



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

Computer and data processing services
W 0921002 (p. 8)

* W 0921002 *

March 6, 2009

Type Tax: Sales and Use Taxes

Issue: Computer and data processing services

Statutes: Sections 77.51(4)(a)2. and 77.52(2)(a)10.,
Wis. Stats. (2007-08)

Administrative Code: Section Tax 11.71(2)(c) and (3),
Wis. Adm. Code (April 1993 Register)

This letter responds to your request for a private letter ruling dated September 29, 2008.

Facts, as you provided:

Company A (the taxpayer), commercially domiciled in a state other than Wisconsin, is a logistics solutions provider. The taxpayer provides its customers with web-based inbound/outbound logistical management services. The taxpayer’s logistical management services

operate through the Internet on a per-transaction multiple-user basis. The taxpayer’s customers are not required to purchase or install on their computer terminals any of the taxpayer’s software or to purchase any computer hardware. Furthermore, the taxpayer’s software is not installed on any customer computer in order to effectuate the logistical management services transactions. Customers log in to the system to manage their overall transportation function, including obtaining benchmarking and transportation services. The logistical management services system is housed on a server in the taxpayer’s state of commercial domicile. The taxpayer merely sells access to its web-based logistical management services system to customers seeking a solution to their logistics management function. Accordingly, the taxpayer operates as an application service provider (ASP), which is a business organization which offers software application capabilities to business users from centralized data centers via wide area networks usually through the Internet.

In addition to web-based logistical management services, the taxpayer also provides other logistics management support services to its customers. These services include implementation services related to its logistical management services and training related to the logistical management services system (each support service is offered on both a remote and an on-site basis). Additionally, customers reimburse the taxpayer for expenses associated with the taxpayer’s personnel traveling to customer locations to perform training or implementation services.

The taxpayer provides the following to its customers for a fee:

- **Logistical Management Services** - Logistical management services consist of an Internet-based logistics management system, which provides the daily planning, execution, and settlement functions relevant to the management of customer transportation and delivery operations. Additionally, the logistical management services provide the unique ability for customers to view their complete supply chain and private transportation systems. These logistical management services are only possible through the taxpayer’s extensive network of constantly shared and updated information from customers, suppliers, consignees, shippers, carriers,

and other third parties. This functionality generally provides customers with the following: inbound supplier management, appointment scheduling, benchmarking, and network-wide reporting. Customer logistics personnel access this individualized information to review the recommendations provided by the logistical management services.

- **Implementation Services** -The taxpayer consultants provide technical consulting and integration specifications to customers in order for the customer system to interface properly with the taxpayer's logistical management services.
- **Training Services** -The taxpayer's personnel train customer personnel at the customer's location.
- **Expense Reimbursement** - Customer reimbursement of the taxpayer's personnel travel expenses.

Question 1: Are the taxpayer's logistical management services subject to Wisconsin sales and use tax?

Answer 1: No. The sale of logistical management services by the taxpayer is not subject to Wisconsin sales and use tax, regardless of whether the system is housed on a server located in Wisconsin or outside Wisconsin.

Question 2: To the extent Wisconsin deems the taxpayer's logistical management services are subject to sales and use tax, is the location of customer logistic departments an appropriate method of sourcing the sales of logistical management services for Wisconsin sales and use tax purposes?

Answer 2: Not applicable.

Question 3: Are the taxpayer's implementation services subject to Wisconsin sales and use tax?

Answer 3: Providing technical consulting and integration logistics is subject to Wisconsin sales and use tax if provided in connection with the sale, lease, or rental of tangible personal property or the selling, performing, or furnishing of a taxable service. Providing technical consulting and integration logistics is not subject to Wisconsin sales or use tax if not provided in connection with the sale, lease, or rental of tangible personal property or the selling, performing, or furnishing of a taxable service. See "Implementation and Consulting" in *Analysis*, below.

Question 4: Are the taxpayer's training services subject to Wisconsin sales and use tax?

Answer 4: No. See "Training" in *Analysis*, below.

Question 5: Are expense reimbursements customer pays to the taxpayer subject to Wisconsin sales and use tax?

Answer 5: Expense reimbursements are included in the selling price of the product or services sold for purposes of computing Wisconsin sales or use taxes. Therefore, if the property or service sold is subject to Wisconsin sales or use tax, the amount of the expense reimbursement is subject to Wisconsin sales or use tax. If the property or service sold is not subject to Wisconsin sales or use tax, the amount of the expense reimbursement is not subject to Wisconsin sales or use tax. See "Expense Reimbursements" in *Analysis*, below.

Analysis

Section Tax 11.71(3), Wis. Adm. Code (April 1993 Register), provides that time-sharing services, which permit persons at different locations to access the same computer through remote access by telephone lines, microwave or other means, are not subject to sales or use tax when a person or that person's employees, who have access to the equipment:

- Are not located on the premises where the equipment is located, and
- Do not operate the equipment or control its operation.

This same analogy can be applied to the sharing of computer software.

The lease of tangible personal property (e.g., computer hardware, computer software that is not custom computer software*) is subject to Wisconsin sales or use tax, unless an exemption applies. For example, a customer may have control over computer hardware and software it accesses from a remote location, if that person has unlimited access to the server, loads its own software, is responsible for security measures regarding its use of the computer equipment and software, and decides how, when, and where its output will be provided through its own manipulation of the software. In such cases, the seller is leasing tangible personal property to its customer. Based on the fact that you provided that the taxpayer merely sells access to the logistical management services, the taxpayer is not leasing tangible personal property.

*Computer software that is not custom computer software is deemed to be tangible personal property, as provided in sec. 77.51(20), Wis. Stats. (2007-08).

Implementation and Consulting - Consulting services that are not provided in connection with the sale of tangible personal property, such as researching information and answering questions, are not services subject to the tax.

However, consulting services are subject to Wisconsin sales or use tax as part of the gross receipts from the sale of tangible personal property if they are provided in connection with the sale of the tangible personal property. For example, upon the taxpayer's recommendation to its customer, its customer purchases taxable equipment from the taxpayer. The taxpayer charges its customer for the equipment and pre-sale consultation or implementation. The entire charge is subject to Wisconsin sales or use tax. Also, the taxpayer's consulting services are taxable if they consist of repairing, servicing, altering, fitting, cleaning, painting, coating, towing, inspecting, or maintaining tangible personal property (e.g., computer software, except custom computer software) and the tangible personal property being repaired, serviced, etc. is not exempt from Wisconsin sales or use tax. For example, if the taxpayer is hired as a computer consultant to determine the problem with a customer's computer software that is not custom software and to fix the problem with the software, the taxpayer's charge for the consultation for the inspection and repair services is subject to tax under sec. 77.52(2)(a)10., Wis. Stats. (2007-08).

Training - Separate charges for training services are not subject to Wisconsin sales or use tax. Section Tax 11.71(2)(c), Wis. Adm. Code (April 1993 Register), provides that the following receipts are taxable:

"The sale of training materials, such as books and manuals furnished to trainees for a specific charge. However, **training services are not taxable.**" (Emphasis added.)

Expense Reimbursements – Section 77.51(4)(a)2., Wis. Stats. (2007-08), provides that "gross receipts," for Wisconsin sales and use tax purposes, means the total amount of the sale, lease, or rental price without deduction for "[t]he cost of the materials used, labor or service cost, interest paid, losses or any other expense."

Therefore, the taxpayer's charge for expense reimbursements is included in its selling price of tangible personal property or taxable services sold for purposes of computing Wisconsin sales or use tax, regardless of whether the expense reimbursements are separately

stated on the taxpayer's invoice to its customer. If the property or service sold is subject to Wisconsin sales or use tax, the amount of the expense reimbursement is subject to Wisconsin sales or use tax. If the property or service sold is not subject to Wisconsin sales or use tax, the amount of the expense reimbursement is not subject to Wisconsin sales or use tax.