



State of Wisconsin • DEPARTMENT OF REVENUE • OFFICE OF GENERAL COUNSEL

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June 28, 2001

Attorney William M. Witter  
Department of Workforce Development  
INTER-D: Room 331A, 201 E Washington Ave.

JUL - 2 01

RE: Vehicle Purchased from Northpoint Ford with DVR Funds

Dear Attorney Witter:

Thank you for the materials you faxed me June 19<sup>th</sup>. Additional inquiry by telephone was made regarding the DVR program and specifically the instant transaction regarding [REDACTED]

[REDACTED] ("Client"), a DVR client. The facts, as I understand them:

- The Client was required to obtain estimates from three different dealers of the vehicle she selected.
- 78% of the funds for the purchase came from federal sources and 22% from Wisconsin, with the Client personally providing none of the funds.
- DVR issued a purchase order for the vehicle and provided its sales tax exemption (CES) number to Northpoint, representing to it that the sale was exempt.
- DVR paid Northpoint directly.
- Northpoint's contract on sale of the vehicle shows the Client as purchaser of the vehicle.
- The vehicle was titled in the Client's name.
- The Department has conducted an audit of Northpoint and has assessed Northpoint on this sale; Northpoint has contacted DVR for assistance in resolving this question.

I have reviewed the statutes, the Department's administrative code and discussed this matter with several staff members. I conclude that the assessment to Northpoint should be reversed because the Department is estopped to impose tax in this instance on Northpoint. My opinion is primarily based on Tax 11.05(4)(b). That subsection provides:

A Wisconsin governmental unit shall provide one of the following to a retailer as proof that a sale to the governmental unit is exempt from tax: 1. A purchase order or similar written document identifying the governmental unit as the purchaser. 2. A Wisconsin sales and use tax exemption certificate, form S-211. 3. Its certificate of exempt status number that the retailer should record on the invoice or other document it keeps as part of its records. (Emphasis added.)

DVR provided a purchase order to Northpoint which, viewed as a whole, identified DVR as the purchaser. Accordingly, the auditor should have exempted the sale, regardless that the vehicle purchase agreement and title were in the Client's name.

I note that if this sale had been under subsection (c) of that Rule, which deals with governmental units making payment to retailers for welfare recipient's purchases, a different result would have occurred. Subsection (c) of the Rule requires tax on such sales unless the purchase is made directly by the governmental unit and all 3 stated conditions are met:

- a governmental unit purchase order to the retailer;
- issuance of a billing in the name of the governmental unit; and
- retention of the purchase order and billing by the retailer.

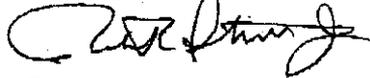
Obviously, the drafters of the Rule knew how to specify that a billing/invoice be in the name of the governmental unit, when so required. One could argue, as I concluded, that since there is no requirement in (b) of the Rule that there be a billing or invoice in the name of the governmental unit, the billing in the name of the Client was irrelevant. Further, since sub. (c) deals with a fact situation different from the current one, it does not apply here.

The Northpoint letter referenced to Department personnel relying on Publication 202, which deals with sales of vehicles (I have included a copy of the 9/98 version for your use and will make various references to it below; I have also included the current 11/00 version, which is slightly expanded). On page 11 (IV. **EXEMPT SALES OF TANGIBLE PERSONAL PROPERTY, B. Governmental Units**), the Publication essentially repeats the terms of Tax 11.05(4)(b) set forth above in regard to purchases by governmental units. On pages 12 (D. **Tax-Exempt Nonprofit Organizations**) and page 30 (XII. **COMMON ERRORS TO AVOID, #4**), the Publication indicates that vehicles purchased by tax-exempt nonprofit organizations must be registered in the name of the organization, not an individual, for the transfer to be exempt. Reliance on those latter provisions would be a mistake, in my opinion. While the DVR can be seen as a tax-exempt nonprofit organization in some senses, it is more correctly

considered a governmental unit and thus the more specific treatment on page 11 applies to it. There is no stated requirement that the vehicle be titled in the governmental unit's name to exempt the sale. Hence, while it would be advisable to have the purchase agreement ("billing") show DVR as purchaser from the Department's viewpoint for auditing, it is not required for such a sale to be exempt. It is quite possible that the Department will seek to amend the Rule to add the requirements that property purchased by a governmental unit be invoiced and/or titled in the name of the unit. If such an amendment occurs, my opinion of this type of fact situation in the future may also change.

I do not know the status of the audit. If it is completed, Northpoint should file for a refund on the sale. If the audit is still open, please have a copy of this letter provided to the auditor. If there are any further questions, please contact me. Thank you.

Very truly yours,



Robert C. Steffick, Jr.  
Attorney, Wisconsin Department of Revenue