



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 rulings are included:

Corporation Franchise and Income Taxes; Sales and Use Taxes

Nexus

W9728006 (p. 46)

Sales and Use Taxes

Admissions — stage performances
W9727004 (p. 48)

Exemptions — artificial equipment
W9727003 (p. 49)

✱ W9728006, April 18, 1997

Type Tax: Corporation Franchise and Income; Sales and Use

Issue: Nexus

Statutes: Sections 71.23(3) and 77.51(13g), Wis. Stats. (1995-96)

Wis. Adm. Code: Sections Tax 2.82 (January 1979 Register) and 11.97 (March 1991 Register)

This letter responds to your request for a private letter ruling, which requests confirmation of your understanding of the sales and use tax and income and franchise tax reporting requirements of JKL Corporation (JKL).

Facts

Per your request and subsequent telephone conversations, the facts are as follows:

- JKL is a retailer of tangible personal property (i.e., buys and resells canned computer programs such as Lotus and Word).
- JKL does not sell or license any of its own programs for use in Wisconsin. JKL buys other companies' canned computer programs and resells the programs to Wisconsin customers.
- JKL operates two retail stores in Wisconsin.
- JKL employs salespeople who solicit sales from corporate, government, and educational organizations.
- The salespeople are based throughout the country and made sales calls to companies in Wisconsin.
- JKL also sells its products via mail order and solicits mail order sales primarily through catalogs and other materials which are sent directly to consumers.
- JKL also accepts mail order sales through its web page and does engage in some outgoing telephone solicitation.
- All items sold through the mail order division are delivered to customers by common carrier.
- All orders are accepted and approved at its corporate headquarters located outside of Wisconsin and are delivered into Wisconsin from inventory stored in a warehouse which is located outside of Wisconsin.
- JKL is closing the two retail outlets located in Wisconsin.
- The retail outlets were leased and the lease agreements run through Month X. JKL is negotiating with the landlord to terminate the lease agreements prior to Month X.
- JKL no longer operates sales offices or employs direct salespeople, and with the closure of its retail stores in Wisconsin and termination of the lease agreements, will no longer have a physical presence in Wisconsin.
- Once JKL closes its retail stores and terminates the leases in Wis-

consin, its only contact with Wisconsin will be the soliciting of customers through the use of catalogs or other similar promotional mailings, soliciting customers through JKL's web page, or soliciting customers over the telephone. All these activities will be done by persons located outside of Wisconsin, and any orders will be delivered via common carrier from a location outside of Wisconsin.

- JKL mailed a formal withdrawal application for its Wisconsin Certificate of Authority to the Wisconsin Secretary of State on Date Y.

Request

You ask whether JKL has nexus in Wisconsin for corporate income and franchise tax purposes and/or sales and use tax purposes, since it no longer has a physical presence in Wisconsin (i.e., no longer operates sales offices, employs direct salespeople, or has retail stores located in Wisconsin).

Rulings

Corporate Income and Franchise Tax Purposes

For Wisconsin corporate income and franchise tax purposes, Wisconsin does not recognize "part-year" nexus. Therefore, for Wisconsin corporate income and franchise tax purposes, JKL will no longer have nexus in Wisconsin beginning on the first day after the close of the taxable year in which JKL closes its retail stores in Wisconsin, terminates the leases and has no other nexus creating activities in Wisconsin. Beginning with the first day after the end of the taxable year in which JKL no longer has a Certificate of Authority from Wisconsin or has nexus in Wisconsin, Wisconsin cannot

require JKL to file a Wisconsin corporate income or franchise tax return.

Example: JKL's taxable year runs from April 1 through March 31. JKL withdraws its Certificate of Authority from Wisconsin by March 31, 1997. JKL's only nexus creating activity in Wisconsin after March 31, 1997, is that it is leasing property in Wisconsin until May 1997. JKL has nexus in Wisconsin and must file a Wisconsin income tax return which covers the taxable year April 1, 1997 through March 31, 1998, because Wisconsin does not recognize part-year nexus and JKL had nexus creating activities in Wisconsin on or after April 1, 1997. Assuming JKL's operations do not change from the facts described in this ruling, JKL will not be required to file a Wisconsin corporate income or franchise tax return for taxable years beginning after March 31, 1998.

Sales and Use Tax Purposes

For Wisconsin sales and use tax purposes, once JKL closes its retail stores in Wisconsin, terminates the leases, and has no other physical presence in Wisconsin, as described in the facts above, JKL no longer has nexus in Wisconsin, and Wisconsin cannot require JKL to collect Wisconsin sales or use tax on its sales of tangible personal property which are shipped to Wisconsin customers via common carrier. JKL may, however, at its option, choose to collect and remit Wisconsin use tax for the convenience of its Wisconsin customers.

(Note: If JKL has third party representatives providing certain services in Wisconsin, such as warranty repair services, training services, or installation services, it may still have nexus in Wisconsin for both Wisconsin sales and use tax purposes and

Wisconsin corporate income or franchise tax purposes. If JKL has third party representatives conducting services in Wisconsin, it may wish to furnish information about the third party representative's activities to the Department of Revenue so that a ruling can be issued on whether these activities create nexus for JKL in Wisconsin.)

Analysis

Corporate Income and Franchise Tax Purposes

For Wisconsin corporate income and franchise tax purposes, sec. Tax 2.82(2)(b), Wis. Adm. Code, provides that under Public Law 86-272, Wisconsin may not impose its franchise or income tax on a business selling tangible personal property in Wisconsin if the business' only activities in Wisconsin are the solicitation of orders which are sent outside of Wisconsin for approval and filled by delivery from a point outside of Wisconsin.

Based on the facts provided in your request, since JKL's activities in Wisconsin will not exceed those activities protected under Public Law 86-272, Wisconsin may not impose its corporate income or franchise tax on JKL.

Sales and Use Tax Purposes

For Wisconsin sales and use tax purposes, sec. Tax 11.97, Wis. Adm. Code, provides that activities which in and of themselves **do not** create nexus in Wisconsin include:

- a) Advertising in newspapers published in or outside of Wisconsin.
- b) Sending catalogs into Wisconsin from a location outside of Wisconsin if subsequent orders are shipped either by mail or common carrier into Wisconsin.

c) Receiving mail or telephone orders outside of Wisconsin from customers located in Wisconsin if the orders are shipped into Wisconsin either by mail or common carrier.

Based on the facts provided in your request, since JKL's activities in Wisconsin will be limited to the sending of catalogs or other promotional mailings to Wisconsin customers, soliciting orders via JKL's web page, or soliciting orders via the telephone, and having the orders delivered into Wisconsin either by mail or common carrier, JKL's activities in Wisconsin do not create nexus in Wisconsin for Wisconsin sales and use tax purposes, and JKL will not be required to collect Wisconsin sales or use tax. □

✱ **W9727004**, April 16, 1997

Type Tax: Sales and Use

Issue: Admissions — stage performances

Statutes: Section 77.52(2)(a)2, Wis. Stats. (1995-96)

Wis. Adm. Code: Section Tax 11.65 (June 1991 Register)

This letter responds to your request for a private letter ruling, concerning whether Wisconsin sales tax applies to receipts of ABC Organization (ABC) from the sale of admission tickets for performances of the XYZ Theater (XYZ).

Facts

ABC is a newly established non-stock, not for profit, charitable organization, which has been organized for the purpose of bringing the performing arts and visual arts to the small, rural community of DEF and surrounding areas.

Its mission is to provide an environment that encourages a variety of opportunities to enlighten, enrich, and develop artistic growth for community members of all ages.

ABC has received a determination of exemption from the Internal Revenue Service under sec. 501(c)(3) of the Internal Revenue Code.

ABC's "fine arts season" includes a variety of enriching, entertaining events which cover many artistic styles. The following nationally-acclaimed, professional touring groups have been booked for the 1997-8 season: LMN, OPQ, RST, UVW, and XYZ. All performances will take place in the venue of ABC which is located at the north end of the DEF Public School building. Admission (ticket sales) is charged to the public for these performances.

It is XYZ for which you are requesting a "Private Letter Ruling."

XYZ provides an avenue for young people in your community to experience a stage performance that will not only tap on their talents, but also enhance their self-esteem as they participate in a full-scale musical. This experience is good for children. Growth is seen in self-confidence and skills within the drama and music areas. The community is able to share in the entertainment value of this performance. All ages can appreciate the joyful, positive excitement of the show. By bringing this artistic experience into your community, the community will be reminded of how much the arts can do for children and how relevant the arts are within the whole educational process.

Since 1970, XYZ has been creating professional drama for children with a unique style of production. It is a style that provides local audiences with the rare opportunity to experi-

ence simultaneously the polished craft of professional theatre, and the refreshing energetic talents and skills of local children, adults, and community actors.

When XYZ visits DEF, Wisconsin, it will be for a week-long residency that culminates in a full-scale musical production of a classic children's tale. Approximately 50 local performers, ranging from kindergarten to high school, are cast in the production. Five days of intensive rehearsals follow. Older students serve as assistant directors and spend the week becoming familiar with all technical aspects. The tour is complete with sets, costumes, make-up, and basic lighting equipment.

Two actor-directors from XYZ play the major roles in the production. Roles cast locally range from ensemble chorus, to Dorothy in "The Wizard of Oz," or the title characters in "Cinderella" and "Jack and the Beanstalk." Other productions include "Pinocchio," "Snow White and the Seven Dwarfs," "Johnny Appleseed," "Betty Lou and the Country Beast," "The Fisherman and His Wife," "Hansel and Gretel," "Tales of Hans Christian Anderson," "The Pied Piper," "Alice in Wonderland," and "Rumpelstiltskin."

For the audience, it's a unique, high-quality performance. For the cast, it's an intensive theatrical experience that none will soon forget. The residency includes two public performances of the final production. The actor-directors will also conduct enrichment workshops for interested school or community groups.

To help offset XYZ's fees, workshop expenses, and related advertising costs, ABC will be charging a ticket price of \$5.00 for the public performances. The audience will

primarily consist of parents, grandparents, siblings, friends, and neighbors of the children as cast and crew. Based on a standard 75% of house capacity, ABC's sales tax impact of tickets sold for these performances could amount to approximately \$200.

Request

You requested a ruling exempting ABC from making payment of Wisconsin sales tax on its receipts from sales of admission tickets for XYZ performances.

Ruling

ABC's gross receipts from sales of admission tickets for XYZ performances are subject to Wisconsin sales tax.

Analysis

Section 77.52(2)(a)2, Wis. Stats. (1995-96), imposes Wisconsin sales tax on the sale of admissions to amusement, athletic, entertainment, or recreational events or places.

Section Tax 11.65(1)(a), Wis. Adm. Code, June 1991 Register, provides, in part, that sales of admissions to musical and dance performances and plays are subject to Wisconsin sales tax.

The Wisconsin Tax Appeals Commission, in the case of *Historic Sites Foundation, Inc. d/b/a Circus World Museum vs. Wisconsin Department of Revenue*, January 21, 1986, found that the "primary objective" interpretation of sec. 77.52(2)(a)2, Wis. Stats., should be used in considering the taxability of Circus World Museum's admission fees. The primary objective interpretation, as it applies to ABC's receipts from admissions to XYZ performances, is provided below.

Although the productions, including the week-long residency, are educational for the children and other cast members involved in the productions, the facts indicate that for the audience, the XYZ performances are primarily entertainment events.

Because admissions to the XYZ performances are primarily for entertainment purposes, ABC's sales of such admissions are subject to sales tax under sec. 77.52(2)(a)2, Wis. Stats. (1995-96). □

✳ **W9727003**, April 10, 1997

Type Tax: Sales and Use

Issue: Exemptions — medical appliances

Statutes: Section 77.54(22), Wis. Stats. (1995-96)

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

Facts

Your client, an optometrist, is anticipating the sale of prescribed optical aids to achieve improvement in eyesight for individuals with permanent visual handicaps. The vision aids prescribed will be portable and desk top devices which magnify items such as newspapers, magazines, books, photographs, pill bottles, telephone directories, etc., and display the magnified images onto a television set, monitor, or head mount display unit.

The vision aids are described below:

- The Vision Aid A (VAA) is a portable, light weight, hand held electronic magnifier which connects to any television set to provide enhanced reading ability for those with low vision. VAA is a proven reading aid for individu-

als with macular degeneration, retinitis pigmentosa, diabetic retinopathy, and other low vision conditions helped by electronic magnification.

The VAA uses a camera unit which weighs seven ounces. The camera is held in either hand, making scanning and reading easy. Magnification is variable, and is changed by raising or lowering the camera from the reading material.

The VAA has two controls located on the hand held camera, an on-off switch and an image control to adjust contrast and reduce glare. The hand held camera connects to a video processor.

Power is supplied either by an AC transformer or by a battery pack, both of which connect to the video processor.

The video processor has outlet jacks for connection to a television set, a portable six inch flat screen monitor, or a head mount display unit.

- The Vision Aid B (VAB) is a light weight portable reader (camera unit) with variable magnification built in. The VAB has dual mountings — rollerbase and flexarm. The VAB can be used with any television set.

Accessories included are AC to DC power supply, push-on channel and video cables, video enhance/control module, manual A/B switch, 8 AA alkaline battery pack, training manual, workbook, flexarm and C-clamp mount, instructions, and carrying case.

- The Vision Aids C, D, and E (VAC, VAD, and VAE) are desk top readers which can be used

with any television set. These readers are also sold with 19" monitors for an additional charge.

- The Vision Aid F (VAF) is a stereoscopic, lightweight color headset monitor (head mount display unit) which is used with the VAB and, in some cases, is used with the VAC, VAD and VAE. Accessories included with the VAF are AC to DC power supply, rechargeable battery with charger, connection block and cable, foam forehead pad, video and audio cable, monaural audio adapter, clip-on visor for light shielding, users manual, and carrying case.
- The Vision Aid G (VAG) is a black and white portable monitor.
- Vision Aid H (VAH) model 12, 14, 19, and 25 desk top readers with 12", 14", 19", or 25" monitors.
- Vision Aid I (VAI) desk top reader with built-in 14" monitor.

Although prescribed, none of the visual aids described above are individually designed, constructed, or altered for a particular person.

Request

You requested a ruling of whether sales of these vision aids are subject to Wisconsin sales tax or if they are tax exempt sales under sec. 77.54(22), Wis. Stats. (1995-96).

Ruling

Sales of the following vision aids are exempt from sales and use tax:

- VAA head mount display unit, and accessories and parts.
- VAF, and accessories and parts.

For sales of exempt vision aids, it is not necessary for the seller to obtain an exemption certificate from the buyer.

Sales of the following vision aids are subject to sales and use tax:

- VAA camera unit, video processor, and battery pack.
- VAA portable six inch flat screen monitor.
- VAB.
- VAG.
- VAC, VAD, and VAE.
- VAH model 19, 25, 14, and 12 desk top readers and monitors.
- VAI desk top reader and monitor.

Analysis

Section 77.52(1), Wis. Stats. (1995-96), imposes sales tax on retail sales of tangible personal property, unless an exemption applies.

Section 77.54(22)(a), and (b), Wis. Stats. (1995-96), provides sales and use tax exemptions for "The gross receipts from the sales of or the storage, use or other consumption of the following property and of parts and accessories for the following property:

(a) Artificial devices individually designed, constructed or altered solely for the use of a particular physically disabled person so as to become a brace, support, supplement, correction or substitute for the bodily structure including the extremities of the individual.

(b) Artificial limbs, artificial eyes, hearing aids and other equipment worn as a correction or substitute for

any functioning portion of the body."

"Correction" is defined in Webster's Ninth New Collegiate Dictionary, 1991, in part, as "a bringing into conformity with a standard."

"Worn" is defined in Webster's Ninth New Collegiate Dictionary, 1991, as the past part of "wear." "Wear" is defined as follows: "1: to bear or have on the person ..."

Because none of the vision aids described in the facts are individually designed, constructed, or altered solely for the use of a particular physically disabled person, none of these vision aids qualify for exemption under sec. 77.54(22)(a), Wis. Stats. (1995-96).

The VAA head mount display unit and VAF, and accessories and parts for them, qualify for exemption under sec. 77.54(22)(b), Wis. Stats. (1995-96), because the VAA head mount display unit and VAF are worn as a correction or substitute for any functioning portion of the body.

Because the VAA camera unit, video processor, and battery pack; VAG, VAB, VAC, VAD, and VAE; VAH model 19, 25, 14, and 12 desk top readers; and VAI desk top readers are not worn by the user, they do not qualify for exemption under sec. 77.54(22)(b), Wis. Stats. (1995-96).

Note: If the VAA head mount display system, consisting of the VAA camera unit, video processor, power supply, battery pack, and head mount display unit, is sold for a total price, a reasonable allocation of the selling price may be made for the head mount display unit. The portion of the selling price allocable to the head mount display unit is exempt from sales and use tax, and the remaining portion is taxable. □