

possession of the TV is transferred by the store to Sue in Wisconsin. The \$30 charge for renting the truck is also subject to Wisconsin sales tax because the rental or lease of tangible personal property is subject to Wisconsin sales tax.

**Example 8:** Tom goes into a Wisconsin clothing store and tries on various pieces of clothing. Tom buys the clothing for \$100 and arranges with the store to have it shipped to his home in Minnesota for an additional \$5.

The sale of the clothing and charge for shipping (\$105) is not subject to Wisconsin sales tax because possession of the clothing is transferred from the seller's agent to Tom in Minnesota.

**Example 9:** Assume the same facts as in Example 8 except that Tom has the clothing shipped to his mother's home in Wisconsin.

The sale of clothing and charge for shipping (\$105) is subject to Wisconsin sales tax because possession is transferred from the seller's agent to Tom's mother at his mother's home in Wisconsin.



## 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 three 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.*

W8937006, June 27, 1989

**Type Tax:** Homestead Credit

**Statutes:** Section 71.52(7), Wis. Stats. (1987-88)

**Issue:** Owner of homestead where property is held by an estate

This letter responds to your request for a private letter ruling regarding the amount of homestead credit to which you are entitled for 1987 and 1988.

Information provided in your letter, in two follow-up letters, and in a telephone conversation indicates the following:

Your father died on September 22, 1986, and his will bequeathed all his assets, including his residence in Wisconsin, equally to his two children, namely you and your brother. You and your brother had resided in the residence prior to your father's death and continued to reside there through part of 1988 when it was sold by the estate. Since the estate had insufficient cash and personal property to pay liabilities, you and your brother paid numerous bills, including real estate taxes on the residence in 1987 and 1988. Both you and your brother were over age 18 as of December 31, 1987, so in that respect you qualified to claim a homestead credit.

On January 8, 1987, you and your brother paid the 1986 real estate taxes of \$1,968.28 on the residence at Wisconsin, with your personal funds. Your brother purchased a cashier's check and you reimbursed him for your one-half share of the taxes.

The 1987 property taxes were \$1,919.31. Partial payments of these taxes were made on January 25, 1988, (\$639.77) and on March 25, 1988, (\$319.89), and the balance of \$972.45 was paid with the proceeds from the sale of the residence, at the closing.

You moved from the residence to your present dwelling in the latter part of March 1988. The property was sold by the estate on April 21, 1988, and in addition to the remaining 1987 property taxes, the pro rata share of 1988 property taxes were credited on the closing statement. The remaining proceeds from the sale were transferred to the estate to pay outstanding funeral, medical, and miscellaneous expenses, and the balance of approximately \$32,000 was distributed to you and your brother.

Both you and your brother filed 1987 individual income tax returns. You filed a 1987 Wisconsin homestead credit claim in December 1988 and submitted a copy of the ruling request with it. You do not know whether your brother filed a claim or not. Prior to filing your 1987 claim, you were informed by a Wisconsin Department of Revenue employe that the taxes which you paid must be considered "rent" for purposes of determining your allowable homestead credit.

You have also filed a 1988 Wisconsin homestead credit claim, based solely on the rent you paid for your homestead for 1988.

You feel you are entitled to claim a homestead credit based on the amount of property taxes paid as though you were a one-half owner of the property, and you cite the following reasons:

- The real estate taxes which you were advised were allowable as rent were not "arm's length rent" as required by statute.

- You and your brother paid, directly or indirectly, all of the real estate taxes.
- The source of the real estate tax payments is immaterial, and you paid the taxes to protect your interest in the home.
- A beneficiary of an estate pays real estate taxes as surely as a vendee under a land contract or where a lender pays the taxes from an escrow account.
- An estate is merely a custodian for the beneficiary.
- It has been ruled that the heirs are the owners of the property of a decedent; you cited several court decisions.
- One does not need title to be an owner of property; you cited several court cases which allowed a tax deduction for property taxes paid by a beneficial owner of the property.

You submitted copies of your 1987 homestead credit claim, your 1987 Wisconsin Form 1, the 1986 and 1987 property tax bills, the cashier's check for payment of the 1986 property taxes, the last will and testament of your father, domiciliary letters, general inventory, final account and petition, closing statement, and several attachments referencing your statute and court case citations.

You have requested a ruling as to the appropriate amount of "Homestead Credit" for 1987 and 1988 allowable, to yourself and to your brother, under section 71.09 of the Wisconsin Statutes based on the facts you cited.

### Ruling

Your allowable homestead credit for 1987 is \$764.00, based on household income as reported, and property taxes accrued of \$959.66, which is your one-half share of the 1987 real estate taxes of \$1,919.31, representing your one-half share of equitable ownership in the property.

Your allowable homestead credit for 1988 cannot be stated in this ruling, because sufficient information to be able to determine the correct credit has not been provided. Therefore, this ruling will only deal with the allowable proration of property taxes accrued for your former homestead at for the time you lived there in 1988.

Based on your one-half share of equitable ownership in the property, you are allowed for 1988 one-half of the prorata share of the 1988 real estate taxes, prorated from January 1, 1988, to the date you moved from the homestead. The taxes shown on the closing statement, \$1,919.31 (the 1987 taxes are used for the 1988 tax proration), equate to \$5.244 per day, and your one-half share of that amount is \$2.622 per day. Thus, on your 1988 homestead credit claim you may claim property taxes accrued of \$2.622 times the number of days you resided at the residence in 1988.

### Analysis

The issues for which a ruling was sought are 1) whether you may claim property taxes accrued or may claim only rent constituting property taxes accrued as the basis for homestead credit for the Wisconsin residence, and 2) the appropriate amount of homestead credit allowable to you for 1987 and for 1988.

Under sec. 71.52(7), Wis. Stats. (1987-88), formerly sec. 71.09(7)(a)7., Wis. Stats. (1985-86), "property taxes accrued" for homestead credit purposes means property taxes levied on a homestead owned by the claimant or a member of the household ("household" is the claimant and his or her spouse, per sec. 71.52(4), Wis. Stats. (1987-88)). Section 71.52(7), Wis. Stats., further states that if a homestead is owned by 2 or more persons who are not members of the same household, "property taxes accrued" is that part of the property taxes that reflects the ownership percentage of the claimant.

The determinative factor in this ruling is "ownership." While you never held "record title" to the homestead, you did have "equitable ownership" of a one-half share of the homestead. This is by virtue of the fact that the record title holder died and by will bequeathed the homestead to you and to your brother in equal shares. Furthermore, based on the information you submitted, the will was not contested, you and your brother lived in the homestead and paid a portion of the property taxes in order to protect your interest in it, nobody else claimed any right to the property or objected to your possession of it, and when the property was sold by the estate you and your brother received the balance of the proceeds after paying outstanding debts of the estate. A claimant with equitable ownership is considered the owner of a homestead, as required under the homestead credit statutes.

Under sec. 71.52(7), Wis. Stats. (1987-88), when a homestead is sold during the year, property taxes accrued for the seller are prorated in proportion to the period of time the seller both owned and occupied the homestead during the year to which the claim relates. The seller may use the closing agreement as the basis for computing property taxes accrued, but those taxes are allowable only for the portion of the year the seller both owned and occupied the sold homestead. If a household owns and occupies a homestead for part of the year and rents a homestead for part of the year, it may claim both the proration of the taxes on the owned homestead and rent constituting property taxes accrued for the rented homestead.

Based upon the above analysis, your 1987 homestead credit claim is based on your one-half share of the 1987 property taxes accrued, that is one-half of \$1,919.31, or \$959.66. Your 1988 homestead credit claim is based on your one-half share of the prorated property taxes shown on the closing statement, further prorated for the time you both owned and occupied the homestead in 1988, plus rent constituting property taxes accrued for the 1988 rent you paid for your second homestead in 1988.



W8946007

**Type Tax:** Sales/Use

**Statutes:** Section 77.52(2)(a)1, Wis. Stats., (1987-88)

**Issue:** Sale of timeshare interests in condominium and campground facilities

This letter responds to your request for private letter ruling regarding the sale of timeshare interests in condominium and campground facilities at the subject facility.

#### Facts

The information provided in your request and letters states that B is the developer for C located in Wisconsin. B is engaged primarily in the business of selling time-share interests in condominium and campground facilities to the general public.

The interests fall into three general categories: first, B conveys whole ownership of vacant lots to individuals wishing to build a vacation home at the development. The sale of these vacant lots is not a part of this ruling request.

**Condominium (Villas and Cabins):** Secondly, B sell time-share estates of one, two, or more weeks in specific condominium units known as either villas or cabins. The purchaser acquires a fee simple ownership interest in a designated unit, or units, for a designated week or weeks within a particular season. With the fee simple title goes an undivided interest in the common elements which consist of parking, land around the condominiums and the common areas (including two outdoor swimming pools) for the convenience of the purchaser. Title does not include any ownership interest in the following recreational facilities: golf course, tennis courts, indoor swimming pool, ski hill, hotel, and undeveloped lands.

The condominium time-share interests are further divided into 3 types as follows:

(a) "Guaranteed use" periods are fixed time periods of one week whereby the time-share owner is granted, by warranty deed, an undivided interest in a unit for a specific week each year. Guaranteed use periods are no longer offered for sale and are not a part of the ruling request.

(b) "Preferred flex" periods are, likewise, undivided interests conveyed by warranty deed, which permit the time-share owner the right to choose a week in one of the units during weeks 21 through 35. (Unit week no. 1 consists of the seven consecutive days commencing on the first Friday in January of each year.)

(c) "Regular flex" periods are identical to preferred flex except that the time-share owner has the right to choose a week in a condominium between weeks 1 through 20 and weeks 36 through 52.

There are 51 weeks available for sale in each unit, while one week remains unsold and is used for maintenance. Although the interests sold in the villas at C are identified to a particular unit, the owners are required to reserve an available unit, in order to permit more flexibility in scheduling.

According to the Cabin and Villa Documents submitted with the ruling request: "Regardless of the use period(s) owned by any flexible use period owner, and regardless of the particular unit with which such use period(s) may be associated, in the purchase agreement deed or otherwise, no person shall have any right whatsoever to occupy a particular unit at any time, except pursuant to a reservation executed by or on behalf of the management firm."

**Campground, Etc.:** The third type of ownership that B sells is an undivided interest as tenant in common with hundreds of other owners in a specific parcel of real estate. That parcel of real estate contains numerous campsites. Those interests are conveyed with an undivided interest in the common areas located within the parcel for the convenience and use of the purchasers. As in the time-share estate condominium sales, these sales do not include any ownership interest in the recreational facilities (apart from a clubhouse and swimming pool located within the campground parcel which are subsequently discussed in this ruling).

**Recreational Facilities:** The recreational facilities, which are not part of commonly owned areas but are available to all purchasers of cabins, villas and campground units at no additional charge, are two tennis courts, cross-country ski and hiking trails, fishing, rowboats, bicycles, a softball diamond, basketball courts, and, within the new hotel and recreation center, a sauna, jacuzzi and exercise room, indoor pool that is 960 square feet in size with a 150 square foot whirlpool. These facilities are not open to the public.

The purchaser of a time-share interest in the campgrounds obtains an ownership interest in a clubhouse, 3,420 square foot outdoor swimming pool, 80 square foot whirlpool, horseshoe pit and shuffleboard court.

The purchaser of a time-share interest in a cabin or villa currently obtains an ownership interest in two out door swimming pools with a third under construction, located at three separate sites within the property, each of which is approximately 817 square feet.

Time-share owners and the general public pay for use of the golf course, golf carts, ski hill, ski and golf rental equipment, horseback riding and for the restaurant, lounge, trading post and gas station. Time-share owners get a 25 percent discount on golf course green fees, golf and ski equipment rental, ski lift tickets and horseback riding.

**Annual Fees for Maintenance, Repairing and Real Estate Taxes:** The owners of time-share interests in the condominiums belong to the C Village Owners Association, and the owners of time-share campground interests belong to the C Campground Owners Association. Each year, each time-share owner is required to pay to the

association maintenance fees used by the association for the maintenance of the property and a pro rata share of the real estate taxes assessed on the property.

The company operates, maintains, and develops the recreational facilities with its own funds and with its user fees. The developer also contracts with the C Village Owners Association and the C Campground Owners Association to perform maintenance on their respective properties.

### Statutes Involved

Section 77.52(2)(a)1. and 2., Wis. Stats., in its entirety currently provides: "(2) for the privilege of selling, performing or furnishing the services described under par. (a) at retail in this state to consumers or users, a tax is imposed upon all persons selling, performing or furnishing the services at the rate of 5% of the gross receipts from the sale, performance or furnishing of the services.

(a) The tax imposed herein applies to the following types of services:

1. The furnishing of rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations, including the furnishing of rooms or lodging through the sale of time-share property, as defined in s. 707.02(32), if the use of the rooms or lodging is not fixed at the time of sale as to the starting day or the lodging unit. In this subdivision, "transient" means any person residing for a continuous period of less than one month in a hotel, motel or other furnished accommodations available to the public. In this subdivision, "hotel" or "motel" means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, lodging houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins and any other building or group of buildings in which accommodations are available to the public, except for a continuous period of more than one month and accommodations furnished by any hospitals, sanatoriums, or nursing homes, or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes provided that no part of the net earnings of such corporations and associations inures to the benefit of any private shareholder or individual.

2. The sale of admissions to amusement, athletic, entertainment or recreational events or places, the sale, rental or use of regular bingo cards, extra regular cards, special bingo cards and the sale of bingo supplies to players and the furnishing, for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational devices or facilities, including, in connection with the sale or use of time-share property, as defined in s.707.02(32), the sale or furnishing of use of recreational facilities on a periodic basis or other recreational rights, including but not limited to membership rights, vacation services and club memberships."

Subdivision 1. was amended by Section 2153m of 1989 Wisconsin Act 31, effective August 9, 1989

### Request

You have requested a ruling that:

1. For the sale of time-share estates described above, the entire amount of the purchase price represents an interest in realty and, therefore, is not subject to sales tax.
2. The annual fee charged to the condominium and campground owners by their respective owners association for real estate taxes, maintenance and repairs are not taxable.
3. Fees charged by the company for the use of its hotel, ski hill, golf course, health club, and other recreational facilities are subject to sales tax.

### Ruling

1. a. Time-share Interest in Condominium Units (Villas and Cabins)

The sale of flexible use time-share interests in the C condominium units (cabins and villas) are not in actuality or in practice, fixed at the time of sale as to the starting day or the lodging unit and, thus, are subject to sales tax under sec. 77.52(2)(a)1, Wis. Stats., as amended by 1989 Wis. Act 31, effective August 9, 1989, as access to temporary lodging if the access is for a continuous period of less than one month.

- b. The purchase price of time-share interest in the campground is subject to sales tax as access to recreational facilities under sec. 77.52(2)(a)2, Wis. Stats., effective May 17, 1988. The purchase price of the time-share interest in the cottages is subject to sales tax under sec. 77.52(2)(a)1, Wis. Stats., as amended by 1989 Wis. Act 31, effective August 9, 1989, as access to temporary lodging if the access is for a continuous period of less than one month.
2. The annual fee charged by the respective owners associations for real estate taxes, maintenance, and repairs is subject to sales tax, effective as of the date the sale of the basic time-share interest is taxable, as set forth in this ruling.
3. Fees charged by the company for the use of its hotel, ski hill, golf course, health club, and other recreational facilities are subject to sales tax.

### Analysis

1. a. Condominium Units (Villas and Cabins)

The gross receipts from the sale of time-share interests in a condominium unit or group of units where the use of the rooms or lodging is not fixed at the time of sale as to the

starting day of the lodging unit are subject to sales tax. Although a specific unit and week are identified on the deed, this identification is for purposes of registration only and does not give the purchaser of the time-share interest the right to occupy that unit at that identified time. The purchaser of a time-share interest in a C condominium receives an incidental ownership in realty and a right of occupancy of a condominium unit, subject to reservation and availability. This constitutes the furnishing of rooms or lodging which is explicitly taxable under sec. 77.52(2)(a)1, Wis. Stats.

In consideration of the fact that the time-share industry is an emerging industry and in a developmental state to which the application of sales tax has been unclear and in order that the tax be uniformly and consistently applied, the sales tax under sec. 77.52(2)(a)1, Wis. Stats., became effective August 9, 1989, the date the clarifying language of 1989 Wis. Act 31 became effective.

b. Campground and Cottages

The charge for a fee simple undivided 1/5400th interest as tenant-in-common ownership of a multi-unit campground facility to be used on a first come, first serve, subject to availability basis is taxable. The primary purpose of the purchase is considered to be for admission to recreational facilities and, therefore, subject to sales and use tax. In consideration of the fact that the time-share industry is an emerging industry and in a developmental stage to which the application of sales tax has been unclear and in order that the tax be uniformly and consistently applied, the sales tax as it applies to campgrounds under sec. 77.52(2)(a)2, Wis.

Stats., became effective May 17, 1988. On this date sec. 77.52(2)(a)2, Wis. Stats., was clarified by 1987 Wisconsin Act 399 to specifically include access to time-share facilities.

The purchase price of the time-share interest in the cottages is subject to sales tax under sec. 77.52(2)(a)1, Wis. Stats., as amended by 1989 Wis. Act 31, effective August 9, 1989, as access to temporary lodging if the access is for a continuous period of less than one month.

2. The annual fee charged by the owners association for the pro rata share of real estate taxes, maintenance, and repairs is subject to sales and use tax. This fee is fully taxable since it is of the same general character as the basic time-share payment, a required payment having the primary purpose of obtaining temporary lodging or access to recreational facilities. This amount is not deductible from gross receipts per sec. 77.51(4)(a), Wis. Stats. The tax on the fee became effective on August 9, 1989, the same time the tax became effective on the basic time-share purchase price.

3. Hotel and Recreational Facilities

The fees for the use of the hotel for periods less than 30 continuous days are subject to tax under sec. 77.52(2)(a)1, Wis. Stats. The charge for the access to the ski hill, golf course, health club and other recreational facilities is subject to tax under sec. 77.52(2)(a)2, Wis. Stats.

The tax treatment of all items in this section of the ruling request applies to all periods open to adjustment.