



This Week in State Tax (TWIST)

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Wisconsin: Tax Appeals Commission Treats Sale-Leaseback of Aircraft as Taxable

The Wisconsin Tax Appeals Commission (“Commission”) has held that payments two affiliated insurance companies made under aircraft and software sale-leaseback agreements were subject to Wisconsin sales tax. The Commission rejected the taxpayers’ argument that the transactions were, in substance, refinancing arrangements. In 2011, the taxpayers sold an aircraft and some internally developed software to an equipment finance company. The taxpayers leased the assets back from the finance company for rent, with an option to buy the assets at the end of each lease term. A clause in each agreement said that, for federal, state, and local sales and income tax purposes, the parties would treat the deal as a loan secured by the assets, with the taxpayers still treated as owners. The Wisconsin Department of Revenue assessed sales tax on the lease payments for tax years 2015 through 2018.

The taxpayers argued that the substance of the transactions should control. They pointed to provisions that called the assets collateral, said the transfers were made only to give the lender a security interest, and based rent on the value of the property. The Department of Revenue argued that the agreements were leases in name and function, and met the definition of a lease under Wisconsin law. The Commission sided with the Department of Revenue. It relied on its earlier decision in *Ladish Co., Inc. v. Wisconsin Department of Revenue*, under which the Department may look past the form of a transaction to its substance, but a taxpayer is held to the transaction’s express terms and cannot demand recharacterization when that form is unfavorable. The Commission said the agreements appeared to be drafted to support conflicting readings. It added that accepting the taxpayers’ position would encourage unclear contracts and leave the Department of Revenue with an analysis that would be nearly impossible to administer. The Commission also noted that a contract clause stating the parties’ intended tax treatment does not bind the Department of Revenue, which was not a party to the agreements.

The Commission found the taxpayers’ substance argument unpersuasive. The agreements repeatedly referred to lessors, lessees, and rent. Also, the agreements allowed the taxpayers to return or buy the assets at the end of the term, which would make little sense if the taxpayers still owned them. In addition, the taxpayers had stipulated that sales occurred, and neither party offered evidence of how the transactions actually worked after the agreements were signed. The Commission acknowledged federal tax precedent holding that a transfer of legal title alone does not make a transaction a sale. However, it stressed that federal authority is persuasive but not controlling on questions of Wisconsin law. Finding no statutory exception for sale-leaseback transactions, the Commission concluded that a valid sale-leaseback occurred and the payments were taxable.

For questions regarding [CMFG Life Insurance Co. v. Wisconsin Department of Revenue](#), please contact [John Vann](#).

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