

within 2 weeks after demand, from the owner or other person for whom it inspects any petroleum product, an inspection fee. Before July 1, 1994, the fee is 2 cents for each gallon from which the sample was taken, with certain exceptions.

Facts and Question 1: Company A, an oil company, sells oil to distributors and others. Company A receives a shipment of oil by barge or pipeline. Ten thousand gallons of oil are inspected by DILHR at the time Company A transfers the oil into storage tanks. This oil will be resold to distributors and individuals. DILHR charges Company A an inspection fee of \$200 (10,000 gallons X \$0.02).

Is DILHR's \$200 oil inspection charge to Company A subject to Wisconsin sales or use tax?

Answer 1: No. DILHR's \$200 charge to Company A for oil inspection is not subject to Wisconsin sales or use tax.

Section 77.52(2)(a)10, Wis. Stats. (1991-92), provides that the inspection of tangible personal property, which includes oil, is subject to Wisconsin sales or use tax. However, if the sale of the property being inspected is not subject to Wisconsin sales or use tax at the time of being inspected, the inspection charge is

not subject to Wisconsin tax. Since the sale of the oil is a sale for resale that is not subject to Wisconsin sales or use tax, the oil inspection charge is also not subject to Wisconsin sales or use tax.

Company A should provide DILHR with a properly completed resale certificate.

Facts and Question 2: The 2 cents per gallon oil inspection charge that Company A pays to DILHR is passed on to Company A's customers with the sale of the oil. Some of the oil Company A sells is subject to Wisconsin sales or use tax, while some of the oil Company A sells is not subject to Wisconsin sales or use tax because it is resold or an exemption applies.

Is the 2 cents per gallon oil inspection charge Company A pays and passes on to its customers with the sale of the oil subject to Wisconsin sales or use tax?

Answer 2: If the sale of oil is subject to Wisconsin sales or use tax, the 2 cents per gallon oil inspection charge that Company A pays and passes on to its customers with the sale of oil is subject to Wisconsin sales or use tax.

If the sale of oil is not subject to Wisconsin sales or use tax, the 2 cents per gallon inspection charge Company

A pays and passes on to its customers with the sale of oil is not subject to Wisconsin sales or use tax.

Section 77.51(4)(a), Wis. Stats. (1991-92), provides that gross receipts, for purposes of imposing Wisconsin sales tax, means the total amount of the sale from sales of tangible personal property without any deduction for service cost or any other expense. If the sale of the oil is subject to Wisconsin sales or use tax, the gross receipts subject to Wisconsin sales and use tax include the oil inspection charge Company A passes on to its customers who buy the oil.

Example 1: Company A sells 5,000 gallons of oil to Company B. Company A charges Company B \$0.56 per gallon plus a 2 cents per gallon inspection fee. Company B provides Company A with a properly completed resale certificate. Company A's charge to Company B of \$0.58 per gallon (\$0.56 + \$0.02) is not subject to Wisconsin sales or use tax.

Example 2: Assume the same facts as in Example 1, except that Company B does not provide Company A with a resale or exemption certificate. Company A's charge to Company B of \$0.58 per gallon (\$0.56 + \$0.02) is subject to Wisconsin sales or use tax. □



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 "W" is for "Wisconsin," the first two digits are the year the ruling becomes available for publication (80 days after the ruling is issued to the taxpayer), the next two digits are the week of the year, and the last three digits are the

number in the series of rulings issued that year. 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 delet-

ed. Wisconsin Publication 111, "How to Get a Private Letter Ruling From the Wisconsin Department of Revenue," contains additional information about private letter rulings.

The following private letter rulings are included:

Sales and Use Taxes

Telecommunication services — teleconferencing
W9320003, February 18, 1993 (p. 32)

When and where a sale takes place
Fabricating and processing
W9314001, January 13, 1993 (p. 34)

✳ W9320003, February 18, 1993

Type Tax: Sales and Use

Issue: Telecommunication services — teleconferencing

Statutes: Sections 77.51(17m) and (21m) and 77.52(2)(a)5, Wis. Stats. (1991-92) and 77.52(2)(a)5, Wis. Stats. (1989-90)

This letter responds to your request for a private letter ruling regarding the Wisconsin sales and use tax implications of teleconferencing services furnished by XYZ Corporation.

Facts .

XYZ Corporation is a Delaware corporation headquartered outside of Wisconsin. As an outgrowth of its manufacturing operation, XYZ Corporation entered into the business of providing conferencing services. Conferencing services account for 80% of XYZ Corporation's revenue.

XYZ Corporation has regional sales and conferencing offices located in

nine major metropolitan areas in the United States, and outside of the United States. Wisconsin customers are serviced by one of XYZ Corporation's area conferencing offices.

Each conferencing office is staffed by conference coordinators who personally introduce, monitor, and close the conferencing meeting. Conference participants may call into the conference office from any location in the world and are joined together by the conference coordinator using an audio bridge.

The conferencing office provides no telephonic transmission services, but serves as a juncture for conference participants. The majority of conferences are reserved in advance, although service is available on demand.

XYZ Corporation offers 3 types of conference calling services:

1. Service 1. Conferencing participants call the conferencing office at a prearranged time and are joined together through the audio bridge by the conferencing coordinator. Each person uses his or her own telephone carrier to contact the conferencing office and incurs his or her own phone usage costs during the duration of the call.

The conferencing service is billed to the customer that ordered the conference at a standard rate per minute. The rate is designed to enable XYZ Corporation to recover the direct costs of the conference coordinator and audio bridge equipment, indirect costs related to supervision, general administrative charges, plus a profit mark-up. The minutes billed are determined by multiplying the number of participants by the length of the call.

The invoice to the person that ordered the conference does not indicate where each participant is located.

2. Service 2. Conferencing participants call the conferencing office at a prearranged time and are joined together through the audio bridge by the conference coordinator. Each participant uses a predesignated 800 number provided to them by XYZ Corporation.

The customer that ordered the conference is billed in two parts: first, at a standard rate per minute for the conferencing service as described in Service 1, and second, at a standard rate per minute for the additional service provided as a part of XYZ Corporation's Service 2. The latter rate is designed to recover XYZ Corporation's direct cost of purchasing 800 service from independent long distance and local telephone companies plus certain indirect general and administrative costs. The number of minutes billed for each service component is determined by multiplying the number of participants by the length of the call. The charges for the conferencing and Service 2 components are separately stated on the customer bill.

XYZ Corporation pays sales tax to the long distance and local telephone companies on the 800 services it purchases and uses in providing Service 2.

3. Service 3. The XYZ Corporation conferencing coordinator calls the conference participants at a prearranged time and joins them together through the audio bridge.

The customer that ordered the conference is billed in two parts:

first, at a standard rate per minute for the conferencing service as described in Service 1, and second, at a standard rate per minute for Service 3. The latter rate allows XYZ Corporation to recover its direct cost of purchasing long distance and local telephone service from independent long distance and local telephone companies plus certain indirect general and administrative costs. The number of minutes billed for each service component is determined by multiplying the number of participants by the length of the call. The charges for the conferencing and line charge components are separately stated on customer bills. XYZ Corporation pays sales tax to the long distance and local telephone companies for the line charges it incurs in providing its Service 3.

Request

You ask whether the teleconferencing services XYZ Corporation provides are subject to Wisconsin sales or use tax.

Ruling

The teleconferencing service XYZ Corporation provides is a taxable telecommunications service under sec. 77.52(2)(a)5, Wis. Stats., prior to October 1, 1991, and on or after October 1, 1991.

Prior to October 1, 1991, only those services that originate in Wisconsin and are charged to a subscriber in Wisconsin or telephone located in Wisconsin are subject to Wisconsin sales or use tax. On or after October 1, 1991, only those services that originate in Wisconsin and are charged to a service address in Wisconsin are subject to Wisconsin sales or use tax.

Analysis

Prior to October 1, 1991

Section 77.52(2)(a)5, Wis. Stats. (1989-90), provides that the sale of telecommunication services of whatever nature are subject to Wisconsin sales or use tax. Interstate services are subject to Wisconsin sales or use tax only if the service originates in Wisconsin and is charged to a subscriber or telephone located in Wisconsin.

The statute is very broad in that it provides for the taxation of telecommunication services "of whatever nature." Since teleconferencing is directly related to telephone services which are clearly telecommunications services, teleconferencing is a telecommunication service "of whatever nature."

The teleconferencing service is considered to originate when and where the participant who arranged for the teleconference makes contact with XYZ Corporation to begin the teleconference. Therefore, if the participant who ordered the conference makes contact with XYZ Corporation to begin the teleconference through use of a telephone located in Wisconsin, the service originates in Wisconsin.

Based on the analysis above, sales of teleconferencing services, specifically, Service 1 and Service 2 are subject to Wisconsin sales or use tax if the participant who ordered the conference makes contact with XYZ Corporation through the use of a telephone located in Wisconsin and the service is charged to the participant in Wisconsin or the telephone in Wisconsin. Sales of Service 3 are not subject to Wisconsin sales or use tax because the service does not originate in Wisconsin (i.e., XYZ Corporation initiates the teleconference by calling out to the participants).

On or After October 1, 1991

Section 77.52(2)(a)5, Wis. Stats. (1989-90), as amended by 1991 Wisconsin Act 39, provides that the sale of telecommunication services that originate in Wisconsin and are charged to a service address in Wisconsin, regardless of the location where that charge is billed or paid, is subject to Wisconsin sales or use tax.

Section 77.51(21m), Wis. Stats., as created by 1991 Wisconsin Act 39, provides that telecommunications services means "*sending messages and information transmitted through the use of local, toll and wide-area telephone service... or any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities.*"

Teleconferencing is an integral part of the transmission of messages or information and, therefore, is considered to be within the definition of telecommunication services.

The teleconferencing service is considered to originate when and where the participant who ordered the teleconference makes contact with XYZ Corporation to begin the teleconference. Therefore, if the participant who ordered the conference makes contact with XYZ Corporation to begin the teleconference through use of a telephone located in Wisconsin, the service originates in Wisconsin.

A service address is defined in sec. 77.51(17m), Wis. Stats., as created by 1991 Wisconsin Act 39, as the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a buyer. If the participant who ordered the conference

makes contact with XYZ Corporation through the use of a telephone located in Wisconsin, then the charge is to a service address in Wisconsin.

Based on the analysis above, sales of teleconferencing services, specifically, Service 1 and Service 2 are subject to Wisconsin sales or use tax if the participant who ordered the conference makes contact with XYZ Corporation through the use of a telephone located in Wisconsin. Sales of Service 3 are not subject to Wisconsin sales or use tax because the service does not originate in Wisconsin (i.e., XYZ Corporation initiates the teleconference by calling out to the participants). □

✳ **W9314001**, January 13, 1993

Type Tax: Sales and Use

Issues: When and where a sale takes place; Fabricating and processing

Statutes: Sections 77.51(14r) and (18), 77.52(2)(a)11, and 77.53(2) and (3), Wis. Stats. (1991-92)

This letter responds to your request for a private letter ruling.

Facts

ABC Company is a Delaware corporation with its principal office outside of Wisconsin. ABC Company operates an interstate retailing business with stores located in Wisconsin.

ABC Company is considering entering into the following transaction.

A manufacturer of planes will sell an incomplete or "green" plane to ABC Company. The interior of the plane will be sufficiently complete to fly, but will contain no seats or instru-

ments. The interior of the plane will be unfinished. That is, the wiring, hydraulic lines, and insulation will be exposed to view. No seating, or any other equipment normally required to transport passengers, will be present.

The manufacturer, who is not registered to collect Wisconsin sales or use tax and is not a Wisconsin licensed dealer of planes, will fly the plane from its factory, located outside the United States, using temporarily installed seats and instruments. The plane will be taken through customs where it will receive a United States certificate of air worthiness, in addition to the certificate it will have from the Canadian government. ABC Company will take title to the plane at the port of entry into the United States.

After clearance through customs, the manufacturer will fly the plane to Wisconsin where the manufacturer's pilots will remove the temporary seats and instruments, which were used to fly the plane from the original manufacturing facility. The plane will then be turned over to the completer, who is unrelated to the manufacturer or the taxpayer and is located in Wisconsin.

The completer, under contract with ABC Company, will finish the manufacturing of the aircraft by finishing the exterior and interior and installing instruments, seating, and other equipment required to transport passengers safely. Once the plane is complete, it will be flown by the completer to the agreed point of delivery that is outside Wisconsin. The plane will be placed in service at that time and will not reenter Wisconsin, except as part of an interstate flight in the ordinary course of company business. It will be based at an airport outside Wisconsin.

Request

You ask the following:

1. Is Wisconsin sales or use tax due on the cost of the "green" plane purchased from a manufacturer outside Wisconsin and flown into Wisconsin for completion?
2. Is Wisconsin sales or use tax due on all or any part of the cost of completion of the plane which is done in Wisconsin?

Ruling

1. The "green" plane sold by the manufacturer to ABC Company is subject to Wisconsin use tax at the time the plane is transferred from the manufacturer to the completer in Wisconsin.
2. The sale of completion services and sale of tangible personal property in providing the completion service are not subject to Wisconsin sales or use tax.

Analysis

Sale of aircraft by manufacturer to ABC Company

Section 77.53(3), Wis. Stats. (1991-92), provides that every retailer engaged in business in Wisconsin and making sales of tangible personal property in Wisconsin for delivery into Wisconsin, with knowledge that the property will be stored, used, or consumed in Wisconsin, is subject to Wisconsin use tax on the sale, unless exempt. A retailer engaged in business is defined in sec. 77.51(13g), Wis. Stats. (1991-92).

The manufacturer of the plane is not registered to collect Wisconsin sales or use tax. Assuming that the manu-

facturer is properly not registered to collect Wisconsin sales or use tax because it is not engaged in business in Wisconsin as defined in sec. 77.51(13g), Wis. Stats. (1991-92), the manufacturer is not required to collect Wisconsin use tax on its sale of the plane to ABC Company.

However, sec. 77.53(2), Wis. Stats. (1991-92), provides that every person storing, using, or otherwise consuming in Wisconsin tangible personal property purchased from a retailer is liable for Wisconsin use tax if tax has not been paid to Wisconsin.

Section 77.51(18), Wis. Stats. (1991-92), defines storage to include any keeping or retention in Wisconsin for any purpose except sales in the regular course of business of tangible personal property purchased from a retailer.

Since ABC Company is keeping the aircraft in Wisconsin for purposes of having it completed, it is subject to Wisconsin use tax on the sales price of the aircraft.

Section 77.53(17r), Wis. Stats. (1991-92), provides an exemption from Wisconsin use tax for aircraft if all of the following requirements are fulfilled:

1. The aircraft is purchased in another state.
2. The aircraft's owner has paid all the sales and use taxes imposed by the state where it was purchased.
3. If the owner is a corporation, that corporation, and all corporations with which that corporation may file a consolidated return for federal income tax purposes, neither is organized under the laws of Wisconsin nor has real

property or other tangible personal property, except aircraft and hangers, accessories, attachments, fuel, and parts for the operation of the aircraft, in Wisconsin.

4. The department has not determined that the owner, if the owner is a corporation, was formed to qualify for the exception under this subsection.

Since ABC Company has real and tangible personal property in Wisconsin as a result of its retailing operation in Wisconsin, this exemption from Wisconsin use tax does not apply.

Completion of aircraft by completer

Labor

Section 77.52(2)(a)11, Wis. Stats. (1991-92), provides that the gross receipts from the producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting are subject to Wisconsin sales or use tax.

The sale of the producing, fabricating, processing, printing, or imprinting services, for purposes of imposing Wisconsin sales tax, is considered to take place where the service is furnished to the customer. For purposes of service to tangible personal property, the service is furnished where possession of the tangible personal property on which the service is performed is transferred from the service provider to the customer.

The completion of the aircraft is a service subject to tax under sec. 77.52(2)(a)11, Wis. Stats. (1991-92).

However, the sale of the completion service takes place outside Wisconsin, where possession of the serviced aircraft is transferred by the completer to ABC Company, and, therefore, is not subject to Wisconsin sales or use tax.

Parts, Accessories, and Attachments

Section 77.52(2m)(b), Wis. Stats. (1991-92), provides that with respect to services subject to Wisconsin sales or use tax under sec. 77.52(2)(a)11, Wis. Stats. (1991-92), all property physically transferred to the customer in conjunction with the selling, performing, or furnishing of the service is a sale of tangible personal property separate from the selling, performing, or furnishing of the service.

The transfer of parts, accessories, and attachments that physically become a part of the aircraft when the completer performs its services is considered a sale of tangible personal property.

Section 77.52(1), Wis. Stats. (1991-92), provides that the sale of tangible personal property at retail in Wisconsin is subject to Wisconsin sales tax.

Section 77.51(14r), Wis. Stats. (1991-92), provides that the sale of tangible personal property takes place where and when the seller or the seller's agent transfers possession of the tangible personal property to the buyer or the buyer's agent.

The parts, accessories, and attachments that become a part of the plane are transferred by the completer to ABC Company outside Wisconsin and, therefore, the sale of the parts, accessories, and attachments is not subject to Wisconsin sales or use tax. □