



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

Nontaxable service vs. inspection of tangible personal property
W 0820001 (p. 14)

✱ **W 0820001** ✱

February 25, 2008

Type Tax: Sales and Use Taxes

Issue: Nontaxable service vs. inspection of tangible personal property

Statutes: Section 77.52(2)(a)10, Wis. Stats. (2005-06)

Wis. Adm. Code: Section Tax 11.67(2)(c), Wis. Adm. Code (April 2000 Register)

This letter responds to a request for a private letter ruling dated August 10, 2007, and the subsequent submission of additional requested information.

Facts, as provided:

You are a Medical Physicist certified by the American Board of Radiology in Therapeutic Radiological Physics and Diagnostic Medical Physics. You work full time at

an area hospital and occasionally provide annual evaluations of mammography systems to allow the facility to have local medical physics support.

All mammography systems are required to have a qualified medical physicist provide at least an annual survey to assure image quality. In 1992, the Food and Drug Administration (FDA) passed regulations implementing the Mammography Quality Standards Act (MQSA) (21 CFR Part 900). This initiative was intended to provide consistent and quality images to improve the detection of breast cancer. The American College of Radiology is the accrediting body for the State of Wisconsin and they determined a specific set of tests to be performed by the medical physicist and the medical facility’s quality assurance technologist for a mammography system.

According to the Mammography Quality Control Manual, the tests are “...designed to assess the continuing performance of screen-film mammography equipment, comply with the Mammography Quality Standards Act (MQSA) ...” While other tests are included in the manual to provide a more complete assessment of the system performance, such tests are not covered under MQSA.

You provide a medical physics survey of radiology equipment to assess the image quality and radiation performance. During a survey of a system, you spend about three hours measuring radiation parameters and taking about 60 images. You spend at least another hour reviewing the site’s records (recorded over the prior year) of the required periodic quality assurance tests. You then spend another two hours at a later time in your office evaluating the data collected and writing a report. You provide a summary of your findings and list improvement recommendations, if any are necessary. Any corrections would be determined by the owner and made by site personnel, the equipment manufacturer, or equivalent, and not by you or another medical physicist.

Within your survey, you do not remove any covers (of the equipment) nor do you provide the owner of the radiology equipment with any tangible personal property, other than a report. You primarily evaluate the imaging portion of the system to determine if patients are receiving a quality radiation exam and verify that a system meets federal and state regulations for an x-ray system. You may recommend within your report that a medical facility have periodic system maintenance performed by

the manufacturer or equivalent, you do not have the qualifications for this service and do not perform it.

You have no involvement with the installation of tangible personal property and do not improve the value of the equipment. You are not involved in the sale, installation, repair, or maintenance of the equipment.

Question: Is the service that you are providing subject to Wisconsin sales and use tax?

Answer: Yes, unless an exemption applies (for example, you provide the service for a hospital that holds a Wisconsin certificate of exempt status). You are providing the taxable service of inspecting tangible personal property, which is subject to Wisconsin sales and use tax under sec. 77.52(2)(a)10., Wis. Stats. (2005-06).

Analysis: Section 77.52(2)(a)10., Wis. Stats. (2005-06), in part, imposes Wisconsin sales and use tax on "...the repair, service, alteration, fitting, cleaning, painting, coating, towing, *inspection*, and maintenance of all items of tangible personal property unless, at the time of that [the] repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance, a sale in this state of the type of property repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected, or maintained would have been exempt to the customer from sales taxation..." (Emphasis added.)

Section Tax 11.67(2)(c), Wis. Adm. Code (April 2000 Register), provides that "(i)f there is a single charge for

providing both taxable and nontaxable services, the entire charge is subject to the 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."

You are performing a number of analytical procedures to the radiology equipment and reviewing the output of the equipment to determine whether the equipment is functioning properly and within the parameters established by the FDA through the MQSA. Such services are the inspection of tangible personal property. The inspection of tangible personal property (that is, the radiology equipment) is subject to Wisconsin sales and use tax, as provided in sec. 77.52(2)(a)10., Wis. Stats. (2005-06).

Although you may also provide services other than the inspection of tangible personal property, the primary objective of the service that you perform is to determine whether the performance of the screen-film mammography equipment is in compliance with the standards set forth by the MQSA (that is, the service of inspection of tangible personal property)..