

## Income/Franchise:

### Wisconsin Tax Commission Says Individual Has Nexus from Out-of-State SMLLC's Software Licensing

*Case Nos. 21-W-080 and 21-W-081, Wis. Tax App. Comm. (7/28/23).* In a ruling involving a nonresident individual with sole ownership in an out-of-state single-member limited liability company (SMLLC) that developed educational software and sold licenses to use the software to Wisconsin third-party customers without selling underlying copyright rights in the software, the Wisconsin Tax Appeals Commission (Commission) concluded that such licensing of computer software subjected the individual to Wisconsin income tax, and the SMLLC to pass-through withholding, on the income generated by such licensing transactions. Specifically, the Commission reasoned that the sale of licenses for the use of computer software constituted the sale of intangible personal property under state law, and the underlying gross receipts from sales of the rights to copy, install, and use computer software under copyright license agreements were "gross receipts from the use of computer software" as that language is used in applicable Wisconsin statutes. As such, the Commission held that the sale of licenses for the use of computer software constituted "business transacted in Wisconsin," subjecting the nonresident individual to Wisconsin income tax and the SMLLC to underlying pass-through withholding tax. The Commission also concluded that P.L. 86-272 was not applicable to the facts because:

**URL:** <https://taxappeals.wi.gov/Documents/Decisions/2022-2023/KUTA%20SOFTWARE,%20MICHAEL%20KUTA,%2021-W-080,%2021-W-081,%2021-I-082.pdf>

1. Sales of licenses for the use of computer software are not sales of tangible personal property, and
2. Sales of licenses to use computer software were not the only activities of the SMLLC's business given that in-state customers received associated software support.

Please contact us with any questions.

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