

her in exchange for the use of a company automobile for personal purposes. Is there a sales tax liability in this situation.

Answer 3: Yes. Although Salesperson A does not pay a fee for the use of the automobile, Salesperson A is cancelling a debt of the employer. Use of the company automobile is subject to sales tax because sec. 77.51(4)(a), Wis. Stats. (1987-88), provides that gross receipts means the rental price of tangible personal property valued in money, whether received in money or otherwise. The cancellation of indebtedness of \$1,200 is the gross receipts subject to sales tax.

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5. Photocopies of Medical Records

Statutes: Sections 77.51(14)(h) and (L) and 77.52(1) and (2)(a)7, Wis. Stats. (1987-88)

Wis. Adm. Code: Sections Tax 11.47(1)(e), September 1977 Register and Tax 11.67, September 1984 Register

Facts and Question: Company ABC employs people in Wisconsin hospitals to copy patient records as requested by patients themselves or third parties such as attorneys or insurance companies.

Requests for patient records are normally received by the hospitals and turned over to Company ABC. Company ABC employees open the envelopes, log the patient's name, the requestor, the date, and information requested. The log is then used by Company ABC personnel who go to the hospital's medical records area to obtain the necessary documents. The appropriate documents are photocopied using the hospital's photocopying machine and returned to the medical records area.

Company ABC mails the photocopied documents to the requestor with an invoice for the amount due. The normal charge varies from \$5 to \$15 which includes up to 5 copies. Additional copies are available on a per page basis. All postage is paid by Company ABC. No reimbursement is made to the hospitals for the use of the hospitals' copy machine or paper.

Are these charges by Company ABC subject to Wisconsin sales and use tax?

Answer: Yes. The charges by Company ABC are for the sale of photocopies which are subject to Wisconsin sales and use tax under sec. 77.51(14)(h) and (L) and 77.52(1) and (2)(a)7, Wis. Stats. (1987-88).

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PRIVATE LETTER RULINGS

"Private letter rulings" are written statements issued to a taxpayer by the department that interpret Wisconsin tax laws to the taxpayer's specific set of facts. Any taxpayer may rely upon the ruling to the same extent as the requestor, provided the facts are the same as those set forth in the ruling. The number assigned to each ruling is interpreted as follows: The first two digits are the year issued, the next two digits are the week issued, and the last 3 digits are the number in the series of rulings issued that year. "Issued" means when the ruling is available to be published (80 days after being mailed to the requestor). The date following the 7-digit number is the date the ruling was mailed to the requestor. Certain information contained in the ruling that could identify the taxpayer requesting the ruling has been deleted. Wisconsin Publication 111, "How to Get a Private Letter Ruling From the Department of Revenue," contains additional information about private letter rulings.

W 8916001, February 1, 1989

Type Tax: Sales/Use

Issue: Occasional Sales Exemption

Statutes: Sections 77.51(a) and 77.54(7) and (7m), Wis. Stats. (1987-88)

This letter responds to your request for a private letter ruling regarding whether receipts qualify for the occasional sale exemption from sales tax.

The information provided in your letter states that B was organized to conduct the 1989 event. This event is an amateur competition between teams from various countries throughout the world and is scheduled to take place in 1989. This organization has applied for and received exempt status from the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code. B will be dissolved shortly after the consummation of the event.

All revenues will be related to the holding of the event in 1989, which will consist of an amateur competition between teams representing various countries throughout the world and will be held at Place A. No professional entertainment will be involved in this event other than disclosed below which is not a subject of this ruling request. The following receipts will be received in connection with this event:

- a. Admission tickets will be sold to individuals. In addition, corporations will be solicited to purchase blocks of seats.
- b. B has arranged through the Place A vendor to provide concessions at the tournament (food and beverage). B will receive a commission on these sales. The vendor will be the retailer of these sales and does hold a Wisconsin seller's permit.

- c. There will also be a trade fair in which accessories, T-shirts, and other tangible personal property will be sold. This trade fair will be conducted by an outside firm and B will receive a commission on these sales. It is our understanding that the seller will apply for a temporary seller's permit.
- d. Programs will be sold at the event. In addition, B will solicit advertising to be included in the program and in limited areas of the arena.
- e. Commemorative pins and other souvenirs will be sold by B at the event. In addition, sales of the pins has begun primarily to the members of the organization.
- f. B will receive contributions from C. C holds the television rights to the event. The amount of contributions received from C will depend in part on the monies collected by C because of these rights.
- g. During the week, five special events featuring professional entertainment will be held. These events will be sponsored by three local clubs. Separate admission will be charged for these events. The local clubs will be responsible for the collection and remittance of sales tax on the receipts from these events.
- h. B will purchase uniforms from an out-of-state supplier for use by its members while working at the games in an official capacity. The members will make contributions to B for the cost of the uniforms. B will make no profit on these sales.

You have stated that the entire event has been detailed and is in no way part of a larger event or transaction.

A copy of the Agreement Between B and C was attached to your letter. Also attached was a copy of the B budget showing total estimated receipts of \$533,450, itemized as follows:

Budget	
Receipts	
Tickets:	
Wholesale	\$152,000
Committee	116,450
Transportation	30,000
Arena Events:	
Trade Fair	7,000
Beer Garden	5,000
Television Revenue	32,000
Contributions	50,000
Programs	51,000
Souvenirs	20,000
Corporate Boxes	40,000
Hospitality/Tours	25,000
Interest	<u>5,000</u>
Total Receipts	<u>\$533,450</u>

You have requested a ruling that the proposed receipts as detailed in this request would not require B to hold a Wisconsin seller's permit and the receipts listed under items a, d, e, f, and h would qualify as an "occasional sale" as defined in Wisconsin Statute section 77.51(9)(a) and, therefore, be exempt from sales tax under section 77.54(7). As authority for your request you state the following:

"Wisconsin Statute Section 77.54(7) provides an exemption from the sales and use tax for 'occasional sales' to include 'Isolated and sporadic sales of tangible personal property or taxable services where the infrequency, in relation to the other circumstances, including the sales price and the gross profit, support the inference that the seller is not pursuing a vocation, occupation or business or a partial vocation or occupation or part-time business as a vendor of personal property on (SIC) taxable services.

"The events described should fall under the statutory definition of 'occasional sale.'" Since this taxpayer is a nonprofit entity staffed exclusively by volunteers, there is no profit motive, and therefore, they cannot be construed to be pursuing a trade or business. The [event] is held annually in various cities throughout the world. It is very unusual for it to be held in the United States. This is the first time the event has ever been held in Wisconsin and it is unlikely that the event would again be held in Wisconsin for many, many years. Therefore, this event should meet the isolated and sporadic requirements. The Wisconsin Tax Appeals Commission held similarly in *Wisconsin Farm Progress Days Clark County v. Wisconsin Department of Revenue*, WTAC Docket No. S-10652, January 21, 1986.

"Wisconsin Statute Section 77.54(7m) exempts from sales tax gross receipts by nonprofit organizations not engaged in operating a trade or business. The statute defines an organization to be engaged in trade or business 'if its sales of tangible personal property or services, not including sales or tickets to events, or if its events occur on more than 20 days during the year, unless its receipts do not exceed \$15,000 during the year.' All of the taxpayer's events revolve around one main event which will occur within a ten day period. The only sales, other than advance ticket sales, not occurring during the ten day period are sales of commemorative pins and other souvenirs by the taxpayer relating to the event. It is unlikely that the gross receipts in 1988 from the sale of these souvenirs will exceed \$10,000.

"Even if it is determined that the taxpayer does not meet the provisions of Section 77.54(7m), the event should still be considered as an occasional sale under the provisions of Section 77.54(7)."

Ruling

For calendar year 1988, if B's gross receipts from the sale of tangible personal property exceed \$7,000, then from only that

time forward, all sales of admissions described under par. a are taxable; however, all sales of tangible personal property become taxable including the initial \$7,000. Tangible personal property includes programs described under par. d, pins and souvenirs described under par. e, and uniforms described under par. h. If B's gross receipts from sales of tangible personal property do not exceed \$7,000 during calendar year 1988, none of B's sales of tangible personal property and admission tickets occurring during the calendar year 1988 would be subject to sales taxation.

For calendar year 1989, B's gross receipts under items a. (admissions), d. (programs), e. (pins and souvenirs), and h. (uniforms) are subject to sales taxation.

Analysis

Due to 1987 Wisconsin Act 399, different criteria for determining whether a nonprofit organization is engaged in a trade or business apply during the period in question (i.e., calendar years 1988 and 1989). Consequently, the receipts for each year must be viewed separately, each under its appropriate statute and/or rule. For this purpose, the sale of admission tickets is deemed to occur at the time payment (e.g., cash, check, or credit card) is received for the tickets.

For calendar year 1988, the occasional sale exemption is found in sec. 77.54(7), Stats., and "occasional sale" is defined in sec. 77.51(9)(a) and (c), Stats. Section Tax 11.10(3), Wisconsin Administrative Code, interprets these sections. Subsection (3)(a) of this rule sets forth the occasional sale standards for admissions, while subsection (3)(c) establishes a dollar standard for sales of "other" tangible personal property and services (exclusive of meals and admissions).

Under sec. Tax 11.10(3)(c), receipts from sales of "other" tangible personal property and services are exempt as occasional sales if the seller is not otherwise required to have a seller's permit and gross receipts from such "other" sales of property and services do not exceed \$7,000 during a calendar year. The exception from this rule for isolated and sporadic sales described in sec. Tax 11.10(3)(d), dealing with situations where the gross receipts exceed \$7,000, does not apply, as B's sales may occur daily on every day that the event exists during calendar year 1988.

Tax 11.10(3)(e) provides that paragraphs (a), (b), and (c) of subsection (3) are treated separately. If the \$7,000 standard in paragraph (c) for "other" sales is exceeded, all receipts for the calendar year from such "other" sales are taxable, and in addition

the admissions received after the receipts from "other" sales first exceed \$7,000 are taxable.

Effective January 1, 1989, sec. 77.51(9)(c), Stats., which establishes the occasional sale exemption standard for admissions, is repealed and replaced by sec. 77.54(7m). Section 77.54(7m), Stats., sets two thresholds for occasional sale exemption, 20 days and \$15,000, and does not distinguish between types of sales and events. A nonprofit organization is deemed to be engaged in a trade or business if its sales of property other than tickets and its events occur on more than 20 days during a calendar year and its gross receipts from all taxable sales exceed \$15,000 during the year.

Under the facts presented, B's sales of commemorative pins and souvenirs may occur on every day. In addition, it will sell programs and uniforms and hold the event. Thus, B will make sales of property other than tickets on more than 20 days during calendar year 1989. As indicated in its budget, B's gross receipts from taxable sales are projected to be:

Tickets	\$268,450
Programs	51,000
Souvenirs	<u>20,000</u>
Total	<u>\$339,450</u>

Therefore, the event will exceed both the 20 day and \$15,000 thresholds in calendar year 1989, and under sec. 77.54(7m), Stats., B is deemed to be engaged in a trade or business during that year. Accordingly, its sales during calendar year 1989 will not qualify as occasional sales.

You have indicated you felt that, as a nonprofit organization, B has no profit motive, and therefore, B cannot be construed to be pursuing a trade or business. The Legislature clearly did not intend to exempt all sales by nonprofit organizations; indeed the statutes set forth very precise standards as to when a nonprofit organization is deemed to be engaged in trade or business subject to sales tax during calendar year 1989 or as to when receipts from admissions qualify as occasional sales during calendar year 1988. The *Wisconsin Farm Progress Days* decision is distinguishable as to the facts and the law and does not apply in this situation. For these reasons, B cannot qualify for the sec. 77.54(7), Stats., occasional sale exemption.

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