fermented malt beverages for which Chapter 125 requires a wholesaler's permit or a retailer's license. Out-of-state shippers' permits may be issued to a brewer of fermented malt beverages who is not engaged in the wholesale or retail sale of fermented malt beverages for which Chapter 125 requires a wholesaler's permit or a retailer's license.

This tax release provides examples of when out-of-state shippers' permits may or may not be issued.

**Example 1:** ABC Brewery, an out-of-state brewery, owns a business in Wisconsin which produces brewery-logoed clothing (e.g., ABC Brewery t-shirts, jackets, caps, and other clothing). ABC Brewery supplies beer it produces at its out-of-state brewery to a Wisconsin wholesaler through its out-of-state shippers' permit. The wholesaler sells and distributes the beer to Wisconsin taverns, restaurants, and retail stores. The Department will issue an out-of-state shippers' permit to ABC Brewery, as the regulated alcohol beverage product follows the required 3-tier system of alcohol regulation, as required by sec. 125.01, Wis. Stats.

**Example 2:** DEF Distributor, located in Wisconsin, holds a fermented malt beverage wholesale permit for the sale and distribution of fermented malt beverage products to Wisconsin retail establishments. DEF Distributor is considering whether to acquire an out-of-state brewery and applies for an out-of-state shippers' permit. The Department will not issue an out-of-state shippers' permit to DEF Distributor, as the regulated alcohol beverage product does not follow the required 3-tier system of alcohol regulation, as required by sec. 125.01, Wis. Stats.

**Example 3:** GHI Brewery, an out-of-state brewery, owns a soda water manufacturing and bottling plant in Wisconsin. GHI Brewery produces beer in another state and ships it into Wisconsin through its out-of-state shippers' permit, to a Wisconsin wholesaler, who in turn sells and distributes the beer to Wisconsin taverns, restaurants, and retail stores. The Department will issue an out-of-state shippers' permit to GHI Brewery, as the regulated alcohol beverage product follows the required 3-tier system of alcohol regulation, as required by sec. 125.01, Wis. Stats.

**Example 4:** JKL Brewery, an out-of-state brewery, has an office in Wisconsin for its accounting, legal, and human resources staff. JKL Brewery ships beer it produces at the out-of-state brewery to a Wisconsin wholesaler for sale and distribution to Wisconsin retailers. The Department will issue an out-of-state shippers' permit to JKL Brewery, as the regulated alcohol beverage product follows the required 3-tier system of alcohol regulation, as required by sec. 125.01, Wis. Stats.

**Example 5:** MNO Brewery has an in-state brewery and an out-of-state brewery. MNO Brewery ships beer it produces at the in-state and out-of-state breweries to a Wisconsin wholesaler for sale and distribution to Wisconsin retailers. The Department will issue a brewer permit to the in-state brewery and will issue an out-of-state shippers' permit to the out-of-state brewery. Issuing both permits to MNO Brewery allows the beer produced at either location to be shipped to a Wisconsin wholesaler and follows the required 3-tier system of alcohol regulation, as required by sec. 125.01, Wis. Stats.

**Example 6:** PQR Tavern holds a Class "B" fermented malt beverage retail license in Wisconsin for the retail sale of fermented malt beverage products. PQR Tavern acquires an out-of-state brewing facility to produce its own products and applies for an out-of-state shippers' permit in Wisconsin. The Department will not issue an out-of-state shippers' permit to PQR Tavern, as the regulated alcohol beverage product does not follow the required 3-tier system of alcohol regulation, as required by sec. 125.01, Wis. Stats.



## 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 ruling is included:

**Sales and Use Tax**  
 Temporary services  
 W1308002 (p. 20)

✱ **W1308002** ✱

**November 30, 2012**

**Type Tax:** Sales and Use Tax

**Issue:** Temporary services

**Statute:** Section [77.52\(2\)\(a\)](#), Wis. Stats. (2009-10)

This letter responds to your request for a private letter ruling submitted July 20, 2012.

**Facts, as provided by you:**

Company A is a Florida subchapter S corporation that is qualified to conduct business in Wisconsin. This ruling request is submitted on behalf of Company A to ensure the proper sales tax treatment of existing temporary agency services as well as the contemplated provision of permanent placement services for its Wisconsin clients.

Company A is engaged in the business of providing temporary staffing of physical therapists, occupational therapists and their related assistants to hospitals, skilled nursing centers, nursing homes and home health care agencies to Wisconsin clients. The therapists interact directly with patients of Company A's clients. Company A may begin to provide temporary staffing of physicians in Wisconsin.

Company A employs therapists at clients located throughout the United States; however, it only has one physical location in Florida. The duration of the temporary work assignments for Company A's employees in Wisconsin typically last from three to eight months and the assignments may be extended by the client (health care facility) at the client's own discretion. Company A's employees are paid thru W-2; none of Company A's personnel work as independent contractors.

The therapists work on site at health care facilities in Wisconsin and while on the assignment for Company A, the employees are under the direct supervision of the directors and/or supervisors at the client's location. It should be noted that the client's supervisors and directors at these facilities are not employees of Company A. Company A does not provide recruitment activities for the temporary staffing nor is Company A paid any commission for securing the temporary employment. Rather, Company A is paid by clients based upon an hourly rate set by Company A. The therapist does not become an employee of the health care facility. The temporary employees remain the employee of Company A at all times.

Company A is contemplating the provision of permanent placement of physicians, physical therapists, occupational therapists and their related assistants to hospitals, skilled nursing centers, nursing homes and home health care agencies to customers located in Wisconsin. Company A does not currently offer such permanent placement services to its Wisconsin clients.

In addition, you further clarified the permanent placement services provided by Company A involve finding and placing suitable candidates for permanent employment as employees of Company A's clients.

**You ask:**

- (1) Are Company A's charges to its clients for temporary staffing of physical therapists at a Wisconsin location subject to sales tax?
- (2) Is Company A required to collect sales tax on charges to its clients for temporary staffing of physicians in Wisconsin?
- (3) Is Company A required to collect sales tax on charges to its clients for permanent placement of physicians and/or physical therapists in Wisconsin since it would provide medical services consisting of the physicians and physical therapists to healthcare facilities?

**Answers**

- (1) Company A's charges to its clients for temporary staffing of physical therapists at Wisconsin locations are not subject to Wisconsin sales or use taxes.
- (2) Company A is not required to collect Wisconsin sales or use taxes on charges to its clients for temporary staffing of physicians in Wisconsin.
- (3) Company A is not required to collect Wisconsin sales or use taxes on charges to its clients for permanent placement of physicians and/or physical therapists in Wisconsin.

**Analysis**

In order for Company A's charges to be taxable, two criteria must be met. First, the services provided by Company A's employees must be of a type described as a taxable service under sec. 77.52(2)(a), Wis. Stats. (2009-10); and second, the person providing the service must **not** meet the criteria to be a "temporary help company," as described in the tax release titled "Temporary Services" in Wisconsin Tax Bulletin 165-6.

- (1) Company A's employees are physical therapists working at locations in Wisconsin. Charges for the services provided by physical therapists are not subject to Wisconsin sales tax, as these services are not indicated as being subject to Wisconsin sales tax under sec. 77.52(2)(a), Wis. Stats. (2009-10).
- (2) Company A's employees are physicians working at locations in Wisconsin. Charges for the services provided by physicians are not subject to Wisconsin sales or use taxes, as these services are not indicated as being subject to Wisconsin sales tax under sec. 77.52(2)(a), Wis. Stats. (2009-10).

(3) Company A's charges to a client for finding a person to be employed by the client on a permanent basis are for providing a service, the charges from which are not subject to Wisconsin sales or use taxes under sec. 77.52(2)(a), Wis. Stats. (2009-10).

Services performed by physical therapists, physicians, and their assistants, are services not described in sec. 77.52(2)(a), Wis. Stats. (2009-10). As such, the charges to provide persons who perform these services are not taxable. Charges to find and place a permanent employee are also services not described in sec. 77.52(2)(a), Wis. Stats. (2009-10). Because Company A's services do not meet the first criteria in the tax release titled "Temporary Services" in Wisconsin Tax Bulletin 165-6, it is not necessary to determine whether Company A is a "temporary help company."