



This Week in State Tax (TWIST)

October 16, 2023



To listen to the podcast please [click here](#)

Wisconsin: Title Transfer to Federal Government Was a Sale

A Wisconsin circuit court recently affirmed a Tax Appeals Commission decision holding that indirect materials purchased to fulfill a taxpayer's contracts with the federal government were exempt from sales tax. The taxpayer, a manufacturer of specialty vehicles, purchased both direct and indirect materials to use in manufacturing military vehicles. "Direct materials" were items such as raw steel, tires, and vehicle parts, while "indirect materials" included office supplies and computers. The taxpayer's contracts required it to transfer title of the indirect and direct materials used in fulfilling the contracts to the federal government, and the title transfer occurred in this case. However, the Department of Revenue asserted that the taxpayer had not resold the items to the government, despite the contractual title transfer, and therefore the transactions were not exempt as sales for resale. After the Tax Appeals Commission concluded that the taxpayer purchased the indirect materials for resale to the government, the Department appealed.

All parties agreed that the taxpayer had purchased the indirect materials and transferred title to the federal government. The issue before the court was whether the transfer of title constituted a "sale" under Wisconsin law so that the resale exemption would apply. Because the purchaser was the federal government, the subsequent sale was not taxable. Wisconsin law provides that a "sale" includes *any* of the following: the transfer of ownership of, *title to*, possession of, *or* enjoyment of tangible personal property, *or* services for use or consumption *but not for resale....* In the court's view, the Commission correctly determined that the statute was unambiguous. Notably, any of the listed actions, which were joined by the disjunctive "or," constituted a sale. A "sale" was not predicated on "use and consumption" of the goods in addition to the transfer of title, ownership, or possession. As such, the court concluded that a transfer of title alone was sufficient to be a "sale." In reaching this conclusion, the court rejected the argument that the taxpayer should be treated as the final consumer of the indirect materials; the federal contracts addressed when the title transfer occurred and supported that the fact that the taxpayer did not use the indirect materials before transferring title to the federal government. The court also rejected the argument this holding would incentivize corporations to improperly assign indirect material costs to tax exempt entities. The court noted that similar sales to private entities would remain taxable, and it must uphold the plain and unambiguous language selected by the legislature. Please contact Jill Nielsen with questions on *Wisconsin Department of Revenue v. Oshkosh Corp.*

kpmg.com/socialmedia



© 2023 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. USCS000670-1P

The following information is not intended to be "written advice concerning one or more federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.