

4 Mobile Mixing Units

Statutes: Section 77.54(5)(d), Wis. Stats. (1991-92)

Background: Section 77.54(5)(d), Wis. Stats. (1991-92), provides a sales and use tax exemption for the gross receipts from the sale of and the storage, use, or other consumption of mobile units used for mixing and processing. The exemption includes the motor vehicle or trailer on which the unit is mounted, including accessories, attachments, parts, supplies, and materials for those vehicles, trailers, and units.

Facts and Question 1: Company A sells Company B a cement mixer mounted on a truck chassis. Water is mixed with stone, sand, or gravel in the cement mixer, and then poured into foundations or ditches under construction.

Is the cement mixer used for this purpose subject to Wisconsin sales or use tax?

Answer 1: No. The cement mixer is used for mixing and processing and is exempt from Wisconsin sales or use tax under sec. 77.54(5)(d), Wis. Stats. (1991-92).

Facts and Question 2: Company A sells a cement mixer mounted on a truck chassis to Company B. Company B will use it to mix soil with surfactants in order to remove contaminants from the soil. No tangible personal property is manufactured.

Is this mobile mixing unit subject to Wisconsin sales or use tax?

Answer 2: No. The sale of this mobile unit is exempt from Wisconsin sales or use tax under sec. 77.54(5)(d). The contaminated soil is being mixed and processed. There is no requirement that the mixer be

manufacturing tangible personal property for the exemption to apply.

5 Motor Vehicle Warranty Transfer Fees

Statutes: Section 77.52(1) and (2)(a), Wis. Stats. (1991-92)

Background: Section 77.52(2)(a), Wis. Stats. (1991-92), imposes Wisconsin sales or use tax on certain selected services. Specifically, sec. 77.52(2)(a)10, Wis. Stats. (1991-92) imposes Wisconsin sales or use tax on the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of tangible personal property.

Facts and Question 1: A customer purchases a motor vehicle and an extended warranty from a motor vehicle dealership. One of the provisions of the extended warranty contract allows the original purchaser of the motor vehicle to transfer the rights and duties under the warranty to a subsequent purchaser of the motor vehicle for \$25. The provision states that the transfer fee covers the administrative cost to the warranty company in recording the transfer.

The original owner sells the motor vehicle to another person for \$5,000. The original owner then tells the buyer of the extended warranty. The buyer agrees to pay the warranty provider \$25 to have the extended warranty transferred to the buyer's name.

Is the \$25 warranty transfer fee subject to Wisconsin sales or use tax?

Answer 1: No. The transfer fee is a charge for the record keeping required to record the transfer of the rights and duties under the warranty. The fee is a charge for a service not

subject to Wisconsin sales or use tax under sec. 77.52(2)(a), Wis. Stats. (1991-92).

Facts and Question 2: Assume the same facts as above except the warranty transfer fee applies to the warranty the motor vehicle manufacturer provides with the sale of a new motor vehicle.

Is the \$25 warranty transfer fee subject to Wisconsin sales or use tax?

Answer 2: No. The transfer fee is a charge for the record keeping required to record the transfer of the rights and duties under the warranty. The fee is a charge for a service not subject to Wisconsin sales or use tax under sec. 77.52(2)(a), Wis. Stats. (1991-92).

6 Sale and Lease of Modular Office Units

Statutes: Sections 77.51(2) and (20), 77.52(1), 77.53(2), and 77.57, Wis. Stats. (1991-92)

Wis. Adm. Code: Section Tax 11.68(4), December 1992 Register

Background: Section 77.51(2), Wis. Stats. (1991-92), provides that contractors and subcontractors are the consumers of tangible personal property used by them in real property construction activities, and sales and use tax applies to the sale of tangible personal property to them.

Section 77.51(20), Wis. Stats. (1991-92), defines tangible personal property to include leased property affixed to realty if the lessor of the realty has the right to remove the property upon breach or termination of the lease, unless the lessor of the property is also the lessor of the realty to which the property is affixed.

Section Tax 11.68(4)(a), Wis. Adm. Code, provides that in determining whether tangible personal property becomes a part of real property, the following criteria shall be considered:

1. Actual physical annexation to the real property,
2. Application or adaption to the use or purpose to which the real property is devoted, and
3. An intention on the part of the person making the annexation to make a permanent accession to the real property.

Facts: Company A sells a modular office unit to Company B. The unit is on wheels and is delivered by semi-trailer to Company B. Once delivered, Company A places the unit on cinder blocks, in a gravel area prepared by Company B. The unit is on land owned by Company B. The wheels may be removed; however, the axles remain on the unit. In certain areas, three to four foot anchors are augered into the ground to keep the unit from moving. Strips of vinyl skirting are attached to the base of the unit. Wood decks and stairs are also attached. Installation takes about two weeks. It is Company B's responsibility to physically hook up the utilities; however, the unit's utility hookups are easily accessible. Company B intends the unit to be permanent.

The units can be removed easily by removing the seams, cinder blocks, skirting, and decking with no damage to the unit. This process takes about two days. Company A will remove the unit if a customer defaults on the lease.

Question 1: Is Company A subject to Wisconsin sales or use tax on the installation and sale of the modular office unit?

Answer 1: No. Company A is installing real property when it sells and installs the modular unit.

The modular unit is physically annexed to real property because it sits on a foundation and is hooked up to utilities. "On the foundation" means the unit is off the wheels and sitting on some other support. The modular unit in question is off its wheels and sits on a support of cinder blocks, sometimes anchored to the ground. "On a foundation" does not require being bolted to a concrete slab. The modular unit is also adapted to the purpose to which the real property is devoted. Company B also intends it to be permanent. The fact that the unit is movable does not mean it is not intended to remain at the location permanently.

Question 2: Is Company A subject to Wisconsin sales or use tax on its purchase of a modular office unit that is sold and installed for Company B?

Answer 2: Yes. Company A is subject to Wisconsin sales or use tax on its purchase of the modular unit sold and installed, because contractors are the consumers of tangible personal property used by them in real property construction (sec. 77.51(2), Wis. Stats. (1991-92)).

Question 3: Assume the same facts as above, except that Company A leases the modular office unit to Company B.

Is Company A subject to Wisconsin sales or use tax on the installation and lease of the modular office unit?

Answer 3: Yes. The charge for the installation and lease is subject to Wisconsin sales or use tax. Although the unit leased is installed in the same manner as a unit that is sold by Company A, Company A is leasing tangible personal property. Company A has the right to remove the unit upon breach or termination of the lease, and because the unit is not affixed to land owned by Company A, the unit is deemed to be tangible personal

property under sec. 77.51(20), Wis. Stats. (1991-92).

Question 4: Assume that after leasing the modular unit to Company B, Company A removes the unit from Company B's property and sells the unit to Customer C, installing it on Company C's property.

Is Company A subject to Wisconsin sales or use tax on its purchase of that modular office unit that was originally purchased for lease to Company B and later sold to Company C and installed on Company C's property?

Answer 4: Yes. Company A is the consumer of the modular unit when it performs the real property construction activity of installing the unit for Company C. Section 77.57, Wis. Stats. (1991-92), provides that if a purchaser certifies in writing to a seller that property purchased will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale as exempt from sales or use tax and uses the property in some other manner or for some other purpose, the purchaser is liable for the sales tax. The tax is measured by the sales price of the property to the purchaser (Company A), but if the taxable use first occurs more than six months after the sale, Company A may use as the measure of the tax either that sales price or the fair market value of the property at the time the taxable use first occurs.

Note: If the unit was purchased from an out-of-state vendor, where a certificate was not issued, use tax would be due at the time the unit was installed as a real property improvement. Every person storing, using, or otherwise consuming in this state tangible personal property or taxable services purchased from a retailer is liable for use tax (sec. 77.53(1) and (2), Wis. Stats. (1991-92)). The tax is measured by the sales price of the

property to the purchaser (Company A), but if the taxable use first occurs more than six months after the sale, Company A may use as the measure of the tax either that sales price or the fair market value of the property at the time the taxable use first occurs. □

CORPORATION FRANCHISE AND INCOME TAXES

7 Wisconsin Treatment of Tax-Option (S) Corporations' Officer's Life Insurance

Statutes: Section 71.34(1) and (1g), Wis. Stats. (1991-92)

Background: Tax-option (S) corporation shareholders are taxed on distributions received from the corporation, except distributions of net income on which they were previously taxed. To compute the Wisconsin tax effect of distributions made to their shareholders, tax-option (S) corporations use the Wisconsin Accumulated Adjustments Account (AAA) in taxable years beginning after December 31, 1982. The Wisconsin AAA will have a zero balance on the first day of the tax-option (S) corporation's first taxable year beginning after December 31, 1982.

In addition, tax-option (S) corporations with accumulated earnings and profits may have a previously taxed income (PTI) account and, for taxable year 1987 and thereafter, a Wisconsin Other Adjustments Account (OAA). Generally, accumulated earnings and profits are those derived in taxable years in which the corporation was a regular (C) corporation and in the tax-option (S) corporation's taxable years that began before 1983. Since 1987 is the first year for which the Wisconsin OAA may be used, the Wisconsin OAA will have a zero balance at the beginning of the tax-

option (S) corporation's 1987 taxable year.

If the corporation does not have accumulated earnings and profits for Wisconsin purposes at the end of the current taxable year, the Wisconsin AAA is adjusted as follows:

The Wisconsin AAA is increased by:

- Taxable income and gains, as determined under Wisconsin law.
- Nontaxable income earned in taxable year 1987 and after. (Nontaxable income earned prior to 1987 does *not* increase the Wisconsin AAA.)

The Wisconsin AAA is decreased by:

- Deductible losses and expenses, as determined under Wisconsin law.
- Nondeductible expenses (expenses that are never deductible for Wisconsin purposes).
- Distributions applicable to the Wisconsin AAA.
- The amount of the supplement to the federal historic rehabilitation tax credit computed.

If the corporation has accumulated earnings and profits for Wisconsin purposes at the end of the current taxable year, the Wisconsin AAA is not increased by nontaxable income nor decreased by nondeductible expenses related to nontaxable income. Instead, adjustments for these items are made to the Wisconsin OAA.

Facts and Question 1: A tax-option (S) corporation is the beneficiary of a life insurance contract payable by reason of the death of an officer of the corporation. Internal Revenue Code (IRC) section 101 excludes from gross income proceeds of life insurance policies paid to the benefi-

ciary upon the death of the insured. What is the Wisconsin tax treatment of the life insurance proceeds?

Answer 1: The proceeds of the officer's life insurance policy are nontaxable income of the tax-option (S) corporation. Since the Wisconsin tax-option (S) corporation law is based on the Internal Revenue Code, the federal treatment of the life insurance proceeds applies for Wisconsin purposes.

For the 1987 taxable year and thereafter, the officer's life insurance proceeds are reported as follows:

- If the corporation does not have accumulated earnings and profits, the corporation must add the officer's life insurance proceeds to its Wisconsin AAA.
- If the corporation has accumulated earnings and profits, the corporation must add the officer's life insurance proceeds to its Wisconsin OAA, not the AAA.

For 1986 and prior taxable years, Wisconsin law did not permit an adjustment to the Wisconsin AAA for the officer's life insurance proceeds, nor did it allow the use of a Wisconsin OAA.

Facts and Question 2: If a tax-option (S) corporation is the beneficiary of a life insurance policy payable by reason of the death of a corporate officer, must the corporation report the increase in cash surrender value of the policy in its Wisconsin AAA or OAA, as appropriate, each year?

Answer 2: No, a tax-option (S) corporation may not add the increase in the cash surrender value of the officer's life insurance policy to its Wisconsin AAA or OAA, as appropriate, each year.

Facts and Question 3: A tax-option (S) corporation which is directly or indirectly a beneficiary under its officer's life insurance policy pays the premiums on that policy. For federal income tax purposes, the corporation's premium payments are not deductible pursuant to IRC section 264 and Treasury Regulation §1.264-1(b). What is the Wisconsin treatment of the premium payments?

Answer 3: The officer's life insurance premiums are treated as a non-deductible expense, the same as for

federal purposes. Since this expense is related to nontaxable income, it must be reported in the same account where the nontaxable income would be reported.

For the 1987 taxable year and thereafter, the officer's life insurance premiums are reported as follows:

- If the corporation does not have accumulated earnings and profits, the corporation must subtract the premium payments from its Wisconsin AAA.

- If the corporation has accumulated earnings and profits, the corporation must subtract the premium payments from its Wisconsin OAA.

For 1986 and prior taxable years, the corporation, whether or not it had accumulated earnings and profits, was required to subtract the officer's life insurance premiums from its Wisconsin AAA. □



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 deleted. 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 ruling is included:

Sales and Use Taxes

Advertising, video production,
and script writing
W9353006, October 8,
1993 (p. 29)

✻ W9353006, October 8, 1993

Type Tax: Sales and Use Taxes

Issue: Advertising, video production, and script writing

Statutes: Sections 77.51(14)(intro.) and 77.52(1) and (2)(a), Wis. Stats. (1991-92)

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

Facts

You have an understanding with a local cable television system to sell advertising that will be placed on the cable television system during certain times (local access time).

You contract with various companies (clients) for the production and airing of advertisements on the cable television system for a fee. This fee may or may not separately state the advertisement production and air time.

Your client provides you with an advertising concept and any script. You contract with a video company to have the advertisement produced. The video company does all filming and editing. Once production is completed, the advertisement is transferred to you and you provide it to the cable television system for airing. The video company bills you for the production of the advertisement.

Occasionally, your client will request that the script for the advertisement