

the denominator of which is the total sales of the taxpayer everywhere during the tax period. Therefore, if due to the method of accounting employed the sales are not recognized for Wisconsin franchise or income tax purposes, they are not included in the sales factor. The sales are included in the sales factor for the tax period in which the income is recognized.

Example: Corporation P, a calendar year, accrual basis taxpayer, is a multistate publisher of magazines which determines its Wisconsin net income by use of the three-factor apportionment formula. Corporation P has elected, under section 455 of the Internal Revenue Code, to recognize prepaid subscription payments as income ratably over the subscription period rather than in the year of receipt. The prepaid subscription payments should be included in the sales factor for Wisconsin apportionment purposes for the year(s) in which the income is recognized.

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5. When a Sale Is in Wisconsin for Computing the Sales Factor of the Apportionment Formula

Statute: Section 71.07(2)(c), Stats. (1985-86)

Wis. Adm. Code: Tax 2.39(5), January 1978 Register

Background: Section 71.07(2), Stats. (1985-86), requires all multi-state corporations with operations in Wisconsin, when such operations are part of a unitary business, to file tax returns using the apportionment method. The basic apportionment formula used by most multi-state corporations is composed of a property factor representing 25% of the fraction, a payroll factor representing 25% of the fraction, and a sales factor representing 50% of the fraction.

The numerator of the sales factor is the total sales of the taxpayer in Wisconsin during the tax period and the denominator is the total sales of the taxpayer during the tax period. This Tax Release gives some examples of when sales of tangible personal property are included in the numerator.

Sales must be included in the apportionment factor in the same taxable period that they are included in apportionable income.

Facts and Question 1: The taxpayer is a Wisconsin manufacturer that sells batteries to an Illinois retailer which operates stores nation-wide. The purchaser directs the taxpayer to ship batteries to its warehouse in Wisconsin. Are these sales included in the Wisconsin numerator of the taxpayer's sales factor?

Answer 1: Yes. The destination of these sales is in Wisconsin even though the purchaser is in Illinois.

Facts and Question 2: The taxpayer is a Wisconsin manufacturer that sells batteries to a Michigan manufacturer. Title to the batteries passes to the purchaser after the batteries are manufactured. The taxpayer stores some of these batteries in its warehouse until directed to ship them to Michigan by the purchaser. Are these sales of batteries stored in Wisconsin included in the Wisconsin numerator of the taxpayer's sales factor?

Answer 2: No. The batteries are not delivered or shipped to a purchaser within Wisconsin since the purchaser's location is in Michigan and the product is shipped to Michigan. The passage of title and delay in shipment are conditions of the sale which do not affect the assignment of the sale. However, if the taxpayer is not subject to tax by the state of Michigan, the sales would be included in the numerator of the sales factor under the "throwback" principle.

Facts and Question 3: The taxpayer is a Wisconsin manufacturer which makes engines for an Indiana manufacturer. Title to the engines passes to the purchaser after the engines are tested. The taxpayer, at the direction of the purchaser, ships the tested engines to a public warehouse in Wisconsin. The warehouse operator stores the engines until directed to ship them by the purchaser. Are these sales of engines included in the numerator of the taxpayer's Wisconsin sales factor?

Answer 3: Yes. The public warehouse is treated as a business location of the Indiana purchaser and Wisconsin is the destination state to which the taxpayer shipped the engines. The subsequent shipment of these engines is not controlled by the taxpayer.

Facts and Question 4: The taxpayer is a Wisconsin company (Company A) which manufactures and sells pipe. An Iowa purchaser submits an order, but wants the pipe waterproofed for underground installation. Company A recommends another Wisconsin company (Company B) to do the waterproofing. Company A ships the pipe to Company B and bills the Iowa purchaser for the cost of the pipe. Company B waterproofs the pipe, ships it to Iowa, and bills the purchaser for its service. Are these pipe sales by the Company A included in the Wisconsin numerator of its sales factor?

Answer 4: No. The pipe is not delivered to the purchaser in Wisconsin. Company B is an intermediary, like a common carrier. However, if Company A does not have nexus in Iowa, these sales would be included in the numerator of the sales factor under the "throwback" principle.

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SALES/USE TAXES

1. Are Certain Charges Related to the Construction of a Golf Course Taxable Landscaping Services?

Statutes: Section 77.52(2)(a)20, Stats. (1985-86)

Facts and Question: A person in the landscaping business is constructing a new golf course. Among other things it involves the following types of construction work.

1. Constructing sand traps. This consists of buying sand, hauling it to the golf course and then installing the sand. It does not involve the preliminary work of digging, excavating, or shaping the trap.
2. Greens mix installation. Greens mix consists of 80% sand and 20% peat and this mixture is used to create proper drainage of the green. This mixture is purchased, installed, and fine-graded. Then grass is planted or installed on top of the greens mix.

Fine grading, such as the filling or leveling of topsoil for lawns and gardens, is a taxable landscaping service.

Are the gross receipts from constructing sand traps and installing greens mix a taxable landscaping service under sec. 77.52(2)(a)20, Stats. (1985-86)?

Answer: The construction of a sand trap is closely related to fine grading and as such is a taxable landscaping service. Therefore, the gross receipts from providing and installing sand is taxable. Greens mix is also fine graded and its installation is also considered a taxable landscaping service.

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2. Laboratory Testing in a Creamery

Statutes: Section 77.54(2) and (6)(a), Stats. (1985-86)

Wis. Adm. Code: Sections Tax 11.40, November 1981 Register and 11.41, July 1987 Register

Facts And Question: A creamery sells cheese, whey, butter, and buttermilk which it produces. This creamery carries on the following functions in its laboratory:

1. Research. This work is related to the flavoring of butter. Usually it is in connection with a special order. Instead of research into a new or existing product, this testing is done to make sure they have the proper flavor.
2. Raw product testing (a). This is testing on the raw product

before any manufacturing takes place. When the truck driver picks up a load of raw material, a sample is drawn. The load is placed in a raw products material tank, along with 20-30 other loads that were picked up from the area. The sample is tested, sometimes that day, sometimes the next day. That test is used to determine what type of raw product they are getting from that supplier. If the tests are below standard, they stop using that supplier. This is testing for payment purposes.

3. Raw product testing (b). This also is testing on the raw product before any manufacturing takes place. The sole purpose of this testing is to determine the butter fat content, which is another basis for payment.
4. Product testing. Depending on the specific product being manufactured (salted or unsalted butter, bulk or table size), the creamery tests the product at three or four different stages in the plant. They do not test the product once it has been packaged unless requested by the purchaser. This testing is conducted at about half hour intervals as the taxpayer operates around the clock.
5. The production of cultures that are used in yeast and mold formation. These cultures are part of the testing process or they become an ingredient of the product.

This laboratory contains various pieces of equipment, plus tubing attached to the equipment and glassware used to conduct the tests and collect the samples. The equipment is:

1. A special type of microwave oven.
2. Centrifuge.
3. Water bath.
4. UDY (protein analysis).
5. PH meter.
6. Sterilizer (clean up of glassware).
7. Tubing (rubber).
8. Glassware to take and test samples.

Certain chemicals used in the laboratory are only used for the purposes of determining payment to suppliers, or pre-manufacturing testing. The balance of the chemicals used in the laboratory are used mainly for manufacturing testing, but on occasion may be used for pre-manufacturing testing.

Section 77.54(6)(a), Stats. (1985-86), provides an exemption for machinery and equipment used directly and exclusively in the manufacturing process.

Are the equipment and tubing used in this testing laboratory exempt under sec. 77.54(6)(a), Stats. (1985-86), and are the chemicals and consumable supplies used in the laboratory exempt under sec. 77.54(2), Stats. (1985-86)?

Answer: The equipment and tubing located in this testing laboratory which are used in numbers 1 (research), 2 (raw product

testing), and 3 (raw product testing) are not exempt under sec. 77.54 (6)(a), Stats. (1985-86), because they are used in operations which are not manufacturing. The pieces of equipment which are used exclusively in number 4 (product testing) or number 5 (production of cultures) would be exempt if only used in these exempt manufacturing activities. If equipment is used in nonmanufacturing activities and exempt manufacturing activities, it does not meet the "exclusivity" requirement of sec. 77.54(6)(a), Stats. (1985-86).

The chemicals and other consumable supplies consumed in the manufacturing testing are exempt under sec. 77.54(2), Stats. (1985-86). However, chemicals and supplies used in pre-manufacturing testing are taxable as they are not used in the actual manufacture of tangible personal property.

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3. Parking Is Provided for Monies Intended to Cover Costs

Statutes: Sections 77.51(4)(a) and (c) and 77.52(2)(a)9, Stats. (1985-86)

Wis. Adm. Code: Section Tax 11.84(2)(b), July 1987 Register

Facts and Question: A city owns and operates a parking ramp adjacent to a shopping mall operated by a private business (PB). The city asked PB for monthly payments to help maintain and operate the ramp and PB originally agreed to payments of \$65,000 a year. The amounts gradually increase with each new year. The ramp is open to the public and is used by persons shopping in the mall. The first two hours are free for anyone parking in the ramp and additional hours must be paid for. The city pays sales tax on these cash collections for additional hours. PB does not have any reserved spaces or special parking privileges in the ramp.

Section 77.51(4)(a), Stats. (1985-86), provides that "costs" may not reduce taxable gross receipts and (4)(c) provides that all receipts, cash, etc. received for providing a taxable service are subject to the sales tax. Are this city's recoveries of costs by contractual agreement in operating a parking ramp taxable parking receipts under sec. 77.52(2)(a)9, Stats. (1985-86)?

Answer: The amounts received by the city from the private business (PB) are taxable parking receipts under sec. 77.52 (2)(a)9, Stats. (1985-86), even though the agreement between the parties indicate these payments are to reimburse the city for its costs.

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4. Refuse Derived Fuel Plant Is a Recycling Facility

Statutes: Section 77.54(26m), Stats. (1985-86)

Facts and Question: A utility has agreed to take a county's refuse for the next 20 years and run the refuse through a refuse derived fuel (RDF) plant which the utility intends to construct in the near future. After ferrous materials, aluminum, and glass are recovered from the refuse and recycled, the remaining burnable materials (paper, wood, and plastic) will be used to produce fuel (RDF). A mixture of 54% RDF is to be used in combination with 46% wood to burn in the utility's boilers. This process then results in the production of electricity which is sold by the utility. The utility describes the project's number one criteria as maximum landfill avoidance.

Does the exemption in sec. 77.54(26m), Stats. (1985-86), for machinery and equipment used exclusively and directly in waste reduction or recycling apply to the construction of this RDF plant?

Answer: The machinery and equipment exclusively and directly used to produce refuse derived fuel is exempt under sec. 77.54 (26m), Stats. (1985-86). However, this exemption would not apply to buildings or other real estate improvements nor personal property which is not used exclusively and directly in producing RDF.

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5. Retailers' Receipts for Handling Manufacturers' Coupons

Statutes: Section 77.51(4) and (15), Stats. (1985-86)

Wis. Adm. Code: Sections Tax 11.28(3), July 1987 Register and 11.32(2), October 1986 Register

Facts and Question: A retailer accepts a manufacturer's coupon (25¢ value) in selling a 67¢ bar of soap to a customer. The coupon's value is 25¢ and the retailer receives an additional 7¢ from the manufacturer for handling the coupon. Therefore, the manufacturer actually pays 32¢ to the retailer. The retailer also accepts a 25¢ coupon on the purchase of a frozen pizza which is an exempt grocery item. The retailer also receives 32¢ from the manufacturer for this transaction.

Is the 7¢ received by the retailer for handling either of these coupons subject to the sales tax?

Answer: Section 77.51(4), Stats. (1985-86), which defines the receipts of a retailer which are subject to the sales tax, does not include receipts from handling coupons, whether related to taxable sales of soap or nontaxable sales of frozen pizza. There-

fore, receipts received by retailers from manufacturers for handling coupons are not taxable. However, the 25¢ received by the retailer for the coupon on the sale of the bar of soap is taxable.



6. Sales to Government and Other Exempt Organizations' Employes

Statutes: Sections 77.54(9a) and 77.55(1), Stats. (1985-86)

Wis. Adm. Code: Section Tax 11.05(4)(intro.), (a.) and (d), October 1987 Register

Background: The Wisconsin sales and use tax law in sec. 77.54 (9a), Stats. (1985-86), provides an exemption for sales of tangible personal property and services to the following governmental agencies and nonprofit organizations:

- A. State of Wisconsin or any agency thereof.
- B. Any county, city, village, town, or school district in Wisconsin.
- C. A county-city hospital established under sec. 66.47, Stats. (1985-86)
- D. A sewerage commission organized under sec. 144.07(4), Stats. (1985-86), or a metropolitan sewerage district organized under secs. 66.20 to 66.26 or 66.88 to 66.918, Stats. (1985-86).
- E. Any other unit of government in Wisconsin or any agency or instrumentality of one or more units of government in Wisconsin.
- F. Any corporation, community chest fund, foundation, or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals (except hospital service insurance corporations under sec. 613.80(2), Stats. (1985-86)) no part of the net income of which inures to the benefit of any private stockholder, shareholder, member, or corporation.

Sales to the United States and its incorporated or unincorporated agencies and instrumentalities are exempt from Wisconsin sales and use tax under sec. 77.55(1), Stats. (1985-86).

Facts: Restaurants, motels, and other retailers sell meals and lodging to the above governmental agencies and nonprofit organizations or to their employes under various situations. In order for a sale to such governmental agencies or nonprofit organizations to be exempt from Wisconsin sales and use tax, the following three conditions must occur:

- A. The retailer (e.g., motel or restaurant) issues the billing or

invoice for the meal or lodging in the name of the exempt entity.

- B. The retailer receives from the exempt entity:
 1. A purchase order or similar written document if the exempt entity is a governmental agency listed in A, B, C, D or E above, or is a United States agency or instrumentality, or
 2. The Certificate of Exempt Status number of the exempt entity if it is a nonprofit organization described in F above. The retailer must enter this exempt status number on the retailer's copy of the invoice or billing document.

- C. The retailer keeps a copy of the documents mentioned in A and B to substantiate that the sale was exempt from Wisconsin sales and use tax.

NOTE: If these three conditions are met, the sale to the governmental agency or nonprofit organization is exempt from Wisconsin sales and use tax, regardless of whether such exempt entity or its employe pays the retailer for the sale of the meal or lodging.

Question 1: An employe of the State of Wisconsin purchased a meal and lodging in a motel. The billing is made in the employe's name and the employe pays the bill with his or her own funds. The employe is subsequently reimbursed by the employer (State of Wisconsin) for the amount of the meal and lodging. Is the sale of the meal and lodging subject to sales tax?

Answer 1: Yes. This sale is taxable because it is a sale to the employe, rather than to the State of Wisconsin. (Note: This sale of the meal and lodging would still be taxable, even though the employe submitted a letter from the State of Wisconsin indicating that it would ultimately be responsible for the cost of the meal and lodging.)

Question 2: An employe of a church purchases a meal and lodging and gives the retailer the Certificate of Exempt Status number of the church. The billing is in the name of the church and the church directly pays the retailer for the meal and lodging. Is the sale of the meal and lodging subject to sales tax?

Answer 2: No. This sale of the meal and lodging is exempt from sales tax under sec. 77.54(9a), Stats. (1985-86), because the sale is considered to be made to the church, rather than to the employe. The retailer must record the church's Certificate of Exempt Status number on the billing to substantiate that the sale was an exempt sale to the church. (Note: This sale would still be exempt if the employe (rather than the church) paid the retailer and was subsequently reimbursed by the church.)

Question 3: An employe of an agency of the State of Minnesota purchases a meal and lodging and submits a letter to the retailer (which is placed in the retailer's files) indicating that the employe is traveling on agency business and funds are being

provided to the employe to pay any expenses. The retailer's bill is made in the name of the Minnesota state agency. Is the sale of the meal and lodging subject to sales tax.

Answer 3: Yes. This transaction is subject to sales tax because agencies of other states are not entitled to the exemption under sec. 77.54(9a), Stats. (1985-86)

Question 4: A City of Madison employe, when purchasing a meal and lodging, submits a letter to the retailer from the city indicating that the employe is on city business and the city authorizes the employe to purchase meals and lodging relating to such city business. This letter is placed in the retailer's files. The retailer makes out the bill in the name of the City of Madison. The employe pays the bill with his or her own funds and is subsequently reimbursed by the city. Is the sale of the meal and lodging subject to sales tax?

Answer 4: No. This is an exempt sale to the City of Madison under sec. 77.54(9a), Stats. (1985-86)

Question 5: An employe of the federal government purchases lodging in a motel. The employe provided the motel with a letter from the federal agency (which is placed in the retailer's files) indicating the employe is traveling on agency business and the agency is responsible for payment of this employe's expenses. The billing is made out to the federal agency. The employe used a travel advance to pay for the lodging. Is the sale of lodging subject to sales tax?

Answer 5: No. This sale is exempt from tax under sec. 77.55(1), Stats. (1985-86), because it is considered a sale to the federal agency.

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7. Wax Purchased by Car Wash Operators

Statutes: Section 77.52(2)(a)10 and (2m)(b), Stats. (1985-86)

Wis. Adm. Code: Section Tax 11.67(3)(m), September 1984 Register

Facts and Question: The "incidental" test for resale items purchased by persons who provide taxable services went into effect on September 1, 1983, pursuant to 1983 Wis. Act 27. Section Tax 11.67(3)(m), Wis. Adm. Code, provides that wax transferred to the customer's vehicle may be purchased without tax by the car wash operator. The business of washing motor vehicles is a taxable service under sec. 77.52(2)(a)10, Stats. (1985-86), and sec. 77.52(2m)(b), Stats. (1985-86), provides that with respect to services subject to taxation under sec. 77.52(2)(a)10, all property physically transferred to the customer in conjunction with the service is a sale of tangible personal property which may be purchased for resale.

Do purchases of wax by car wash operators qualify as exempt purchases for resale under sec. 77.52(2m)(b), Stats. (1985-86), effective September 1, 1983?

Answer: Yes. The "resale" policy set forth in s. Tax 11.67(3)(m), Wis. Adm. Code, for purchases of wax by car wash operators continues to apply.

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