



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:

Sales and Use Taxes

Exemptions — admissions — educational events

W9728005 (p. 27)

Exemptions — web site designs

W9745007 (p. 28)

✱ W9728005, April 17, 1997

Type Tax: Sales and Use

Issue: Exemptions — admissions — educational events

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

This letter responds to your request for a private letter ruling, concerning whether Wisconsin sales tax applies to receipts of GHI Organization (GHI) from the sale of admission tickets to its three-dimensional IMAX dome theater.

Facts

GHI is a not-for-profit organization jointly owned by two income-tax-exempt museums: Museum J and Museum K. GHI is also exempt from income tax under Internal Revenue Code Section 501(c)(3) and has received a Certificate of Exempt Status from the Wisconsin Department of Revenue.

In Article III of the Articles of Incorporation of GHI it states, “The Corporation is organized and shall be operated on a not-for-profit basis exclusively for charitable, religious, educational and scientific purposes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.”

GHI manages a three-dimensional IMAX dome theater, which exclusively shows educational films. All of the films shown have a topic of history, natural history, or science. Some examples of the films shown

include *Africa - The Serengeti*, *Graphic Films Space Library*, *Search for the Great Sharks*, and *To Be An Astronaut*. GHI sells admission tickets for its IMAX theater to the visiting public.

GHI’s application for recognition of exemption under Section 501(c)(3) of the Internal Revenue Code states that the motion pictures must be in furtherance of the charitable, scientific, and educational purposes of Museum K and Museum J, as well as of GHI.

A majority of the attendees of GHI’s IMAX theater are children attending as students. Each film is accompanied by a teacher’s guide and suggested activities for students, teachers, and parents.

Request

You requested a ruling of whether GHI’s gross receipts from the sale of admission tickets to its IMAX theater are subject to Wisconsin sales and use tax.

Ruling

GHI’s gross receipts from the sale of admission tickets to its IMAX theater are not subject to Wisconsin sales and use tax.

Analysis

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

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 of sec. 77.52(2)(a)2, Wis. Stats. (1995-96), applies to GHI’s admission ticket sales as follows:

- The facts indicate that GHI’s primary objective for showing the films is to educate its audience. All of the films shown have a topic of history, natural history, or science, and each film is accompanied by a teacher’s guide and suggested activities for students, teachers, and parents. Although the persons attending GHI’s IMAX theater would most likely find the films entertaining, as well as educational, the primary objective of showing the films is educational in nature.
- GHI’s sales of admission tickets to its IMAX theater are not subject to Wisconsin sales and use tax because the admissions are not primarily for amusement, athletic, entertainment, or recreational purposes. □

✱ **W9745007**, August 18, 1997

Type Tax: Sales and Use

Issue: Exemptions — web site designs

Statutes: Section 77.52(1) and (2)(a), Wis. Stats. (1995-96)

Wis. Adm. Code: Section Tax 11.70 (April 1993 Register)

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

Facts

ABC Corporation (ABC) is a full service advertising/marketing agency. In the past year, ABC has designed and produced web sites for a few of its clients. ABC has charged sales tax on the sale of the web site designs in the same manner as it charges sales tax on sales of finished artwork.

The design of a web site and transfer to a customer or the customer’s agent can best be described by the following examples:

Example 1: Customers supply ABC with information that is transformed into a point and click interface that allows others to access the information from a home page or Web site and print out the information desired. Specifically, a customer tells the ABC designer the information it wishes to appear on the Internet. A computer is used to create the words and graphics. The design created on the computer is transmitted by ABC electronically from its computer to a server and can be accessed through the Internet.

Example 2: A customer tells the ABC designer the information it wishes to appear on the Internet.

ABC provides this design work to the customer in some tangible form (e.g., paper copy, photograph, etc.). The customer gives the design work to Company C, an Internet service provider. Company C transforms the design work into a point and click interface that is transferred to its server and can be accessed through the Internet.

Request

You ask the following questions:

1. Is the charge by ABC for the web site design it provides to a customer, as illustrated in Examples 1 and 2 above, subject to Wisconsin sales tax?
2. Is the charge by ABC for other designs it provides to a customer by electronic transmission via modem from its computer to the computer of the customer or the customer’s agent (i.e., no tangible form of the design is provided to the customer or its agent) subject to Wisconsin sales tax?

Ruling

1. The charge by ABC for the web site design it provides to a customer, as illustrated in Example 1, is not subject to Wisconsin sales tax. However, the charge by ABC for the web site design it provides to a customer, as illustrated in Example 2, is subject to Wisconsin sales tax.
2. The charge by ABC for designs, other than web site designs, transmitted electronically via modem from its computer to a computer of the customer or the customer’s agent (i.e., no hard copy of the design is provided to the customer or its agent) is not subject to Wisconsin sales tax.

Analysis

1. Section 77.52(1), Wis. Stats. (1995-96), imposes a Wisconsin sales tax on the sale of tangible personal property in Wisconsin. Section 77.52(2)(a), Wis. Stats. (1995-96), provides that the sale of certain services is subject to Wisconsin sales tax.

In Example 1, no tangible personal property is sold to the customer. ABC is transferring data that is not in a tangible form when it is transferred electronically via a modem from its computer to another computer. In addition, designing a web site is

not one of the services subject to tax under sec. 77.52(2)(a), Wis. Stats. (1995-96).

Section Tax 11.70(2)(a), Wis. Adm. Code (April 1993 Register), provides that charges for finished art are subject to Wisconsin sales tax because finished art is tangible personal property.

“Finished art” is defined in sec. Tax 11.70(1)(a), Wis. Adm. Code, to mean the final art used for actual reproduction by photomechanical or other processes, or for display purposes and is usually in the form of drawings, paintings, designs,

photographs, lettering, paste-ups, mechanicals or assemblies, charts, graphs, and illustrative material not reproduced.

In Example 2, ABC transfers finished art in a tangible form (paper, photograph, etc.). The transfer of that finished art is subject to Wisconsin sales tax under sec. 77.52(1), Wis. Stats. (1995-96).

2. Same as 1. There is no basis for sales and use tax purposes to distinguish between design of a web site and design of other information performed in the same manner. □