



## 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 ruling is included:

### Sales and Use Taxes

Common and contract carrier exemption; Disregarded entities  
W 0420001 (p. 24)

✱ **W 0420001** ✱

**February 20, 2004**

**Type Tax:** Sales and Use Taxes

**Issue:** Common and contract carrier exemption; Disregarded entities

**Statutes:** Sections 77.51(10), 77.54(5)(b), and 77.58(3)(a), Wis. Stats. (2001-02)

This letter responds to your request for a private letter ruling regarding the Wisconsin sales and use tax consequences of corporate restructuring for Company A and its wholly-owned, single-member limited liability company, Company B.

**Facts, as stated in your request:**

### I. Background Information

#### A. Overview of Company A’s Operations

Company A is a wholesale distributor with several distribution centers in Wisconsin and other states. Prior to the contemplated restructuring, Company A operated a fleet of tractors and trucks (“Power Units”) that were based at the various distribution centers.

In addition, Company A owns and/or operates trailers that are proportionately based among the various distribution centers. The Power Units and trailers (collectively the “transportation equipment”) generally operate in the midwestern portions of the United States and haul product related to Company A’s distribution operations. Company A previously paid Wisconsin retail sales tax on the purchase of all of its Wisconsin-based transportation equipment.

#### B. Company A’s Restructuring

On April 7, 2000, Company A formed Company B in Wisconsin as a single-member, wholly-owned limited liability company. Company B currently possesses for-hire interstate motor carrier operating authority issued by the Federal Highway Administration and Wisconsin intrastate motor carrier operating authority issued by the State of Wisconsin Department of Transportation (“WDOT”). Copies of those authorities are attached as Attachments A and B. Upon completion of the restructuring, Company B will operate, pursuant to its federal and state operating authorities, all of the transportation equipment formerly operated by Company A and will provide transportation services to, among others, Company A. In this regard, Company B has been granted authority to operate as an intrastate motor carrier not just in Wisconsin, but also in almost all states in which Company A has distribution facilities and in which Company B will base its transportation equipment. Company B has also registered as a foreign limited liability company in these states.

The Companies contemplate a complete transfer of ownership of Company A's Power Units to Company B in return for a membership interest in Company B. In other words, all of the Power Units will now be titled in Company B's name. For the time being, Company A's trailers will be leased to Company B under long-term leases pursuant to which Company B will be responsible for all supplies, repairs, and maintenance. In the future, Company B will purchase additional transportation equipment (both Power Units and trailers from third-party suppliers) for use in its for-hire transportation operations as the need arises.

Company B will maintain separate books and records, a separate bank account, and a distinct telephone number. It will also advertise transportation services to unrelated shippers and establish transportation service rates independent from Company A. When the restructuring is completed, Company B will begin to operate the Wisconsin-based transportation equipment and start to provide transportation services to Company A.

But for one fact, the Companies would not feel a need for a Private Letter Ruling, which, as indicated above, concerns Company B's desire to qualify as a for-hire motor carrier providing transportation services for purposes of Wisconsin sales and use tax. The fact at issue is the parties' intent to keep all truck drivers in Company A's employ and to lease those drivers to Company B for operational reasons discussed below.

## II. Business Reasons

A principal objective of this restructuring is the desire of Company A's management to separate the distribution business from the transportation operations. Company A has experienced significant growth with recent expansions into new jurisdictions. This growth has subjected Company A's distribution business to substantial federal and state transportation-related compliance regulations imposed in connection with the multi-state operation of the transportation equipment. Company A management believes that the restructuring of the operations is important to separate the distribution business from the burdens associated with the regulatory filings.

By segregating the distribution business from the transportation function, the centralization of the transportation activity in a separate legal entity should produce operational efficiencies that will permit Company B to focus its efforts on trucking in the multi-state network involved. For example, fuel tax reporting, titling, and registration of the transportation equipment is now done at each distribution center located in the various states. All of these tasks will be consolidated and performed in the name of Company B, upon completion of the restructuring, thereby resulting in efficiencies through streamlining and centralization. For example, Company B will now only be filing a single fuel tax report in its name, rather than each distribution facility filing its own individual reports.

Additional financial benefits are available as well. For example, with regulatory matters involving the Federal Motor Carrier Safety Administration (the "FMCSA"), a certain amount of flexibility is achieved when the FMCSA reviews the safety records of a transportation company operated in a separate legal entity. In this regard, safety audit assessments are based upon revenue of the company involved, which would put Company A at a competitive disadvantage if it were assessed based upon its total distribution revenues. By contrast, for-hire motor carriers generally end up being assessed based upon their transportation-related revenue, which seems logical since the transportation operations are the subject of a United States Department of Transportation ("DOT") audit. It is also anticipated that the overall liability risks associated with operations of the transportation equipment could be somewhat reduced as a result of the restructuring.

Another important benefit is that Company B's status as a separate, for-hire motor carrier will afford it the business opportunity to provide for-hire transportation services to a variety of shippers other than Company A. It would be impractical to maintain "dual operations" whereby Company A continues to operate as a private carrier in Wisconsin, yet uses the for-hire services of Company B in other states, especially when Company B has the opportunity to offer services to the general public in a streamlined, efficient fashion throughout all of the states involved and can coordinate those services cost-effectively with the services provided to Company A.

For similar reasons, it is impractical to transfer Company A's drivers to Company B in Wisconsin.

None of the other involved states requires the transfer of the drivers' employment in order to be considered a for-hire motor carrier, and so for administrative convenience they will be retained in Company A's employ to avoid the costly and cumbersome transfer of payroll, benefits administration, and associated human relations paperwork that is "second nature" to Company A, but would be a whole new endeavor for Company B over and above its numerous other regulatory compliance responsibilities. Maintaining an inconsistent dual system whereby the drivers are employed by Company B in Wisconsin, but by Company A in all other states could prove to be an administrative "nightmare" and would certainly reduce the operational efficiencies the companies hope to obtain by the proposed restructuring.

Finally, the restructuring will enable Company B to take advantage of savings that are not currently available to Company A Pursuant to Wis. Stat. § 77.54(5)(b) and similar laws in other states, Company B, as a for-hire motor carrier, will be entitled to make trucking-related purchases on a sales-tax exempt basis.

### III. The Relevant Contractual Agreements

Company A and Company B have executed various legal agreements to complete the restructuring and ensure Company B's status as a for-hire motor carrier. The relevant contracts include a Transportation Services Agreement, Administrative Services Agreement, and Driver Leasing Agreement. In addition, an Equipment Lease Agreement may be executed; however, this will only be applicable until the transfer of the transportation equipment is completed (Attachment F).

Pursuant to the Transportation Services Agreement, the terms and conditions of Company B's provision of for-hire motor carrier services to Company A are formally established. The price for transportation services is determined on a costs-plus-profit-margin basis.

The Driver Leasing Agreement sets forth the terms and conditions under which Company B leases the drivers who perform its driving services. Pursuant to provision 3 of the Driver Leasing Agreement, the drivers will remain employees of Company A for purposes of all applicable federal and state withholding taxes, social security, and unemployment insurance. However, Company B maintains com-

plete responsibility and control over the drivers with respect to requirements imposed by the DOT related to the drivers' services. This provision satisfies the Federal Motor Carrier Safety Regulations ("FMCSR") pertaining to leased drivers as well as applicable federal and Wisconsin state law. Provision 8 specifically requires Company B to compensate Company A for driver leasing services at costs related to the employment of the drivers plus a profit margin not to exceed 5% of such costs. Consequently, Company B fully reimburses Company A for the drivers' salaries, benefits, and other costs of employment.

Finally, the Administrative Services Agreement provides the terms and conditions under which Company A and its affiliates provide accounting, administrative, financial, legal, technology, human resources, insurance procurement and similar services to Company B. A fee for these services, which are commonly provided among related companies and corporate affiliates in almost all industries, is likewise set at costs plus a profit margin.

#### Request:

You requested that the department rule on the following issues:

1. As a result of the companies' restructuring, is Company B a for-hire motor carrier performing a non-taxable transportation service when it uses leased drivers?
2. As a result of the companies' restructuring, is Company B entitled to purchase its trucking-related acquisitions (i.e., trucks, tractors, trailers, accessories, parts, and supplies) exempt from retail sales tax under Wisconsin law?

#### Ruling:

1. Company B is a for-hire motor carrier performing a non-taxable transportation service when it uses leased drivers as described in the facts above.
2. Yes, assuming (1) the item it purchases is a motor truck, truck tractor, road tractor, bus, trailer or semitrailer or an accessory, attachment, part, supply, or material for such an item, and (2) Company B uses the items exclusively as described in the facts above.

**Analysis:**

1. Section 77.54(5)(b), Wis. Stats. (2001-02), provides a sales and use tax exemption, in part, for the gross receipts from the sale of and the storage, use, or other consumption of:

“Motor trucks, truck tractors, road tractors, buses, trailers and semitrailers, and accessories, attachments, parts, supplies and materials therefor, sold to common or contract carriers who use such motor trucks, truck tractors, road tractors, buses, trailers and semitrailers exclusively as common or contract carriers...”

For purposes of this exemption, “common carrier” has the same meaning as “common carrier” in sec. 194.01(1), Wis. Stats. (2001-02). “Contract carrier” has the same meaning as “contract motor carrier” in sec. 194.01(2), Wis. Stats. (2001-02).

“Common motor carrier” is defined in sec. 194.01(1), Wis. Stats. (2001-02), in part, as:

“any person who holds himself or herself out to the public as willing to undertake for hire to transport passengers by motor vehicle between fixed end points or over a regular route upon the public highways or property over regular or irregular routes upon the public highways...” (Emphasis added)

“Contract motor carrier” is defined in sec. 194.01(2), Wis. Stats. (2001-02), as:

“any person engaged in the transportation by motor vehicle over a regular or irregular route upon the public highways of property for hire”. (Emphasis added)

“For hire” as used in sec. 194.01(1) and (2), is defined in sec. 194.01(4), Wis. Stats. (2001-02), in part, as “for compensation, and includes compensation obtained by a motor carrier indirectly...”

Because Company B will receive compensation for hauling property of Company A and other shippers, it will be hauling property for hire. When using leased drivers for such activities, Company B will be a for-hire motor carrier performing a non-taxable transportation service. The fact that the drivers will be leased from a related entity does not change the for-hire motor carrier status of Company B.

2. Company B qualifies for the exemption provided in sec. 77.54(5)(b), Wis. Stats. (2001-02), on its purchases of motor trucks, truck tractors, road tractors, buses, trailers and semitrailers, and accessories, attachments, parts, supplies, and materials for such items, provided it uses these items exclusively to haul property of others for hire, as described in the facts.

Although Company B will be formed as a single-member, limited liability company, wholly-owned by Company A, and may be disregarded for federal and Wisconsin corporate income tax purposes, it is a separate entity from Company A for sales and use tax purposes relating to the transactions described in the facts.

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:

- a. 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.
- b. Section 77.58(3)(a), Wis. Stats., was amended to provide that the owner of a QSSS 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 a. and b. above, were amended or created to state that a QSSS 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 for sales and use tax purposes. Therefore, for sales and use tax purposes other than reporting and collecting sales and use tax, Company B is an entity separate from Company A.