



Private Letter Rulings

"Private letter rulings" are written statements issued to a taxpayer by the department that interpret Wisconsin tax laws to the taxpayer's specific set of facts. Any taxpayer may rely upon the ruling to the same extent as the requestor, provided the facts are the same as those set forth in the ruling.

The number assigned to each ruling is interpreted as follows: The "W" is for "Wisconsin," the first two digits are the year the ruling becomes available for publication (80 days after the ruling is issued to the taxpayer), the next two digits are the week of the year, and the last three digits are the number in the series of rulings issued that year. The date following the 7-digit number is the date the ruling was mailed to the requestor.

Certain information contained in the ruling that could identify the taxpayer requesting the ruling has been deleted. Wisconsin Publication 111, "How to Get a Private Letter Ruling From the Wisconsin Department of Revenue," contains additional information about private letter rulings.

The following private letter rulings are included:

Corporation Franchise and Income Taxes

Reorganizations -- recapitalization

W9634004 (p. 32)

Sales and Use Taxes

Prizes

W9630003 (p. 35)

✱ W9634004, June 4, 1996

Type Tax: Corporation Franchise and Income

Issue: Reorganizations -- recapitalization

Statutes: Sections 71.42(2) and 71.45(2), Wis. Stats. (1993-94)

This letter is in response to your request for a private letter ruling as to the Wisconsin franchise or income tax consequences of a proposed recapitalization of XYZ Company (the "Company") under sec. 368(a)(1)(E) of the Internal Revenue Code (IRC).

Facts

The Company, which was incorporated under the laws of Wisconsin, is engaged in the insurance business.

The Company is not listed on any public exchange, nor is its stock publicly traded in the over-the-counter market. The authorized capital stock of the Company consists of 10X shares, \$Y par value, voting Common Stock, of which 2X are issued and outstanding, and 250X shares of \$Z par value nonvoting Preferred Stock, of which 20X Series A shares are issued and outstanding and 1.2X Series B shares are issued and outstanding. None of the outstanding shares of Series A or Series B Preferred Stock are "section 306" within the meaning of IRC sec. 306(c).

The issued and outstanding shares of Common Stock, Series A Preferred Stock, and Series B Preferred Stock

are owned by the sole shareholder of the Company, UVW, Inc. (the "Shareholder"). The rights and privileges appurtenant to the shares of each class of stock are described below.

a. Common Stock

The holders of the Common Stock are entitled to one vote per share on all matters with respect to which shareholders of the Company are entitled to vote. The holders of the Common Stock are entitled to such dividends as shall be declared by the Board of Directors for any year after the cumulative dividends on the Series A Preferred Stock and the cumulative dividends on the Series B Preferred Stock have been paid in full. In the event of liquidation, the net assets of the Company shall be distributed ratably to the holders of the Common Stock, subject, however, to the liquidation preference of the Series A Preferred Stock and the Series B Preferred Stock. The holders of the Common Stock are not entitled to have the Common Stock redeemed by the Company.

b. Series A Preferred Stock

The Series A Preferred Stock has a stated value of \$10Z per share and was issued at \$50Z per share. The Series A Preferred Stock has no voting rights. The Series A Preferred Stock is not convertible into Common Stock of the Company. The holders of Series A Pre-

ferred Stock are entitled to an annual cumulative dividend preference. The Series A Preferred Stock is redeemable upon a majority vote of the Company. The Series A Preferred Stock was redeemable at \$51Z in 1990 and thereafter the redemption price decreases annually. This amount does not exceed 110% of the issue price of the stock. Upon redemption of the Series A Preferred Stock or upon liquidation of the Company, the holders of the Series A Preferred Stock will be entitled to receive an amount equal to the redemption price plus accrued but unpaid cumulative dividends. The accumulated dividend arrearage on the Series A Preferred Stock as of December 31, 1995, is \$A. In no event will the holders of Series A Preferred Stock be entitled either to receive dividends in excess of the dividend preference or to receive more than the specified redemption or liquidation preference upon redemption or liquidation of the Company. The holders of the Series A Preferred Stock are not entitled to have the Series A Preferred Stock redeemed by the Company.

c. *Series B Preferred Stock*

The Series B Preferred Stock has a stated value of \$145Y per share and was issued at \$2,500Y per share. The Series B Preferred Stock has no voting rights. The Series B Preferred Stock is not convertible into Common Stock of the Company. The holders of Series B Preferred Stock are entitled to an annual cumulative dividend preference. The Series B Preferred Stock is redeemable upon a majority vote of the directors of the Company. The Series B Preferred Stock was redeemable

at \$2,550Y per share during 1990 and thereafter the redemption price decreases annually. Upon redemption of the Series B Preferred Stock or upon liquidation of the Company, the holders of the Series B Preferred Stock will be entitled to receive an amount equal to the redemption price plus accrued but unpaid cumulative dividends. The accumulated dividend arrearage on the Series B Preferred Stock as of December 31, 1995, is \$B. In no event will the holders of the Series B Preferred Stock be entitled either to receive dividends in excess of the dividend preference or to receive more than the specified redemption or liquidation preference upon redemption or liquidation of the Company. The holders of the Series B Preferred Stock are not entitled to have the Series B Preferred Stock redeemed by the Company. The Company's books of account and tax returns are maintained and filed on a December 31 fiscal year accrued basis. As of December 31, 1995, the Company had a retained earnings surplus after a deduction of the investment in its insurance subsidiary, RST, Inc.

The Company has not redeemed or otherwise acquired any shares of Common Stock or Series A or Series B Preferred Stock during the last five years, and has no present intention of redeeming or otherwise acquiring any of the outstanding shares of the stock.

It is proposed that the Company be recapitalized in the following manner. The Company will execute a Plan of Recapitalization pursuant to which the Company will amend its Articles of Incorporation to eliminate both the Series A Preferred Stock and the Series B Preferred Stock.

Pursuant to the proposed Plan of Recapitalization and effective immediately upon the filing and recording of the Second Restated Articles of Incorporation of the Company, (a) all dividends that have accumulated but have not yet been declared on all existing shares of both Series A Preferred Stock and Series B Preferred Stock will be deemed cancelled and eliminated and (b) since fractional shares of Common Stock will not be issued, shares of Series A Preferred Stock and Series B Preferred Stock will be exchanged for shares of Common Stock. No Common Stock to be exchanged pursuant to the proposed Plan of Recapitalization will be held in escrow or will be issued under a contingent stock arrangement.

These conversions of stock are based upon the following exchange ratios:

1. One share of Series A Preferred Stock will be exchanged for 0.04444 shares of Common Stock.
2. One share of Series B Preferred Stock will be exchanged for 0.64444 shares of Common Stock.

After the proposed recapitalization, the Shareholder's shareholdings, rights, and preferences will be changed from (1)(a) 20X shares of Series A Preferred Stock, and 1.2X shares of Series B Preferred Stock, with an aggregate liquidation value of \$C and (b) 2X shares of Common Stock, with a total par value of \$D to (2) 3.9X shares of Common Stock, with a total par value of \$E.

The estimated fair market value of the Common Stock to be received by the Shareholder in exchange for its Series A Preferred Stock pursuant to the proposed Plan of Recapitalization (determined immediately following the proposed recapitalization) is

substantially less than the issue price of the Series A Preferred Stock to be surrendered. The estimated fair market value of the Common Stock to be received by the Shareholder in exchange for its Series B Preferred Stock pursuant to the proposed Plan of Recapitalization (determined immediately following the proposed recapitalization) is substantially less than the issue price of the Series B Preferred Stock to be surrendered.

The Company has no present intention of making any further changes to its capital structure; nor does it have any present intention of redeeming or otherwise acquiring any shares of Common Stock. The sole shareholder has no present intention of selling or otherwise disposing of any Common Stock to be received pursuant to the proposed recapitalization. No property other than the Common Stock to be received pursuant to the proposed capitalization will be involved in the proposed recapitalization.

The operations of the Company will be continued on an unchanged basis after the proposed recapitalization. The Company and its shareholders will each pay their own expenses incurred in the proposed recapitalization.

The proposed Plan of Recapitalization is designed to accomplish two business objectives or purposes of both the Company and the Shareholder. The first business purpose is to simplify and change the capital structure of the Company to provide for the elimination of the existing Preferred Stock. Simplifying the capital structure of the Company will ease the Company's application for admission to be licensed in certain states. The second business purpose is to cancel or eliminate the accumulated preferred dividend arrearages and the requirement of payment of preferred dividends.

Cancelling the accumulated preferred dividend arrearages and the requirement of payment of preferred dividends will conserve working capital and strengthen the Company's capital structure. Strengthening the Company's capital structure will ease the Company's application for admission to be licensed in certain states, as well as meet regulatory guidelines in jurisdictions where the Company is currently licensed.

Request

You have requested that the following rulings be issued:

1. If the exchanges of stock provided for in the proposed Plan of Recapitalization of the Company constitute a recapitalization, and therefore a reorganization within the meaning of IRC sec. 368(a)(1)(E), for federal income tax purposes, then IRC sec. 368(a)(1)(E) will also apply for Wisconsin franchise or income tax purposes.
2. If no gain or loss is recognized by the Company pursuant to IRC sec. 1032 for federal income tax purposes as a result of the exchanges of stock provided for in the proposed Plan of Recapitalization, then IRC sec. 1032 will also apply for Wisconsin franchise or income tax purposes.
3. If no gain or loss is recognized by the Shareholder pursuant to IRC sec. 354 for federal income tax purposes as a result of the exchanges of shares of stock provided for in the proposed Plan of Recapitalization, then IRC sec. 354 will also apply for Wisconsin franchise or income tax purposes.
4. If, pursuant to IRC sec. 358(a), the basis for the shares of stock

to be received by the Shareholder under the proposed Plan of Recapitalization is determined by reference to such shareholder's basis and the holding period for the stock exchanged therefor continues pursuant to IRC sec. 1223(l) for federal income tax purposes, then IRC secs. 358(a) and 1223(l) will also apply for Wisconsin franchise or income tax purposes.

5. If no stock to be received by the Shareholder pursuant to the proposed Plan of Recapitalization is treated under IRC sec. 305(b) and (c) as a distribution of property to which IRC sec. 301 applies for federal income tax purposes, then IRC secs. 305(b) and (c) and 301 will not apply to the stock to be received by the Shareholder pursuant to the proposed Plan of Recapitalization for Wisconsin franchise or income tax purposes.

Ruling

1. If the exchanges of stock provided for in the proposed Plan of Recapitalization of the Company constitute a recapitalization, and therefore a reorganization within the meaning of IRC sec. 368(a)(1)(E), for federal income tax purposes, then IRC sec. 368(a)(1)(E) will also apply for Wisconsin franchise or income tax purposes.
2. If no gain or loss is recognized by the Company pursuant to IRC sec. 1032 for federal income tax purposes as a result of the exchanges of stock provided for in the proposed Plan of Recapitalization, then IRC sec. 1032 will also apply for Wisconsin franchise or income tax purposes.

3. If no gain or loss is recognized by the Shareholder pursuant to IRC sec. 354 for federal income tax purposes as a result of the exchanges of shares of stock provided for in the proposed Plan of Recapitalization, then IRC sec. 354 will also apply for Wisconsin franchise or income tax purposes.
4. If, pursuant to IRC sec. 358(a), the basis for the shares of stock to be received by the Shareholder under the proposed Plan of Recapitalization is determined by reference to such shareholder's basis and the holding period for the stock exchanged therefor continues pursuant to IRC sec. 1223(l) for federal income tax purposes, then IRC secs. 358(a) and 1223(l) will also apply for Wisconsin franchise or income tax purposes.
5. If no stock to be received by the Shareholder pursuant to the proposed Plan of Recapitalization is treated under IRC sec. 305(b) and (c) as a distribution of property to which IRC sec. 301 applies for federal income tax purposes, then IRC secs. 305(b) and (c) and 301 will not apply to the stock to be received by the Shareholder pursuant to the proposed Plan of Recapitalization for Wisconsin franchise or income tax purposes.

Analysis

The Wisconsin net income of an insurance company is federal taxable income as determined under the Internal Revenue Code, with certain adjustments prescribed in sec. 71.45(2), Wis. Stats. (1993-94). Internal Revenue Code sections 301, 305(b) and (c), 354, 358(a), 368(a)(1)(E), 1032, and 1223(l) are not modified for Wisconsin purposes. □

✱ **W9630003**, May 7, 1996

Type Tax: Sales and Use

Issue: Prizes

Statutes: Section 77.51(14)(k), Wis. Stats. (1993-94)

Wis. Adm. Code: Section Tax 11.83(7)(b), (April 1993 Register)

This letter responds to your request for a private letter ruling regarding the Wisconsin sales and use tax implications on a transaction under which ABC Company ("ABC") sold a motor vehicle to the DEF Native American Tribe ("the Tribe"), who in turn gave the motor vehicle away as a prize.

Facts

Per your written request and subsequent telephone conversations with Wisconsin Department of Revenue representatives, the facts are as follows:

- ABC received a telephone call from the Tribe asking if ABC could obtain a specific automobile for a promotion the Tribe was planning.
- ABC located the automobile at a second dealership, notified the Tribe that they had located the automobile, and then purchased it from the second dealership.
- ABC obtained possession of the automobile from the second dealership.
- ABC received a purchase order for the automobile from the Tribe.
- ABC then delivered the automobile to the Tribe on the Tribe's reservation.

- The Tribe displayed the vehicle throughout the promotion at the Tribe's bingo and casino hall.
- The Tribe paid for the automobile with a check; the amount did not include any Wisconsin sales or use tax.
- Subsequently, Individual X won the automobile at the Tribe's casino and took possession of the automobile at the Tribe's casino.
- Individual X, the winner of the automobile from the Tribe, went to ABC to complete the paperwork to obtain title to the automobile.
- The title was transferred directly from ABC to Individual X. The vehicle was not titled in the name of the Tribe.
- ABC required that Individual X, the winner of the automobile, pay the Wisconsin sales and use tax due on the automobile, before they could transfer title of the automobile to him.
- Individual X paid the Wisconsin sales and use tax due based on the purchase price of the automobile paid to ABC by the Tribe.
- Individual X then filed a complaint with the Department of Transportation claiming, among other things, that he had been incorrectly required to pay the Wisconsin sales and use tax on the automobile he had won from the Tribe.
- An Investigator with the Department of Transportation contacted ABC and requested that ABC refund the Wisconsin sales tax to Individual X.

Request

You ask what the proper treatment of this transaction is for Wisconsin sales and use tax purposes.

Ruling

The "retail sale" of the automobile is from ABC to the Native American Tribe as provided in sec. 77.51(14)(k), Wis. Stats. (1993-94). Therefore, if any Wisconsin sales or use tax is to be imposed on this sale, it would be imposed on the selling price of the automobile to the Tribe.

However, since possession of the automobile was transferred to the Tribe on the Tribe's reservation, the retail sale of the automobile to the Tribe is not subject to Wisconsin sales tax.

No Wisconsin sales tax may be imposed on the transfer of the title to Individual X, either. Section Tax 11.83(7)(b), Wis. Adm. Code, April 1993 Register, provides that "A motor vehicle transferred as a gift or as a prize in a contest or drawing is exempt when registered with the department of transportation by the recipient or prize winner. However, the sale of the vehicle to the donor of the gift or prize is taxable..."

Analysis

Section 77.51(14)(intro.) and (k), Wis. Stats. (1993-94), provides that

"'Sale', 'sale, lease or rental', 'retail sale', 'sale at retail', or equivalent terms include any one or all of the following: the transfer of the ownership of, title to, possession of, or enjoyment of tangible personal property or services for use or consumption but not for resale as tangible personal property or services and includes: Any sale of tangible personal property to a purchaser even though such property may be used or consumed by some other person to whom such purchaser transfers the tangible personal property without valuable consideration, such as gifts, and advertising specialties distributed gratis apart from the sale of other tangible personal property or service."

Section 77.52(1), Wis. Stats. (1993-94), provides that *"For the privilege of selling, leasing or renting tangible personal property, including accessories, components, attachments, parts, supplies and materials, at retail a tax is imposed upon all retailers at the rate of 5% of the gross receipts from the sale, lease or rental of tangible personal property, including accessories, components, attachments, parts, supplies and materials, sold, leased or rented at retail in this state."*

Generally the sale of an automobile to a person (or entity) who is going to give it away or raffle it off is subject to Wisconsin sales tax. How-

ever, no Wisconsin sales tax may be imposed on this particular transaction because the State of Wisconsin is prohibited from imposing Wisconsin sales tax on sales of automobiles to the Tribe when possession of the automobile is transferred to the Tribe on the Tribe's reservation.

In addition, the transfer of ownership of the automobile to Individual X is not subject to Wisconsin sales or use tax since you have not sold the automobile to Individual X and therefore have not received any gross receipts from Individual X upon which to impose the Wisconsin sales tax. The gross receipts you received were from the Tribe and those receipts, as explained above, are not subject to Wisconsin sales tax.

Since you indicated in your telephone conversation with the Wisconsin Department of Revenue representative that you have already remitted the sales tax collected from Individual X to the Wisconsin Department of Revenue, you will need to file an amended sales tax return (Form ST-12X) for the period in which you remitted the sales tax to the department in order to obtain a refund of the sales tax you collected from Individual X. You will then be required to refund the tax and related interest to Individual X on this transaction. □