



Private Letter Rulings

“Private letter rulings” are written statements issued to a taxpayer by the department, that interpret Wisconsin tax laws based on the taxpayer’s specific set of facts. Any taxpayer may rely upon the ruling to the extent the facts are the same as those in the ruling.

The ruling number is interpreted as follows: The “W” is for “Wisconsin”; the first four digits are the year and week the ruling becomes available for publication (80 days after it is issued to the taxpayer); the last three digits are the number in the series of rulings issued that year. The date is the date the ruling was issued.

Certain information that could identify the taxpayer has been deleted. Additional information is available in Wisconsin Publication III, “How to Get a Private Letter Ruling From the Wisconsin Department of Revenue.”

The following private letter rulings are included:

Corporation Franchise and Income Taxes

Wisconsin treatment of S corporations and their QSSSs
W9819005 (p. 39)

Sales and Use Taxes

Single-owner entities –
“check-the-box”
W9812004 (p. 41)

* W9819005

February 17, 1998

Type Tax: Corporation Franchise and Income

Issue: Wisconsin treatment of S corporations and their QSSSs

Statutes: Sections 71.09, 71.29, and 71.34(2), Wis. Stats. (1995-96); secs. 71.34(1), 71.34(1g)(L), and 71.365(4)(a), Wis. Stats. (1995-96), as amended by 1997 Wisconsin Act 27; and sec. 71.365(7), Wis. Stats., as created by 1997 Wisconsin Act 27

This letter is in response to your request for a private letter ruling regarding the Wisconsin franchise or income tax treatment of federal S corporations and their qualified subchapter S subsidiaries (QSSSs).

Facts

Prior to January 1, 1997, DEF Company (DEF), and subsidiaries, was a C corporation owned by two domestic trusts. DEF was the common parent of a consolidated group filing a consolidated federal income tax return. Members of the group filed separate state tax returns in those states in which they conducted business. DEF did not participate in the filing of these returns and was only registered to do business in

eleven states, none of which was Wisconsin.

On November 26, 1996, GHI Corporation (GHI) was incorporated in a twelfth state (not Wisconsin). As a result of a series of transactions, GHI, wholly owned by two U.S. trusts, became the parent of DEF. GHI is not registered to do business in Wisconsin.

Effective January 1, 1997, the shareholders (the trusts) of GHI, elected federal S corporation status for GHI. Concurrently, each subsidiary (DEF and its subsidiaries) elected to be treated as a qualified subchapter S subsidiary (QSSS).

Pursuant to Internal Revenue Code (IRC) section 1361(b)(3)(A), the QSSSs are treated as “divisions” of the parent S corporation (GHI). The assets, liabilities, items of income, deduction, and credit are deemed that of the parent. Accordingly, the ultimate taxpayer for federal purposes, except for certain items which are taxable at the corporate level, are the shareholders (the trusts) of the parent S corporation.

For purposes of remitting 1997 estimated tax, payments were made to the states by or on behalf of the shareholders (the trusts). No withholding has been remitted on behalf of the trusts’ income. Where applicable, corp-

orate level estimated taxes were paid by the specific entity.

Request

Based on the preceding fact pattern, you requested a ruling determining the treatment of federal S corporations and their QSSSs for Wisconsin tax purposes. You have requested responses to the following questions:

1. Will Wisconsin adopt the federal provisions of IRC section 1362 with respect to:
 - a) The existence of a consolidated S corporation group?
 - b) The ultimate taxpayer as the shareholders of the parent S corporation and not the corporate entity?
2. Is it required for the upper tier parent corporations, DEF and GHI, to register to do business with Wisconsin?
3. Were the procedures used in remitting estimated taxes acceptable to Wisconsin? May you continue with this procedure in future years or does Wisconsin recommend an alternative approach?
4. If the federal treatment of S corporations is not adopted, will nexus with Wisconsin be deemed upon DEF or GHI because of the ownership of its operating subsidiary?

Ruling

For taxable years beginning on or after January 1, 1997, the federal treatment of S corporations and their QSSSs applies for Wisconsin franchise or income tax purposes, with certain exceptions. Wisconsin's tax-option (S) corporation law is mandatory for those corporations that have an election in effect under subchapter S of the Internal Revenue Code for a taxable year and have not elected out of Wisconsin tax-option status under sec. 71.365(4)(a), Wis. Stats. If an S corporation has a QSSS, neither the corporation nor its QSSS may elect out of Wisconsin tax-option (S) corporation status.

The QSSSs are disregarded as separate corporations for Wisconsin franchise or income tax purposes, and their assets, liabilities, and items of income, deduction, and credit are treated as those of the parent tax-option (S) corporation. If Wisconsin has jurisdiction to impose franchise or income taxes on a QSSS, Wisconsin has jurisdiction to tax the parent tax-option (S) corporation.

The answers to your specific questions are as follows:

1. Generally, the provisions of IRC sections 1361 and 1362, relating to the eligibility to be an S corporation, the treatment of certain wholly owned subsidiaries, and the election, revocation, and termination of S corporation status, apply for Wisconsin purposes. However, Wisconsin does not permit 80%-or-more-owned

C corporation subsidiaries to file a consolidated return with their affiliated C corporations.

With certain exceptions, the shareholders of the parent S corporation are the ultimate taxpayers. The shareholders are subject to income tax based on their proportionate share of the S corporation's net income. The parent S corporation may be subject to the franchise tax measured by certain federal, state, and municipal bond interest and to the temporary recycling surcharge.

2. The Department of Revenue is unable to issue a ruling with respect to the requirements for the upper tier parent corporations, DEF and GHI, to register to do business with Wisconsin. The laws relating to the registration of non-Wisconsin corporations are administered by the Corporation Section, Division of Corporate and Consumer Services, Wisconsin Department of Financial Institutions, P.O. Box 7846, Madison, WI 53707-7846 (telephone (608) 261-9555).
3. Since the parent S corporation may be subject to franchise tax and to the temporary recycling surcharge, it must make estimated tax and surcharge installment payments if the total amount due for 1998 will be \$500 or more.

The shareholders must make estimated tax installment payments based on their

shares of the corporation's net income.

4. Not applicable.

Analysis

For Wisconsin franchise and income tax purposes, "tax-option (S) corporation" means a corporation which is treated as an S corporation under subchapter S of the Internal Revenue Code and has not elected out of tax-option corporation status under sec. 71.365(4)(a), Wis. Stats., for the current taxable year. Sec. 71.34(2), Wis. Stats. (1995-96).

A federal S corporation that has a QSSS may not make an election under sec. 71.365(4)(a), Wis. Stats., not to be a tax-option (S) corporation for Wisconsin purposes. Sec. 71.365(4)(a), Wis. Stats., as amended by 1997 Wisconsin Act 27.

If a tax-option (S) corporation elects to treat a subsidiary as a QSSS for federal purposes, that election also applies for Wisconsin franchise and income tax purposes. If Wisconsin has jurisdiction to impose tax on the QSSS, Wisconsin has jurisdiction to impose tax on the tax-option (S) corporation. Sec. 71.365(7), Wis. Stats., as created by 1997 Wisconsin Act 27.

"Net income or loss" of a tax-option (S) corporation means net income or loss computed under the Internal Revenue Code, with certain exceptions. Sec. 71.34(1), Wis. Stats., as amended by 1997 Wisconsin Act 27. For taxable years that begin after

December 31, 1996, and before January 1, 1998, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 1996, with certain exceptions, and as amended by Public Laws 105-33 and 105-34. Sec. 71.34(1g)(L), Wis. Stats., as amended by 1997 Wisconsin Acts 27 and 37.

Corporations subject to Wisconsin franchise or income taxes may be required to make estimated tax and temporary recycling surcharge payments as provided under sec. 71.29, Wis. Stats. (1995-96). A tax-option (S) corporation's shareholders are subject to the estimated tax provisions of sec. 71.09. Wis. Stats. □

* W9812004

December 22, 1997

Type Tax: Sales and Use

Issue: Single-owner entities – "check-the box"

Statutes: Sections 77.51(10) and 77.58(3), Wis. Stats. (1995-96), as amended by 1997 Wisconsin Act 27

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

Facts

ABC Corporation, a Wisconsin corporation, is a closely held S corporation with all stock owned by one individual ("the owner"). ABC Manufacturer is a Wisconsin-based company that manufactures and assembles products that are sold to and

resold by ABC Corporation. ABC Manufacturer also purchases manufactured products from other Wisconsin suppliers for resale to ABC Corporation. ABC Corporation may install the products purchased from ABC Manufacturer in real property construction.

In a private letter ruling dated September 28, 1994 (W9451009, *Wisconsin Tax Bulletin* 91, pages 41 to 43), the department determined that sales of materials to ABC Manufacturer that it used to manufacture products sold to ABC Corporation were exempt from Wisconsin sales or use tax under sec. 77.54(2), Wis. Stats. The sale of products by ABC Manufacturer to ABC Corporation to be used in real property construction by ABC Corporation were not subject to Wisconsin sales or use tax where possession of the products transferred to ABC Corporation outside Wisconsin. Where possession transferred to ABC Corporation in Wisconsin, the sales of products by ABC Manufacturer to ABC Corporation were subject to Wisconsin sales or use tax unless ABC Corporation resold the products without installation.

The owner proposes to restructure his companies such that existing divisions become qualified subchapter S subsidiaries (QSSSs) under a newly formed S corporation holding company.

Specifically, the owner proposes to form a holding company, ABC Holding, which will be an S corporation. ABC Holding will form several wholly owned

subsidiaries which ABC Holding will elect to treat as QSSSs under Internal Revenue Code § 1361. Each subsidiary will conduct the activities associated with a particular product line. No sales of tangible personal property or taxable services will be made by ABC Holding. For federal and Wisconsin income tax purposes, the QSSSs will be ignored and effectively treated as divisions of the parent S corporation.

Pursuant to the reorganization, The owner will contribute his shares of ABC Corporation and ABC Manufacturer to the holding company. Simultaneously, ABC Corporation will transfer by dividend its assets (except for the assets it will retain to carry on its business as a QSSS) to ABC Holding. Again simultaneously, ABC Holding will contribute to the capital of each QSSS the assets needed by the QSSS for the business it will carry on after the reorganization. The various transfers will be accomplished by appropriate corporate resolutions, assignments, bills of sale, and other legal documentation such that, effective January 1, 1998, the former business of ABC Corporation will be conducted under the new multi-corporation format. Also, as part of the reorganization, ABC Manufacturer will change its name to ABC Products.

Additional assets and functions will be added to ABC Products so that the dock leveler/restraint business will include business activities other than just manufacturing (e.g., marketing, administration, and sales support).

However, sales and installations of products of ABC Products will be made through ABC Corporation or other QSSSs. Thus, ABC Products will continue to manufacture or assemble products to be sold to or resold by ABC Corporation.

ABC Products will not be party to any installation or construction activities. ABC Products will sell its products to ABC Corporation and deliver the products using common or contract carriers retained and paid by ABC Products. Possession of the products will not pass to ABC Corporation or its customers until delivered to the state of ultimate destination or installation.

Request

You ask whether the following statements are correct:

1. ABC Holding is not a seller or retailer of tangible personal property sold by its qualified subchapter S subsidiaries, but shall report their taxable transactions on their behalf pursuant to sec. 77.58(3), Wis. Stats. (1995-96), as amended by 1997 Wisconsin Act 27.
2. The private letter ruling issued September 28, 1994, shall continue in effect as to the tax consequences of the sales transactions between ABC Products and ABC Corporation. The restructuring of these entities as qualified subchapter S subsidiaries of ABC Holding has no attendant sales and use tax consequences for the sales by

ABC Products to ABC Corporation.

3. ABC Holding and each QSSS making taxable sales shall each hold a seller's permit.

Ruling

1. ABC Holding is not a seller or retailer solely because its qualified subchapter S subsidiaries, which sell tangible personal property or taxable services, are disregarded as separate entities for Wisconsin franchise or income tax purposes.
2. The private letter ruling issued September 28, 1994, shall continue in effect as to the tax consequences of the sales transactions between ABC Products and ABC Corporation. The restructuring of these entities as qualified subchapter S subsidiaries of ABC Holding has no attendant sales and use tax consequences for the sales by ABC Products to ABC Corporation.
3. ABC Holding is responsible for reporting the gross receipts and taxable purchases of each QSSS, however, if it makes no sales of tangible personal property or taxable services, it cannot be required to hold a seller's permit. Each QSSS making sales of tangible personal property or taxable services is required to hold a seller's permit.

Analysis

Various income and franchise tax statutes were amended and created by 1997 Wisconsin Act 27 to adopt federal provisions that allow qualified subchapter S subsidiaries (QSSSs) and certain single-owner entities to be disregarded as separate entities for Wisconsin income or franchise tax purposes.

As part of this same legislation, two sales and use tax provisions were amended as described below:

1. The definition of “person” in sec. 77.51(10), Wis. Stats., was amended to include single-owner entities disregarded as separate entities under ch. 71, Wis. Stats.
2. Section 77.58(3)(a), Wis. Stats., was amended to provide that the owner of a

qualified subchapter S subsidiary or single-owner entity disregarded as a separate entity for Wisconsin income or franchise tax purposes must report taxable sales and purchases of the disregarded entity on the owner’s sales and use tax return.

No sales and use tax provisions, other than 1 and 2 above, were amended or created to state that a qualified subchapter S subsidiary or single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes is also disregarded as a separate entity for Wisconsin sales and use tax purposes. Therefore, for sales and use tax purposes other than reporting and collecting sales and use tax, ABC Products is an entity separate from ABC Holding and other QSSSs. The transfer of ownership to, posses-

sion of, title to, or enjoyment of property between these separate legal entities is a “sale” as the term is defined in sec. 77.51(14), Wis. Stats. (1995-96).

Each QSSS required to hold a seller’s permit will be assigned a seller’s permit that has a common number but a different letter suffix. The account for that common number will be referenced in some manner to ABC Holding, who is the owner and responsible for filing a sales and use tax return reporting receipts and purchases of each QSSS. Permits held at the time of reorganization should be surrendered and new permits, as required, applied for. Applications should indicate that the QSSS applying for the permit is a QSSS that is disregarded as a separate entity for reporting purposes and such reporting will be done by the owner, ABC Holding. □