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:

Corporation Franchise and Income Taxes

Apportionment of revenue from debit card sales and related fees
W0931003 (p. 12)

Apportionment of cancellation of debt income
W0950004 (p. 14)

❋ W0931003 ❋

May 15, 2009

Type Tax: Corporation Franchise and Income Taxes

Issue: Apportionment of revenue from debit card sales and related fees

Statute: Section 71.25(9)(dh), Wis. Stats. (2007-08)

This letter responds to your request for a private letter ruling dated December 11, 2008.

Facts, as provided:

Corporation A is a marketer and processor of prepaid debit cards and prepaid debit card services throughout the United States.

Corporation A's network includes more than 15,000 retailers, check cashing locations and supermarkets. Independent agency agreements are executed between Corporation A and its retailers / distributors. Corporation A uses a combination of proprietary digital processing, New Account Representatives and Customer Service Representatives to deliver services to customers**.** All debit cards are issued by third party banks, with Corporation A acting as an authorized independent sales organization of these banks.

Corporation A's core products include General Purpose Reloadable Cards (GPR), Gift Cards, and TravelMoney® Cards. GPRs operate like bank debit products. Money can be deposited onto the card by direct deposit, at a terminal or retail location, through a person-to-person payment, or online. Gift cards hold a pre-configured amount of money and cannot be reloaded. TravelMoney® cards are a hybrid between GPR and gift cards; they can only be reloaded up to three times. All cards carry the Visa or MasterCard acceptance marks.

Corporation A derives income from a variety of fees charged in connection with the issuance and subsequent use of the prepaid cards. The card is issued for a set amount, otherwise known as a fulfillment fee. Once money is loaded onto the card, various transactional fees are collected. These transactional fees include interchange fees (signature fees and PIN purchase fees), monthly service fees, account maintenance fees, lost or stolen card fees, convenience fees, and balance inquiry fees. The company's transactional fees account for a majority of total revenues whereas the fulfillment fees account for a relatively small portion of total revenue. Corporation A tracks card sales (e.g. fulfillment fees) on a state-by-state basis according to the location of the transaction. The company's transactional fees are not currently tracked on a state-by-state basis, as systems have not been created to allow for such tracking.

Corporation A's corporate offices and headquarters are based in Texas. The majority of the company's employees are stationed at the company's headquarters. In addition, Corporation A maintains an inventory of its debit cards throughout the U.S. These debit cards are manufactured by various vendors and shipped to the company's main distribution warehouses. The cards are

stored in the warehouses until they are needed and shipped to retailers throughout the country. Corporation A holds legal title to the inventory during the entire distribution process.

Corporation A employs regional account managers, located in sixteen states, who solicit business from new distributors and maintain relationships with existing distributors. The account managers educate and train the distributors' employees, set sales goals for the distributors, ensure that the distributors have the correct point of sales, and assist the distributors with the marketing of Corporation A's cards.

Transactions

As stated above, Corporation A generates revenue from the following transactions in the ordinary course of business:

1) **Sale of Debit Cards** (General Purpose Reloadable Cards, Gift Cards, TravelMoney Card, etc.) The card is issued for a set amount, otherwise known as a fulfillment fee.

2) **Transactional Revenue**

   Interchange Fees ("Signature Fees" and "PIN Purchase Fees"). Interchange fees represent a fee charged by the issuing bank to the merchant's bank for processing the cardholder's purchase transaction. The purchase transactions are processed by third party processors. These third party processors are located in various states, and perform the processing services in various locations. Corporation A receives a portion of this interchange fee from the issuing bank via a revenue share agreement.

   Service Revenue. The maintenance of the cardholder's account is controlled by Corporation A's proprietary digital processing intellectual property and the company's employees that are located in Texas. The company charges cardholders various service fees associated with the maintenance and use of outstanding cards. The typical service fees charged include the following:

   a. Service fees (per transaction or monthly) - Corporation A charges the cardholder a fee each time the card is used. Alternatively, the customer can pay a monthly service fee that allows for multiple transactions rather than paying a fee on a per transaction basis.

   b. Account maintenance fees - The company charges a cardholder an account maintenance fee for each reloadable card with an inactive balance exceeding 90 days. Gift card accounts are charged an account maintenance fee for inactive account balances exceeding six months.

   c. Lost or stolen card fees - Represents the fee charged a cardholder for replacing a lost or stolen card.

   d. Balance inquiry fees - Represents the service fee charged a cardholder for inquiring into the balance of their account.

   e. Account-to-account transfer fee - Represents the service fee charged a cardholder for transferring funds from one Corporation A cardholder account to another.

   f. Check fee - Represents the service fee charged a cardholder for issuing a check to close an account.

Questions Presented:

How should Corporation A apportion revenue generated from the following transactions:

1) Sale of debit cards (general purpose reloadable cards, TravelMoney card, etc.)

2) Transactional revenue

   a. Interchange fees ("Signature Fees" and "PIN Purchase Fees")

   b. Service fees (per transaction or monthly)

   c. Account maintenance fees

   d. Lost or stolen card fees

   e. Balance inquiry fees

   f. Account-to-account transfer fee

   g. Check fee

Answers and Analyses:

In Wisconsin, a single sales factor apportionment formula has been phased-in over a three-year period beginning in 2006. Beginning after December 31, 2007, the apportionment formula is 100% sales. The numerator of the sales factor would include the revenues described above as follows:

1) Sale of Debit Cards

Corporation A's sale of debit cards is part of a sale of a bundle of services. The debit card itself is incidental to these services. The sourcing of these services is explained in 2) below.

2) Fulfillment Fees and Transactional Revenue

Section 71.25(9)(dh), Wis. Stats. (2007-08), provides that gross receipts from services are in Wisconsin if the purchaser of the service receives the benefit of the service in Wisconsin. If the purchaser of a service receives the benefit of the service in more than one state, the gross receipts from the performance of the service are included in the numerator of the sales factor according to the portion of the service received in Wisconsin.

The benefit of a service is received in Wisconsin if any of the following applies:

a. The service relates to real property that is located in this state.

b. The service relates to tangible personal property that is located in this state at the time that the service is received or tangible personal property that is delivered directly or indirectly to customers in this state.

c. The service is provided to an individual who is physically present in this state at the time that the service is received.

d. The service is provided to a person engaged in a trade or business in this state and relates to that person's business in this state.

Corporation A's gross receipts from fulfillment fees and transactional revenues are in Wisconsin if its customers receive the benefit of these services in Wisconsin. Based on the provisions of s. 71.25(dh), Wis. Stats. (2007-08), described in a. through d. above, Corporation A would source its fulfillment fees and transactional fees to Wisconsin if the services are sold and used in Wisconsin.

❋ W0950004 ❋

October 8, 2009

Type Tax: Corporation Franchise and Income Taxes

Issue: Apportionment of cancellation of debt income

Statutes: Sections 71.25 and 71.255, Wis. Stats. (2007-08, as amended by 2009 Acts 2 and 28)

Administrative Code: Section Tax 2.39(2)(a) and (e), Wis. Adm. Code (March 2008 Register)

This letter responds to your request for a private letter ruling dated May 8, 2009.

Facts, as provided:

Company A, a State of Delaware incorporated business, is a parent holding company of a federal consolidated group of companies that together create a leading diversified, multistate industrial organization. Ownership is described as follows: several Company B funds and several individuals (hereinafter, "Company B funds") own Company A, which in turn owns 100% of Company C. Company C owns 100% of Company D, and the latter in turn owns 100% of Company E, a disregarded entity. The group's fiscal year is Month 1 to Month 12.

The transactions leading to the cancellation of debt income or discharge of indebtedness income ("COD income") are described as follows:

1) Company B funds acquired Company A in Year 1. The acquisition was partially financed with the issuance (by Company D and Company E) of X% Senior Notes due in Year 11 (hereinafter "10-year X% Senior Notes").

2) In Year 2, Company A entered into a credit agreement with unidentified parties which provided for Senior Notes due in Year 8 (hereinafter, "6-year Senior Notes"). The stated primary purpose of this transaction was to fund a dividend payment to Company A shareholders and holders of fully vested rollover options.

3) In Year 4, approximately two (2) years after the credit agreement and related "6-year Senior Notes", Company D and Company E announced a private exchange offer (hereinafter, "PEO") to exchange (a) newly issued Y% Senior Notes due in Year 9 (hereinafter, "New Senior Notes") for "10-year X% Senior Notes" and (b) "New Senior Notes" for "6-year Senior Notes."

   In other words, the "New Senior Notes" would replace any tendered "10-year X% Senior Notes" and "6-year Senior Notes." The stated purposes of this transaction were to (a) reduce and (b) manage the indebtedness of Company A, Company D, and Company E.

4) The “PEO” results in COD income to be recognized by Company A and Company D.

5) Company A’s activities were described as completely taking place within Delaware. The activities of Company D and Company E were not described.

Question:

Whether the COD income is apportionable income to be included in the combined report or whether the COD income is nonapportionable income to be allocated to Company A’s state of domicile.

Answer:

The COD income is apportionable income to be included in the combined report.

Analysis

Section 71.255(2), Wis. Stats. (2007-08, as amended by 2009 Acts 2 and 28), imposes the requirement of combined reporting on a corporation engaged in a unitary business with one or more other corporations in the same commonly controlled group. Section 71.255(1)(n) defines “unitary business” and it is so defined to include a commonly controlled group. In turn, “commonly controlled group” is defined in sec. 71.255(1)(c). The group identified in the private letter ruling request constitutes a unitary business under sec. 71.255(1)(n) and subject to combined reporting under sec. 71.255(2).

As the private letter request relates to the treatment of COD income, this analysis does not delve into which members of the unitary group are included in the combined group. For purposes of simplicity, it is assumed none of the members of the unitary group are excluded. As such, every member of the unitary business is also a member of the combined group. Suffice it to state that Wisconsin’s combined reporting law does not require that every member of the unitary group be included in the combined report, as provided by secs. 71.255(2) and 71.255(1)(a) and (b). Only members of the combined group are required to report their income and apportionment factors on a combined report. Nonetheless, sec. 71.255(2)(f), grants the Department of Revenue authority to require other members of the unitary business other than “C” corporations to use combined reporting to prevent tax avoidance or evasion.

The combined report shall include the income and apportionment factors as provided under secs. 71.255(3), (4), and (5). Section 71.255(3)(a), provides, in part, that a member of the combined group is responsible for its tax liability a portion of which is derived from the member’s share of business income of the combined group to which it belongs. Section 71.255(4) provides, in part, that the business income of the combined group is the sum of the income of each combined group member as determined under the Internal Revenue Code and as modified under secs. 71.26 or 71.45. Section 71.22(4)(um), as created by 2009 Wisconsin Act 28, provides that amendments “to the federal Internal Revenue Code enacted after December 31, 2008, do not apply . . . with respect to taxable years beginning after December 31, 2008.” On February 17, 2009, Public Law 111-5, sec. 1231(a), amended sec. 108 of the federal Internal Revenue Code by adding subsection (i), relating to a taxpayer’s election to defer and ratably include COD income arising out of reacquisition of a qualified debt instrument. Therefore, subsection 108(i) of the federal Internal Revenue Code does not apply for Wisconsin purposes.

Section 71.25(5), as amended by 2009 Wisconsin Act 2, sec. 123, provides that, for combined reporting purposes, sec. 71.25 applies in determining the situs of income. Section 71.25(5)(a), provides, in part, that apportionable income includes all income or loss of corporations other than income that is nonapportionable. Section Tax 2.39(2)(a), Wis. Admin. Code (Reg. No. 627, March 2008), also defines “apportionable income” to have the same meaning given in sec. 71.25(5)(a). The definition of nonapportionable income found in sec. 71.25(5)(b), Wis. Stats., and in sec. Tax 2.39(2)(e), Wis. Admin. Code, only encompasses sales, rental, and royalties of nonbusiness real or tangible personal property. It does not include COD income and such income would be apportionable unitary business income. Nonapportionable income, therefore, is deemed to be from sources other than from the unitary business.

Moreover, the subject COD income stems from the readjustment of the unitary business capital structure in the form of, in brief, the issuance of “10-year X% Senior Notes,” a “6-year Senior Notes” credit agreement, and a “PEO” to achieve the stated business objectives of reducing and managing the indebtedness of Company A, Company D, and Company E, each one a member of the unitary group and of the combined group. Further support for the conclusion that COD income is apportionable is found in sec. 71.25(5)(a)22. As the private letter ruling request points out, redemption of corporate bonds is illustrative of apportionable income.

The 2009 Wisconsin Act 28, sec. 1621eb, created sec. 71.255(2m), Wis. Stats. This subsection provides that the designated agent may elect, without first obtaining written approval from the Department of Revenue, to include in its combined group every corporation in its commonly controlled group. Were Company A to make such election, all of the group's income would be apportionable income for purposes of the Wisconsin combined report. Section 71.255(2m) provides, in part, that "all income of all members of the commonly controlled group, whether or not such income would otherwise be subject to apportionment or allocable to a particular state in the absence of an election under this subsection, shall be treated as apportionable income for purposes of the combined report."

Finally, the COD income would ultimately be shared by every member of the combined group, not just Company A and Company D. It may be the case that for federal consolidated return purposes only Company A and Company D report the COD income. For Wisconsin purposes, nonetheless, the COD income would be included in with the rest of the combined unitary income that gets shared by the members of the group. Section 71.255(5)(a), provides that "each member of the combined group is doing business in this state if any member of the combined group is doing business in this state and that business relates to the combined group's unitary business." Since at least one member of the combined group is doing business in this state, Company A and Company D are doing business in this state. Therefore, the COD income is apportionable to Wisconsin and includable in the combined report.