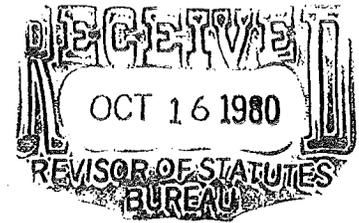


CERTIFICATE OF RULE ADOPTION

STATE OF WISCONSIN )  
DEPARTMENT OF REVENUE ) SS



TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Mark E. Musolf, Secretary of the Department of Revenue and custodian of the official records of said department do hereby certify that the annexed rules relating to nonresident professional athletes, professional sports clubs, certificate of authorization, and mobile homes, were duly approved and adopted by this department on October 15, 1980.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 15th day of October 1980.

  
Mark E. Musolf  
Secretary of Revenue

ORDER OF THE WISCONSIN DEPARTMENT OF REVENUE

ADOPTING RULES

Relating to rules concerning nonresident professional athletes, professional sports clubs, certificate of authorization, and mobile homes.

Analyses prepared by Department of Revenue:

Tax 2.31, "Taxation of Personal Service Income of Nonresident Professional Athletes"

Individuals who are residents of Wisconsin are taxed for Wisconsin income tax purposes on all of their taxable income. Nonresident individuals are taxed only on taxable income which is derived from business transacted, property located, and personal services performed in Wisconsin.

This rule sets forth the method to be used for determining how much of the income earned by a nonresident professional athlete who performs personal services partly within and partly outside Wisconsin is taxable to Wisconsin. The rule patterns the method for allocating such income after Internal Revenue Service Revenue Ruling 76-66 and Section 1.861-4 (b) of the Federal Income Tax Regulations relating to nonresident alien individuals performing services partly within and partly outside the United States.

Subsection (1) provides definitions of terms used in this rule. Subsection (2) sets forth the general rule for the taxation of income from personal services of nonresidents performing personal services within and outside Wisconsin. Subsection (3) describes the method of allocating income of nonresident professional athletes. Subsection (4) identifies the income to which the allocation applies.

Tax 2.505, "Apportionment of Net Business Income of Interstate Professional Sports Clubs"

This rule clarifies the Department of Revenue's current policy on the application of the apportionment formula which is used in computing Wisconsin taxable income as it applies to professional sports clubs which derive their total income from activities in more than one state during the year.

Although the statutory 3-factor formula of tangible property, payroll, and sales is adhered to, the unique nature of the income producing activities of sports clubs requires clarification as to how these fractions are to be computed in order that income be fairly apportioned to Wisconsin.

Tax 4.53, "Certificate of Authorization"

Chapter 11, Laws of 1979, amended ss. 78.40(1) and 78.47, Wis. Stats., to allow suppliers of special fuel to report the tax on deliveries into bulk storage facilities of users. Prior law required licensing of all persons who put special fuel into motor vehicle supply tanks, so such persons were required to file monthly reports and remit tax due to the department.

This rule establishes a procedure for the special fuel user and the supplier to follow. The user and supplier will execute a Certificate of Authorization and the supplier will be liable for the tax payment to the department, irrespective of whether the sale was for cash or on credit.

Tax 11.88, "mobile Homes"

This rule clarifies the sales and use tax status of sales of mobile homes. This rule codifies the Department of Revenue's long-standing interpretation.

Subsection (1) distinguishes between when a mobile home is personal property and when it is a real estate improvement. Subsection (2) provides that sales of mobile homes which are realty improvements are not subject to the tax. Subsection (3) describes the tax status of mobile homes which are personal property and the tax effect of various changes in the law enacted by Chapters 29 and 418, Laws of 1977 applicable to the occasional sales of mobile homes. Subsection (4) provides that the tax must be paid at the time a mobile home is registered with the state, unless the tax has previously been paid or the transaction is exempt. Subsection (5) describes the tax status of consignment sales. Subsection (6) defines "mobile home dealer" and "retailer".

Pursuant to authority vested in the Department of Revenue by Sections 71.11(24)(a), 78.79 and 227.014, Wis. Stats., the Department of Revenue proposes to adopt rules interpreting sections 71.01(1), 71.07(1), (2) and (5), 77.51(7)(am), 77.53(17), 77.54(7), 77.61(1)(a) and (c), 78.40(1), 78.47 and 78.49(3), Wis. Stats., as follows:

Section Tax 2.31 of the Wis. Adm. Code is adopted to read:

Tax 2.31 Taxation of personal service income of nonresident professional athletes. (ss. 71.01(1) and 71.07(1), (2) and (5), Stats.).

(1) DEFINITIONS. (a) In subsections (2), (3) and (4)(a) "duty days" means days during the regular playing season within a taxable year for which the athlete is compensated, such as practice days, travel days and actual playing days. In subsection (4)(b) "duty days" means days during the post-season within a taxable year for which the athlete is compensated, such as practice days, travel days and actual playing days.

(b) "Travel days" means days spent in the state (or other governmental jurisdiction) of destination, except that when the team performs on a travel day, the day shall be considered spent where the performance occurs.

(2) GENERAL. Wisconsin individual income tax is imposed on nonresident natural persons upon such income as is derived from the performance of personal services within Wisconsin. When a specific amount is received for personal services performed in Wisconsin, that amount shall be included in Wisconsin income. When compensation is received for personal services performed partly within and partly outside Wisconsin, the amount to be included in Wisconsin income shall be determined by an allocation of personal services performed in Wisconsin to total personal services on the basis that most correctly reflects the proper apportionment under the facts and circumstances of the particular case. In the absence of clear evidence to the contrary, allocations shall be made on the basis of time; that is, the compensation allocated to Wisconsin shall bear

the same relation to total compensation as the number of days of performance of personal service within Wisconsin bears to the total number of days of performance of personal service for which compensation is received.

(3) METHOD OF ALLOCATION. (a) The allocation to Wisconsin of income earned from the performance of personal services by a nonresident professional athlete under a playing contract shall, as a general rule, be made on the basis of time according to a fraction, the denominator of which is the total number of duty days covered by the contract and the numerator of which is the number of those duty days spent in Wisconsin. For players not under contract, the denominator shall include the total number of duty days and the numerator shall include the number of those duty days spent in Wisconsin.

(b) Amounts paid for participation in training or exhibition games and any per diem payments made in connection therewith are earned at the location of the participation and are considered separately.

(4) TAXATION OF EARNINGS. (a) The fraction determined in sub. (3)(a) shall be applied to the total compensation received within a taxable year for the regular playing season, as well as to bonuses or other compensation received for that season without regard to when paid. The fraction shall also be applied to a bonus received for signing a contract. If bonuses are received prior to or following a year to which the playing contract pertained, the fraction determined for the year covered by the contract will control.

(b) If post-season games are played, the total number of duty days shall be the denominator and the number of those duty days spent in Wisconsin shall be the numerator of the fraction, and this fraction shall be applied to the compensation received within a taxable year for the post-season games.

Section Tax 2.505 of the Wis. Adm. Code is adopted to read:

Tax 2.505 Apportionment of net business income of interstate professional sports clubs. (s. 71.07(2), Stats.) The apportionable income of professional sports clubs engaged in income producing activities both inside and outside Wisconsin during the year shall be apportioned to Wisconsin using an apportionment fraction composed of a property factor representing 25% of the fraction, a payroll factor representing 25% of the fraction and a sales factor representing 50% of the fraction determined as follows:

(1) PROPERTY FACTOR. The property factor is a fraction as defined in s. 71.07(2)(a), Stats. Owned or rented real and tangible personal property shall be included in the factor as provided in s. 71.07(2)(a), Stats. and section Tax 2.39(3). Minor equipment, such as uniforms, and playing and practice equipment, need not be included in the factor.

(2) PAYROLL FACTOR. The payroll factor is a fraction as defined in s. 71.07(2)(b), Stats. Compensation shall be reported as provided in s. 71.07(2)(b), Stats., and section Tax 2.39(4). Bonuses and payments shall be included in the payroll factor on a prorated basis in accordance with Internal Revenue Service Ruling 71-137, Cum. Bull., 1971-1. Compensation paid for optioned players shall be included in the factor only if paid directly to the player by the taxpayer.

(3) SALES FACTOR. The sales factor is a fraction as defined in s. 71.07(2)(c), Stats. Sales shall be included in the factor in accordance with s. 71.07(2)(c), Stats., section Tax 2.39 and the following rules:

(a) Gate receipts. Gate receipts include all receipts from games played at the taxpayer's home facility plus any gate receipts received from games played away from the taxpayer's home facility. The numerator of the sales fraction for taxpayers whose home facility is in Wisconsin shall include all gate receipts from games played in its home facility. The numerator of the sales fraction for taxpayers whose home facility is outside Wisconsin shall include the percentage of gate receipts received from games played in Wisconsin.

(b) Radio and television receipts. Radio and television receipts received by the taxpayer as its proportionate share from a league or association contract with the major communications networks are in Wisconsin in proportion to the number of games played in Wisconsin to total games played by the taxpayer covered by the contract during the season. Local television and radio receipts are in Wisconsin if the games are played in Wisconsin.

(c) Concession income and miscellaneous income. Concession income is assigned to the state in which the concession is operated. Miscellaneous income such as parking lot income, advertising income, and other similar income is assigned to the state in which the activity is conducted.

(d) Player contracts, franchises, etc. Income from player contract transactions, franchise fees, and other similar sources is regarded as intangible business income and shall be excluded from the numerator and the denominator of the sales fraction.

NOTE: This rule clarifies the Department of Revenue's policy and applies to all taxable years open to audit under s. 71.10(10), Stats.

Section Tax 4.53 of the Wis. Adm. Code is adopted to read:

Tax 4.53 Certificate of authorization. (ss. 78.40(1), 78.47 and 78.49(3), Stats.) (1) THE STATUTES. A special fuel dealer may be authorized by a special fuel user, if the special fuel dealer agrees, to report and pay the tax on special fuel delivered into a bulk storage facility of the user. The user then is not required to obtain a special fuel license from the department.

(2) GENERAL. (a) A certificate of authorization (Form MF-207) may be executed by a purchaser of special fuel to request a supplier of special fuel to bill the purchaser for both the special fuel and the special fuel tax.

(b) A certificate of authorization executed by a supplier of special fuel indicates the supplier's acceptance of the purchaser's request to bill the special fuel tax on bulk deliveries and remit it to the department.

(3) EFFECT OF CERTIFICATES. (a) If a purchaser and seller of special fuel agree that the seller will collect the special fuel tax from the purchaser and remit it to the department, the purchaser is not required to obtain a special fuel license from the department nor to submit monthly reports of tax liability.

(b) The supplier will compute the monthly tax liability by adding the number of gallons of special fuel placed in storage facilities where purchasers have executed certificates of authorization to the number of gallons of special fuel placed in fuel supply tanks of motor vehicles.

NOTE: The procedure described in this rule became effective on October 1, 1979.

Blank certificates of authorization (Form MF-207) may be obtained by writing to the Wisconsin Department of Revenue, Excise Tax Bureau, P.O. Box 8900, Madison, WI 53708.

Section Tax 11.88 of the Wis. Adm. Code is adopted to read:

Tax 11.88 Mobile homes. (ss. 77.51(7)(am), 77.53(17), 77.54(7) and 77.61(1)(a) and (c), Stats.) (1) MOBILE HOME AS PERSONAL PROPERTY VS. REALTY IMPROVEMENT. A mobile home is personal property if it is located in a mobile home park or other place where the land on which the mobile home is located is not owned by the mobile home owner. A mobile home is a realty improvement if it is permanently affixed to land owned by the owner of the mobile home. It is permanently affixed to the land for sales tax purposes if the mobile home sits on a foundation and is connected to utilities. "On a foundation" means it is off the wheels and sitting on some other support.

(2) SALES OF MOBILE HOMES WHICH ARE REALTY IMPROVEMENTS. (a) The sale of a mobile home and the land to which it is permanently affixed is the sale of a realty improvement not subject to the tax. The sale of a mobile home which is a realty improvement on the land of the seller, and which is acquired by the purchaser for removal from the seller's land for permanent attachment to the purchaser's land, is the sale of realty.

(b) If the seller of a mobile home as part of the sales transaction agrees to permanently affix the home on a foundation on land owned by the purchaser, the seller is a contractor-consumer engaged in improving realty. Sales of mobile homes to such a contractor-consumer are subject to the tax, but the gross receipts from the subsequent sale by the contractor-consumer to the purchaser of the mobile home are not taxable.

(3) SALES OF MOBILE HOMES WHICH ARE PERSONAL PROPERTY. (a) By dealers. A Wisconsin mobile home dealer's gross receipts from the sales of mobile homes which are personal property are subject to the tax.

(b) By retailers who are not dealers. Retailers who are not mobile home dealers shall not charge the sales tax on sales of mobile homes which are personal property. Instead, the purchaser shall pay the tax as described in sub. (4)(a), unless the transaction is exempt from the tax.

(c) By others. 1. The sales tax status of mobile homes that are personal property and that are purchased from persons who are not mobile home dealers or retailers is as follows, and any sales tax due shall be paid as described in sub. (4)(a):

- a. Exempt from the tax prior to August 1, 1977, regardless of length.
- b. Taxable beginning August 1, 1977 through June 30, 1978, regardless of length.
- c. Exempt beginning July 1, 1978 and thereafter if the mobile home exceeds 45 feet in length excluding the towing hitch.

2. Mobile homes transferred to the spouse, parent or child of the transferor are exempt if the mobile home has been previously registered or titled in this state in the name of the transferor and the person transferring is not engaged in the business of selling mobile homes.

(4) PAYMENT OF TAX. (a) No mobile home may be registered in this state unless the registrant presents proof that the sales or use tax has been paid or that the registrant's acquisition of the mobile home was exempt from the tax. If the mobile home is purchased from a person other than a Wisconsin mobile home dealer and is subject to the tax, the purchaser shall pay the tax at the time the mobile home is registered with the Department of Transportation, Division of Motor Vehicles.

(b) A mobile home purchased outside Wisconsin which is required to be registered under Wisconsin law is subject to the Wisconsin use tax. However, a credit is permitted against the Wisconsin use tax for any sales or use tax paid to the state in which the mobile home was purchased.

(5) CONSIGNMENT SALES. When a mobile home dealer has possession of a mobile home owned by another person (the principal), the dealer is the retailer responsible for reporting tax on the transaction if the dealer makes the sale without disclosing the identity of the principal to the purchaser (see rule Tax 11.55). If the principal is disclosed to the purchaser on the invoice or in the sales contract, the principal is the seller of the mobile home and the tax on the transaction shall be paid under sub. (4)(a), provided the mobile home dealer does not take title to the mobile home. If the dealer does take title, the dealer is the seller.

(6) DEFINITION. In this section "mobile home dealer" has the same meaning as "mobile home dealer" as defined in s. 218.10(3), Stats., and a retailer is a person who has a seller's permit issued pursuant to s. 77.52 (9), Stats. A mobile home dealer is one type of retailer.

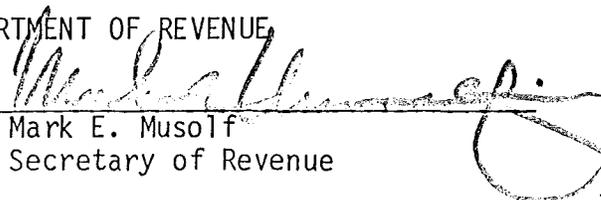
NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted in the rule.

The rules contained in this order shall take effect as provided by s. 227.026(1)(intro.), Wis. Stats., except that rule Tax 2.31 shall first apply to taxable year 1981.

Dated: October 15, 1980

DEPARTMENT OF REVENUE

By:

  
Mark E. Musolf  
Secretary of Revenue



State of Wisconsin \ DEPARTMENT OF REVENUE

Lee Sherman Dreyfus  
Governor

October 15, 1980

Mark E. Musolf  
Secretary

125 SOUTH WEBSTER STREET  
MADISON, WISCONSIN 53702

Ms. Vel Phillips  
Secretary of State  
13 West, State Capitol  
Madison, WI 53702

Mr. Orlan L. Prestegard  
Revisor of Statutes  
411 West, State Capitol  
Madison, WI 53702

Dear Ms. Phillips and Mr. Prestegard:

Enclosed is a Certificate of Rule Adoption and an Order of the Department of Revenue Adopting Rules.

These materials are filed with you pursuant to s. 227.023(1), Wis. Stats.

Sincerely,

A handwritten signature in cursive script, reading "Mark E. Musolf".

Mark E. Musolf  
Secretary of Revenue

MEM:jkr

Enclosures

cc: Prentice Hall, Inc.  
Commerce Clearing House, Inc.