

**Example:** Company J sells office supplies to Company K. Company K will use 20% of the office supplies at its headquarters in Wisconsin. The remaining 80% of office supplies will be resold by Company K. Company K issues a resale certificate to Company J, indicating that 80% of the office supplies are exempt from Wisconsin sales or use tax because they are for resale.

Company J hires a common carrier to transport the office supplies and other tangible personal property to Company K.

Company J bills Company K \$1,000 for the office supplies, plus \$100 for transportation.

Transportation charges may be allocated between taxable and nontaxable based on the selling price of the of the items transported. Therefore, of the \$1,100 that Company J charges to Company K, \$200 of the office supplies plus \$20 of transportation charges are subject to Wisconsin sales or use tax. The \$800 of office supplies that will be resold and \$80 of the transportation charges are exempt from Wisconsin sales or use tax. This method of allocating the \$100 transportation charge is as follows:

$\$200$  (charge for taxable office supplies)  $\div$   $\$1,000$  (total charge for office supplies) = 20%.

$20\% \times \$100$  total transportation charge = \$20 taxable transportation charge.

**Note:** If you have questions about the sales and use treatment of transportation charges that are not addressed in the Background and Questions above, write for a ruling from the Department of Revenue at P.O. Box 8933, Madison, WI 53708-8933. Copies of contracts and invoices between the buyer and the seller and the seller and carrier should be provided with the request for a ruling. □



## 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 111, “How to Get a Private Letter Ruling From the Wisconsin Department of Revenue.”*

The following private letter rulings are included:

### Sales and Use Taxes

Computer software – programs  
(canned vs. custom)  
W9831006 (p. 33)

Computer software – programs  
(canned vs. custom)  
W9832007 (p. 35)

Exemptions – personalty vs. realty  
Exemptions – governmental unit  
W9838008 (p. 38)

### \* W9831006

May 11, 1998

**Type Tax:** Sales and Use

**Issue:** Computer software – programs (canned vs. custom)

**Statutes:** Sections 77.51(20) and 77.52(1), Wis. Stats. (1995-96)

**Wis. Adm. Code:** Section Tax 11.71 (April 1993 Register)

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

### Facts

DEF, Inc. (DEF) licensed to ABC Company (ABC) XYZ software. The XYZ software consists of approximately ten standardized modules of which ABC uses six. The cost of the software licensed by ABC was a small piece of ABC’s planned new operating system.

DEF’s standard Software License and Support Agreement provided for the license of the XYZ software and maintenance and support. An addendum to the standard agreement provided that “software” for purposes of the agreement meant “the computer software modules and related components. . . and any modifications and new versions

thereof and substitute programs there for provided by DEF under this Agreement and the Professional Services Agreement entered into between the parties contemporaneously with this Agreement.”

The total charge for the XYZ System based on the number of users was \$1,651,483.52, excluding maintenance and support. Maintenance fees were 15% of DEF’s list price for the software. Support services were provided at \$250 per hour for the first hour and \$100 for each hour thereafter.

The Professional Services Agreement provided for the following types of services that were billed on a time and materials basis plus reasonable travel and living expenses:

1. General professional services which included:
  - a. Conducting application learning labs (\$382,950)
  - b. Planning and preparation (\$75,800)
  - c. Implementation (\$208,250)
  - d. Pre-migration service, including system simulation and issue review assistance and migration planning (\$25,600)
  - e. Conversion guidance and assistance (\$40,750)
  - f. Migration (\$62,100)
  - g. Implementation (\$62,100)
2. Enhancements done in a general fashion, but also taking into account ABC requirements, usable by other DEF customers. Such enhancements related to order processing and purchasing for which \$19,225 was paid.

3. Optional ABC specific customizations

A description of the customizations to the software provided by DEF and the estimate of man-days to accomplish is as follows:

- a. Geographic restriction. The system will prohibit the shipping of a product to a restricted location upon order entry.  
20 man days
- b. Billing agent and transfer receivables. Provides the ability for ABC to act as a billing agent for certain transfers.  
45 man days
- c. Credit management. Provides the ability for ABC to purchase receivables from distributors and calculate customer interest and payment schedule.  
32 man days
- d. Credit check services. Provides an interface with credit check organizations.  
7 man days
- e. Multiple cost items on quote. A requisitioned item will pull all additional charges as additional line items for purchases from a vendor.  
36 man days
- f. Mass updates.  
20 man days
- g. Electronic fax. Provide ability to create a fax file from information in XYZ.  
15 man days

- h. Direct ship. Turn orders requiring direct/drop ship automatically into purchase orders.  
35 man days

- i. Quote system.  
10 man days

- j. “Bread man” standing orders functionality. Requires a receipt that automatically triggers an evaluated receipt payment.  
16 man days.

Annual maintenance and support fees were increased to 20% of the original fee paid by ABC in order to receive customization of the software.

Several hundred modifications were made to the software by DEF for ABC, with the aid of ABC employees and consultants. The core of the software was significantly modified as summarized above. DEF personnel were on site at ABC for nearly two years coordinating changes to the core modules.

The department had issued an informal ruling to DEF that the software it licensed in general was not custom software and, therefore, charges for the license and installation of the software were subject to Wisconsin sales or use tax. DEF had indicated in its request for the ruling that it made no modifications to the software licensed to its customers. The only customizations consisted of enabling and disabling standard features of the software.

The general nature of the software licensed by DEF can be distinguished from the software licensed to ABC as follows:

1. The largest overseas volume user of the DEF software proc-

esses the same number of transactions in a year that ABC processes in a week.

2. ABC has over 50,000 sales order lines a day. No other company using DEF software has this volume of activity.
3. Modifications to the six modules resulted in more lines of code than comprised the original six modules. (Note: The Professional Services Agreement provided that ABC had the right to contract with third parties to aid in making custom modifications to the software with cooperation from DEF. ABC contracted with several outside consultants to aid in the project who also significantly modified the software. However, modifications by DEF alone were still significant.)
4. Speed, in some areas of the system, was enhanced by 25 times.
5. Modifications were so significant that DEF no longer supports the substantial changes made to the product for ABC.

### Request

You ask whether charges by DEF to ABC for software and related support and professional services are subject to Wisconsin sales or use tax.

### Ruling

Gross receipts from the (1) license of computer software by DEF to ABC and (2) furnishing of related support and professional services for that software are not subject to Wisconsin sales or use tax.

### Analysis

Section 77.52(1), Wis. Stats. (1995-96), imposes a Wisconsin sales tax on sales of tangible personal property and taxable services at retail in Wisconsin.

“Tangible personal property” for purposes of imposing Wisconsin sales tax is defined in sec. 77.51(20), Wis. Stats. (1995-96), to include computer programs, except custom computer programs.

Section Tax 11.71(1)(e), Wis. Adm. Code (April 1993 Register), defines “custom programs” to mean utility and application software which accommodate the special processing needs of the customer. The determination of whether a program is a custom program shall be based upon the facts and circumstances, including the following:

1. The extent to which the vendor or independent consultant engages in significant presale consultation and analysis of the user’s requirements and system.
2. Whether the program is loaded into the customer’s computer by the vendor, and the extent to which the installed program must be tested against the program’s specifications.
3. The extent to which the use of the software requires substantial training of the customer’s personnel and substantial written documentation.
4. The extent to which the enhancement and maintenance support by the vendor is needed for continued usefulness.
5. There is a rebuttable presumption that any program with a cost of \$10,000 or less is not a custom program.

6. Custom programs do not include basic operational programs or prewritten programs.
7. If an existing program is selected for modification, there must be a significant modification to the program by the vendor so that it may be used in the customer’s specific hardware and software environment.

The significant presale consultation and analysis, training, and modifications furnished by DEF and installation of the software by DEF leads to the conclusion that the software licensed by DEF to ABC is custom software. Custom computer software is not tangible personal property and therefore, the license of and service to such software is not subject to Wisconsin sales or use tax. □

### \* W9832007

May 19, 1998

**Type Tax:** Sales and Use

**Issue:** Computer software – programs (canned vs. custom)

**Statutes:** Sections 77.51(20) and 77.52(1) and (2)(a), Wis. Stats. (1995-96)

**Wis. Adm. Code:** Sections Tax 11.67 (November 1993 Register) and 11.71 (April 1993 Register)

This letter responds to your request for a private letter ruling and incorporates the additional information you provided in subsequent letters.

### Facts

GHI Corporation (GHI) operates several television and radio stations in Wisconsin and Minnesota. GHI licensed computer software consisting of various modules from JKL, Inc. (Vendor).

The software is a “traffic system” which schedules and keeps track of all programs and advertising spots shown on a number of television stations. In addition, the software provides a billing mechanism for all advertising charges and tracks accounts receivable and collections of those charges.

Additional facts are as follows:

- The initial term of the license agreement is 66 months. Total license fees for the 66-month period are in excess of \$325,000.
- Much of what Vendor did under the license agreement relates to installation, system setup, user training, technical support, and ongoing operations support. While not related to writing custom software, it is a related service requiring extensive people hours by skilled Vendor personnel. These services are not billed separately, but instead comprise a large portion of the contracted monthly payments included in the “Software License Agreement.”
- Hardware was purchased separately, and sales tax was paid on that purchase.
- An evaluation of GHI’s needs and requirements was done by Vendor prior to sale in excess of 100 hours. This evaluation, in addition to determining software needs, also encompassed the network/hardware needs of GHI.
- Modules with various individual functions were provided under the license agreement: maintenance, parameters, traffic management, billing, operator functions, and data exchange interface. The modules existed at the time of license.

There were no program code changes to the software; however, the following services provided relate to the modules licensed by Vendor:

- The software was adapted for network configuration. Because of frame technology and interaction between stations, complex configurations to the software were necessary to accommodate each of GHI’s locations. Software which controls the network protocols (not Vendor software) was modified, including networking software.
- Modifications were made to allow for special format requirements for confirmation documents and billing invoices that transferred to a laser printer at each location. Time spent making this modification was one man week.
- User specific data categories and category codes were established that applied to each transaction. Queries were then written to group transactions by category codes and by salesperson and/or national sales office, presenting data in a format not provided by the standard Vendor reports. Queries also allowed for grouping data over date ranges other than the standard broadcast and calendar months of Vendor. Time spent making these program set-up changes was three man weeks. Time spent on support for such functions after installation is estimated at one or two days per month.

The queries are conceptually similar to macros in LOTUS, however, the skill level required to make these queries work is higher. Establishing the query requires setting up a set of parameters which is beyond the scope of normal system usage.

- Vendor, as part of the license, was responsible for installing and providing training for up to 35 man weeks. Vendor actually provided about 45 man weeks for installation and 45 man weeks for training. Initial installation and training is estimated to be 35 man weeks at a separate charge of \$1,500 per week or a total of \$52,500 with expenses. Additional training and follow-up after installation is available for an additional charge.
- Vendor, during the period of the license, provides telephone support, changes in program logic, system refinements, and enhancements. Vendor has established a communications link directly, which allows diagnosis and recommendations in the event of a system crash. Telephone support is also provided where, questions are directed to Vendor’s communications center. This particular service relates to all aspects of the network system, but primarily system software crashes.

### Request

You ask whether the traffic software system acquired from Vendor by GHI qualifies as custom software for purposes of the Wisconsin sales and use tax, such that all monthly license charges and installation and training fees are not subject to Wisconsin sales or use tax.

## Ruling

The computer software licensed by Vendor to GHI is not custom software. The monthly charge that relates to the license and installation of the software, configuration of existing software and hardware, and enhancement and maintenance of such software and hardware is subject to Wisconsin sales or use tax.

Separate charges for telephone support (i.e., answering questions by telephone) and training are not subject to Wisconsin sales or use tax.

## Analysis

Section 77.52(1), Wis. Stats. (1995-96), imposes a Wisconsin sales tax on sales of tangible personal property and taxable services at retail in Wisconsin.

“Tangible personal property” for purposes of imposing Wisconsin sales tax is defined in sec. 77.51(20), Wis. Stats. (1995-96), to include computer programs, except custom computer programs.

Section Tax 11.71(1)(e), Wis. Adm. Code (April 1993 Register), defines “custom programs” to mean utility and application software which accommodate the special processing needs of the customer. The determination of whether a program is a custom program shall be based upon the facts and circumstances, including the following:

1. The extent to which the vendor or independent consultant engages in significant presale consultation and analysis of the user’s requirements and system.
2. Whether the program is loaded into the customer’s computer by the vendor, and the extent to which the installed program

must be tested against the program’s specifications.

3. The extent to which the use of the software requires substantial training of the customer’s personnel and substantial written documentation.
4. The extent to which the enhancement and maintenance support by the vendor is needed for continued usefulness.
5. There is a rebuttable presumption that any program with a cost of \$10,000 or less is not a custom program.
6. Custom programs do not include basic operational programs or prewritten programs.
7. If an existing program is selected for modification, there must be a significant modification to the program by the vendor so that it may be used in the customer’s specific hardware and software environment.

Although significant presale consultation, maintenance, enhancement, and training were provided when looking at the entire system licensed to GHI, only a portion relates solely to the Vendor software in question. The department does not consider that portion relating only to the software licensed by Vendor to be significant. More importantly, no significant modifications were made to the program by the vendor.

Document formats were created and queries were set up using the software. Configurations to the software were necessary. However, the program code or language, which existed prior to the license to GHI, was not changed to make it useable by GHI. The department does not consider the document formats, queries, and configurations to be

significant modifications to the software.

Section 77.52(2)(a)10, Wis. Stats. (1995-96), provides that the service or maintenance to tangible personal property is subject to Wisconsin sales or use tax. Vendor, in providing installation of, and maintenance and enhancement to, the computer network (e.g., computer hardware and computer software, except custom), is providing a service to tangible personal property that is subject to Wisconsin sales or use tax.

Training services are not subject to Wisconsin sales or use tax under sec. 77.52(2)(a), Wis. Stats. (1995-96). Similarly, charges for telephone support that results only in a technician answering questions for a customer, where the customer performs the service as instructed by the technician, are not subject to Wisconsin sales or use tax. The technician has **not** serviced, repaired, or maintained the software, which is a service subject to tax under sec. 77.52(2)(a)10, Wis. Stats. (1995-96). The technician has provided only training services, while the customer has actually serviced the software based on the technician’s instruction.

Telephone support charges relating to installation, configurations, inspection, and other services to computer hardware and computer software, except custom software, that are performed directly by the technician either on the customer’s site or off-site through use of a modem, are subject to sales tax under sec. 77.52(2)(a)10, Wis. Stats. (1995-96).

Section Tax 11.67(2)(c), Wis. Adm. Code (November 1993 Register), provides that if there is a single charge for both taxable and nontaxable services, the entire charge is

subject to tax, unless it is determined by the department that another method, such as allocation or primary purpose of the transaction, more accurately reflects the tax. If the charges for taxable and nontaxable services are separately stated on an invoice, the tax applies only to the charge properly attributable to the taxable services, unless it is determined by the department that the primary purpose of the transaction method for computing the tax more accurately reflects the tax. □

✳ **W9838008**

June 25, 1998

**Type Tax:** Sales and Use

**Issue:** Exemptions – personalty vs. realty; Exemptions – sales to governmental unit

**Statutes:** Section 77.54(9a), Wis. Stats. (1995-96)

**Wis. Adm. Code:** Section Tax 11.68 (October 1997 Register)

This letter responds to your request for a private letter ruling, regarding whether the water purification equipment and property described in the facts below retains its status as personal property when installed. Thank you for the additional information you have submitted.

**Facts**

The joint venture of MNO, Inc. (MNO) and PQR, Inc. (PQR) has been engaged by the City of X Department of Public Works (“DPW”) to construct two water purification plants (“Projects”). As provided in the contract, MNO/PQR will provide all labor, material, equipment, professional design services, administration, and supervision required for the complete design, permitting, procurement, construction, testing, and commissioning of

the complete ozonation system at the water purification plants.

The contract can be segregated into two primary aspects: first, the construction of new buildings; and second, the installation of the ozonation system. The ozonation system is the subject of this request.

*Description of system and process.* In general terms the ozonation system includes liquid oxygen storage tanks and related equipment, ozone generation equipment, ozone fine-bubble diffusion equipment, cooling water system, off-gas destruction equipment (ozone destruct system), ozone residual control equipment, harmonic mitigation equipment, instrumentation and control systems, safety, monitoring and control equipment, start-up services, all performance testing, all acceptance testing and all required support systems including equipment and operations buildings, contact tanks, raw water pump modifications, electrical systems, HVAC systems, and process piping and plumbing systems.

The ozonation process itself begins when raw water pumps bolted to concrete pads draw water from a specific Body of Water. The water is pumped into contact basins for treatment with ozone gas. Cooling water for the ozone generators and power supply units is pumped by booster pumps bolted to concrete pads into water bath vaporizers. These vaporizers are tanks bolted to concrete pads. Ozone gas is generated and conveyed to fine-bubble diffusion systems located in the contact basins. Supplemental air is provided by compressed air systems also bolted to concrete pads. This process disinfects the water. The ozone is generated on-site from liquid oxygen stored on-site in 20,000 gallon storage tanks. The ozone gen-

erators and power supply units are bolted to concrete pads.

Once the water is purified, an ozone destruct system consisting of blowers and catalytic destruct units connected to the contact basins removes the ozone from the air above the water surface. These items are also bolted to concrete pads. The purified water is then conveyed into the balance of the existing treatment plant and subsequently piped into DPW’s distribution systems for delivery to commercial and residential customers.

As part of the process monitoring system, the residual control equipment is used to check the performance of the ozone disinfection system and is also used to set the dosage rate for the hydrogen peroxide. The hydrogen peroxide dissipates any remaining ozone in the water at the end of the ozone treatment process.

The harmonic mitigation equipment is used to condition the electric power which is used in the ozone generation process.

Throughout the process, piping and tubing connect the processing equipment described above. The flow of water and chemicals through this tubing is regulated by valves and slide gates controlled by various instrumentation, gauges, and computers.

*Description of Tanks.* There are three types of tanks being provided for this project. One type is called an ozone contactor, another type is hydrogen peroxide storage tanks, and the third type is liquid oxygen (LOX) storage tanks.

The ozone contactors are reinforced concrete structures constructed on site, partially buried, the remainder extending above grade. The above

grade portions are faced with brick masonry or native stone. The contactors also have a reinforced concrete flat slab roof. The contactors will be used to disinfect the untreated Body of Water water by serving as the point of application for the ozone gas and as a holding tank to allow sufficient time for the ozone gas to react with the contaminants. There are four contactors holding approximately one million gallons each at the Plant Y plant site and two contactors holding approximately 800,000 gallons each at the Plant Z plant site.

The hydrogen peroxide tanks are used for bulk storage and feed pump storage of this chemical which is used to neutralize any remaining ozone gas in the water before it leaves the ozone contactors. There is one system at each plant site. The bulk storage tanks are constructed of aluminum, and the feed pump storage tanks (day tanks) are constructed of stainless steel. Both the bulk storage tanks and the day tanks are mounted on concrete pads inside the operations buildings. The bulk storage tanks contain 1,000 gallons at Plant Z and 1,500 gallons at Plant Y and the day tanks contain fifty gallons each. Both the bulk storage tanks and the day tanks are fabricated off site and shipped to the job site for installation.

The cryogenic liquid oxygen storage tanks are made of double wall, insulated construction, the inner vessel is constructed of stainless steel and the outer vessel of carbon steel. There are two 20,000 gallon tanks located at each plant site. They are fabricated off site, shipped to the job site, and mounted in exterior locations on reinforced concrete cradles. These tanks are used to store the liquid oxygen until it is vaporized into gaseous oxygen and then converted to ozone gas by the application of electrical energy.

*Functions of HVAC systems.* There are two principle functions. The first is to provide normal heating and ventilating of the occupied/equipment spaces in the buildings. The second is to provide emergency, high rate exhaust of these areas to the outside atmosphere should a leak develop in the ozone system. Devices are placed throughout these areas to monitor the presence of ozone gas.

There is also a “process” system which exhausts air from the ozone contactors to remove any lingering ozone gas which may accumulate in the space above the water surface, below the roof slab. This air is processed through an ozone destruct system before being released into the atmosphere. This system operates on a continuous basis.

*Description of Process Piping.* There are two types of “process” piping. The major process piping consists of large diameter (48 inch through 120 inch) prestressed concrete and steel pipe. The piping carries the water being treated throughout the plant sites. Most of this piping is buried except where access is required within reinforced concrete vaults or inside the buildings, to equipment installed in the piping such as flow meters, valves, and monitors.

The other types of “process” piping are smaller diameter (less than 8 inches), generally exposed inside the buildings, and convey the following:

**Liquid Oxygen:**

From the LOX storage tanks to vaporizer equipment.

**Gaseous Oxygen:**

From the vaporizers to the ozone generation equipment.

**Ozone Gas:**

From the ozone generation equipment to banks of diffusers located inside the ozone contactors.

**Sample Water - 1:**

From the ozone contactors to dissolved ozone monitoring equipment which provides feedback on the process for control purposes (at both plants).

**Sample Water - 2:**

From the large effluent piping at Plant Y to the laboratory for monitoring chlorine levels in the finished drinking water.

**Chemical Piping - 1:**

To convey hydrogen peroxide from storage tanks into the effluent of the ozone contactors (at both plants).

**Chemical Piping - 2:**

To convey chlorine, ammonia, fluoride, and phosphoric acid from existing equipment to the new feed points (at Plant Y only).

**Compressed Air:**

To convey compressed air from new compressors into the ozone gas system to supplement ozone gas and to convey air to operate chemical sump pumps.

**Plumbing:**

Other systems convey building and service water from existing plant storage to the new buildings, collect drainage and convey to disposal and or collect storm water from roofs and surface areas and convey to disposal off site.

*Description of Electrical Systems.*

There are various levels of electrical systems. At each plant, there are primary power (480 volt) feeds from the plant substation to the new transformers at the ozone generation operations buildings. In addition, at the Plant Y site, a new plant wide

(27.6 kV) power feed is being provided consisting of a major substation.

There are also power systems which convey power from the motor control lineup to each major piece of equipment such as the power supply units for the ozone generators, pumps, HVAC equipment, air compressors, ozone destruct units, etc.

A motor control lineup or motor control center (MCC) is an electrical enclosure containing multiple circuit breakers and motor controllers (starters). Typically, one or two electrical power feeds are brought to the MCC. These are typically referred to as a “main(s)” or “incoming line(s).” Inside the MCC, the electrical power provided by the mains or incoming lines is divided among the circuit breakers and motor starters. The circuit breakers and motor starters are used to distribute the power to equipment requiring electricity, such as HVAC fans, air compressors, pumps, etc.

Some of the electrical loads fed from the MCC are furnished with their own controls. Air compressors, for example, typically are provided with a control panel that controls the operation of the compressor. This type of equipment will be fed by a circuit breaker in the MCC.

Motor starters are used when the loads require the electrical power feed to be controlled. Pumps are a good example. Pumps are operated by turning electrical power to the motor on and off. The electrical power to the motor is controlled at the motor starter. Control switches, value interlocks, and supervisory control and data acquisition systems are connected to the motor starter to control the electrical power feed to the motor and, as a result, control the operation of the pump.

There is also equipment to equipment wiring, such as from the power supply units to the ozone generators.

Another electric system provides volt service, such as lighting, some sump pumps, and certain HVAC equipment.

In addition to power electrical systems, there are also systems for instrumentation and control of the water treatment process equipment.

The major electrical service from the substations on site is conveyed through underground duct banks. Inside the buildings, major duct banks are buried beneath floor slabs, however, there are portions of this which are exposed in conduits leading to the ozone generation and other major equipment.

*Startup Services.* MNO/PQR is providing training and startup assistance for DPW staff consisting of formal training classes and onsite instructions.

*Performance Testing.* As part of MNO/PQR’s contract with DPW, MNO/PQR has certain performance guarantees which set minimum power, liquid oxygen, and cooling water consumption for various levels of ozone gas feed. This effort will be performed after the project meets the substantial completion requirements of the contract.

*Acceptance Testing.* As part of the installation, MNO/PQR is providing functional acceptance testing to ensure that the systems are operating as intended. This consists of a prescribed series of simulations and checks to verify that the equipment and overall systems operate as intended. This work must be completed to meet substantial completion requirements.

*Support Systems.* Support systems consist of building lighting, HVAC, plumbing, etc.

*Raw Water Pumping Modifications.* At the Plant Y plant, MNO/PQR is intercepting the Body of Water water before it enters the existing treatment plant and conveying it to the new ozonation facilities. To do this, some of the existing raw water pumps must be modified to provide sufficient additional pressure to convey water to the new contactors. This work consists of modifying two of the existing pumps by providing new impellers within the pump, new motors, and new power feed equipment. While the modifications are being made, the pumps will also be provided with other miscellaneous upgrades. The other pumps do not need this modification.

*Plumbing Systems.* Plumbing systems at each plant site consist of restroom facilities, floor drainage, roof drainage, and washdown/ service water systems. In addition, there are drainage systems for the ozone contactors.

The drainage system for the ozone contactors is a combination of above and below ground piping. Most of the drainage system is, however, buried beneath the floor slabs of the contactors or underground.

Much of the plumbing for drainage of floor slabs is buried beneath the floor slabs. Roof drainage is supported from the underside of roof slabs or decks.

### **Request**

Does the processing equipment and property described in the facts above retain its status as personal property when installed in the water purification plants, thereby qualifying for the resale exemption when acquired by MNO/PQR, and also qualifying



as an exempt sale to a governmental entity when sold to and installed at DPW?

### Ruling

The following tax treatment applies, depending on whether the property installed becomes real property or remains tangible personal property:

#### 1. Real Property (R)

MNO/PQR is the consumer of tangible personal property used in making the real property improvement. Therefore, MNO/PQR is subject to Wisconsin sales or use tax on its purchase of the property.

The sale of the real property improvement (labor and materials) by MNO/PQR to DPW is not subject to Wisconsin sales or use tax.

#### 2. Tangible Personal Property (P)

MNO/PQR may purchase the tangible personal property it installs that remains tangible personal property without tax, because it is for resale.

The sale and installation of the tangible personal property (labor and materials) is exempt from Wisconsin sales and use taxes under sec. 77.54(9a), Wis. Stats. (1995-96).

The following property as described in the facts above, for purposes of installation by MNO/PQR, is classified as noted below:

**Note:** The classifications below do not apply to concrete foundations. Concrete foundations become a part of real property when installed.

1. Tanks
    - a. Ozone contactors - **P**
    - b. Hydrogen peroxide storage tanks - **P**
    - c. Liquid oxygen storage tanks and related equipment - **P**
  2. Ozone Generation Equipment - **P**
  3. Ozone Fine-Bubble Diffusion Equipment - **P**
  4. Cooling Water Equipment (Booster Pumps and Water Bath Vaporizers) - **P**
  5. Off-Gas Destruction Equipment - **P**
  6. Ozone Residual Control Equipment - **P**
  7. Harmonic Mitigation Equipment - **P**
  8. Instrumentation and Control Systems - **P**
  9. Safety, Monitoring, and Control Equipment - **P**
  10. Equipment and Operations Buildings - **R**
  11. Raw Water Pump Modifications - **P**
  12. Electrical Systems:
    - a. Primary power feeds from plant substation to new transformers at ozone generation operations building - **R**
    - b. Substation at Plant Y site - **R**
    - c. Power feeds from plant substation to motor control center - **R**
  - d. Power system to convey power from motor control lineup to:
    - (1) Power supply units for ozone generators - **R**
    - (2) Pumps - **R**
    - (3) HVAC equipment - **R**
    - (4) Process piping and plumbing systems - **R**
  - e. Equipment to equipment wiring - **P** (Assumes equipment is personal property.)
  - f. Electrical system to provide volt service, such as lighting, some sump pumps, and certain HVAC equipment - **R**
  - g. Systems for instrumentation and control of water treatment process equipment - **P** (Assumes wiring is equipment to equipment wiring.)
13. HVAC Systems
    - a. System for normal heating and ventilating of the occupied/equipment spaces in the buildings and emergency, high rate of exhaust of these areas - **R**
    - b. "Process" system to remove lingering ozone gas - **P**
  14. Process Piping
    - a. Above ground process piping carrying water being treated throughout the plant sites - **P**
    - b. Underground process piping - **R**

- c. Other process piping:
- (1) Liquid Oxygen - **P**
  - (2) Gaseous Oxygen - **P**
  - (3) Ozone Gas - **P**
  - (4) Sample Water - 1 - **P**
  - (5) Sample Water - 2 - **P**
  - (6) Chemical Piping - 1 - **P**
  - (7) Chemical Piping - 2 - **P**
- (8) Compressed Air - **P**
- (Note: Answers to items 14. c. (1) to (8) above assume the piping is above ground.)
15. Plumbing - **R**
- Analysis**
- Section Tax 11.68(4)(b), Wis. Adm. Code (October 1997 Register), provides that certain types of property that have a variety of functions may be personal property in some instances and additions to real

property in others. When the property is installed primarily to provide service to a building or structure and is essential to the use of the building or structure, it is a real property improvement. However, when similar property is installed to perform a processing function, it may retain its status as personal property. The property listed above as tangible personal property is property which serves a process function. The property listed as real property is installed primarily to provide service to a building or structure and is essential to the building or structure. □