

Note: This tax release represents a change in department position and becomes effective May 1, 1990.

Note: Nonmechanical and nonelectronic telephone answering services continue to be nontaxable as stated in section Tax 11.66(1)(c), Wis. Adm. Code.

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ALL TAXES

1. Withholding of Delinquent State Taxes From Lottery Prizes

Statutes: Section 565.30(5), Wis. Stats. (1987-88)

Background: Section 565.30(5), Wis. Stats. (1987-88), provides that the Executive Director of the Lottery Board shall report the name, address, and social security number of each winner of a lottery prize equal to or greater than \$1,000 to the Department of Revenue to determine whether the payee of the prize is delinquent in the payment of state taxes, court ordered child support, and debts owed to other state agencies. Upon certification by the Department of Revenue or upon court order, the Executive Director shall withhold the certified amount for remittance to the appropriate agency or person.

In a Tax Release titled "Taxation of Lottery Winnings," WTB 61, page 16, it stated that a lottery prize could be shared among several people and that each person sharing in the lottery prize was considered a winner. However, for purposes of withholding Wisconsin income taxes, the \$2,000 limit under s. 71.67(4), Wis. Stats. (1987-88), applied to the total lottery prize and not each winner's share of the lottery prize.

Question 1: For purposes of sec. 565.30(5), Wis. Stats. (1987-88), does the \$1,000 limit apply to the total lottery prize or each winner's share of the lottery prize?

Answer 1: The \$1,000 limit, for purposes of determining whether a payee is delinquent in the payment of Wisconsin taxes, applies to the total lottery prize and not each winner's share of the lottery prize.

Example: Taxpayers A, B, and C agree to share any proceeds from a Wisconsin lottery ticket, prior to the determination that the ticket is a winner. The lottery prize of the ticket is \$1,500. The provisions of sec. 565.30(5), Wis. Stats. (1987-88), apply because the total prize is over \$1,000. This is true even though each winner's share of the prize (\$500) is less than \$1,000. If the payee has notified the Lottery Board that there are several person's sharing in the prize, the records for taxpayers A, B, and C will be examined to determine if they owe delinquent Wisconsin taxes.

Question 2: If a taxpayer is delinquent in payment of Wisconsin income taxes and shares equally in a lottery prize with 2 other

persons, can the entire lottery prize be certified by the Department of Revenue and applied against the taxpayer's delinquent Wisconsin income taxes?

Answer 2: No. The Department of Revenue may only certify for application against delinquent Wisconsin income taxes, the delinquent taxpayer's share of a lottery prize.

Example: Taxpayers A, B, and C agree to share any proceeds from a Wisconsin lottery ticket, prior to the determination that the ticket is a winner. The lottery prize of the ticket is \$10,000. Taxpayer A has delinquent state income taxes of \$10,000. The department may only certify \$3,333.33 of the \$10,000 lottery prize, Taxpayer A's share, for application against Taxpayer A's delinquent Wisconsin income taxes.

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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 first two digits are the year issued, the next two digits are the week issued, and the last three digits are the number in the series of rulings issued that year. "Issued" means when the ruling is available to be published (80 days after being mailed to the requestor). 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 III, "How to get a Private Letter Ruling From the Department of Revenue," contains additional information about private letter rulings.

W9002001, October 25, 1989

Type Tax: Sales/Use

Statutes: Sections 77.51(4)(a) and (13) and 77.52(2)(a)20, Wis. Stats. (1987-88)

Issue: Landscaping services; turf grass advisory services

This letter responds to your request for a private letter ruling regarding the sales and use tax status of turf grass advisory services provided by Company A.

Facts

The Company A headquarters outside Wisconsin sells golf related publications, films, books, and other merchandise. Company A regional offices, one of which is located in Wisconsin, provide turf grass advisory services for a fee. It is this turf grass advisory service which is the subject of this request.

A Company A staff agronomist visits a golf course for a full or half day and prepares a report to the course management, recommending ways to improve the course.

The turf advisory reports provided to member clubs are a management consultant type of report. The report includes recommendations for the application of insecticides, fungicides, aerification of fairways, overseeding of grass seed, weed control, etc. The report recommends certain actions to be taken by the golf course superintendent. Whether the golf course superintendent actually does take action is strictly up to the superintendent or the golf course's greens committee.

The Company A services are provided to member clubs only. No advertising of services occurs other than circulation of a brochure occasionally to member clubs. The membership application brochure states "The fee is established to cover costs only."

The brochure further states "The Company A is a company devoted solely to golf course turf, its playing conditions, and its management."

No tangible personal property is provided to the golf course nor are any physical services provided to the golf course. Company A provides no servicing of tangible personal property. No written designs for shrubbery or tree placement are included in the reports.

The recommended actions to be taken will be carried out by golf course employees, not by outside landscape architects or any other person.

The turf advisory fee is a partial reimbursement of expenses since it does not entirely cover the total expenses of this valuable nonprofit service provided to golf courses. Over the past several years, the Company A expenses have exceeded income.

Request

Company A requests a ruling that its turf grass advisory service is not a landscaping or lawn maintenance service subject to Wisconsin sales and use tax under sec. 77.52(2)(a)20, Wis. Stats.

Ruling

Company A's turf grass advisory service is a landscaping or lawn maintenance counseling service subject to Wisconsin sales and use tax.

Analysis

Section 77.52(2)(a)20, Wis. Stats. (1987-88), imposes a retail sales tax upon all persons selling, performing, or furnishing;

"landscaping and lawn maintenance services including landscape planning and counseling, lawn and garden services such as planting, mowing, spraying and fertilizing and shrub and tree services."

The imposition language is very broad, encompassing ". . . all persons selling, performing or furnishing landscaping and lawn maintenance services . . . including . . . counseling . . ." (Emphases added)

You have characterized your service as being similar to management consultants or CPA's who provide written reports recommending actions. That parallel may be accurate, however, landscape counseling services have been selected for taxation while other management consulting or accounting services have not.

"Counseling" implies professional guidance or advice given as a result of consultations.

There is no requirement in either the common meaning of counseling or the state statutes that taxation is contingent upon the transfer of tangible personal property or the performance of physical work.

Section 77.51(13)(a), Wis. Stats., states that "retailer" includes "every seller who makes any sale of . . . taxable services." Company A is selling its landscape counseling services and is, thus, a retailer under this section of the statutes.

Under sec. 77.51(4)(a), Wis. Stats., "gross receipts" include the total amount of the sale without any deduction for the cost of materials used, labor or service cost, losses or any other expense.

You have indicated that the type of service you provide is not listed in the taxable examples in our June 1982 *Tax Report*. Examples in the *Tax Report* or other articles are given as illustrations rather than limitations. The department has no authority to limit broad statutory language with published articles.

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W9003002, October 26, 1989

Type Tax: Sales/Use

Statutes: Sections 77.51(14)(intro.) and (j) and 77.52(1) and (13), Wis. Stats. (1987-88)

Issue: Sale of vehicles for leasing

This is in response to your request for a Private Letter Ruling concerning the sales and use tax status of the sale of vehicles held for lease.

Facts

Taxpayer, a regular corporation with a fiscal year end of February 28, is in the business of leasing trucks and buses to others.

As part of a plan to wind down its affairs and sell off its trucks, taxpayer would like to sell its leased trucks to another company who would continue in the business of leasing these trucks to the present leased parties. Taxpayer intends to sell 1/3 of these trucks to the new lessor on February 28, 1990, and the balance of these trucks on March 1, 1990. Taxpayer intends to surrender its sales tax permit within ten days after the first sale.

The new lessor/buyer of the trucks holds a valid sales tax permit from the Wisconsin Department of Revenue (WDR).

Request/Question

Do these sales of the trucks to the new lessor/buyer qualify under the WDR exemption provisions from sales/use tax?

Ruling

Taxpayer's sale, to a buyer, of the trucks and buses leased by the taxpayer to others, where the buyer will continue to lease out the

trucks and buses, would be an exempt sale for resale, providing the taxpayer takes a properly completed resale certificate in good faith from the buyer.

Analysis

The leasing of trucks and buses is deemed a continuing sale in this state by the lessor under sec. 77.51(14)(j), Wis. Stats (1987-88).

The buyer will continue to lease out the trucks and buses; thus, itself becoming a lessor.

Section 77.52(1), Wis. Stats. (1987-88), imposes a sales tax on gross receipts of retail sales. Since the buyer is going to resell (i.e., lease out) the trucks and buses, the sale to the buyer is not a retail sale under sec. 77.51(14)(intro.), Wis. Stats. (1987-88), and, thus, is not subject to sales tax.

Under sec. 77.52(13), Wis. Stats., it shall be presumed that all receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property or services is not a taxable sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property or service is purchased for resale. The resale certificate must be taken in good faith per sec. 77.52(14), Wis. Stats (1987-88).

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