Sales/Use/Indirect:

Wisconsin: Transactions Deemed Taxable Sale-Leasebacks Rather Than Nontaxable Refinancing Based on Contract Form

Docket No. 20-S-078, Wis. Tax App. Comm. (8/6/24). In a ruling involving two insurance company affiliates that sold an aircraft and software, respectively, to a third-party finance company and then leased them back pursuant to written agreements, the Wisconsin Tax Appeals Commission (Commission) held that based on the form of the underlying agreements, such transactions constituted taxable sale-leasebacks rather than nontaxable refinancing agreements. In doing so, the Commission explained that the taxpayers cannot insist on using a "substance and realities analysis" to determine the taxability of payments made under a lease "when the taxpayer has drafted a contract which has the form of a sale and subsequent leaseback and also contains provisions which could, under a substances and realities analysis, permit the contract to be treated as a financing transaction." The Commission explained that it must base its decision on the form the parties chose for their respective leases and that "any other analytical framework would only encourage the drafting of inherently unclear contracts, and would likely lead to an unruly, near to impossible to administer, required analysis" for the Wisconsin Department of Revenue to apply to sales and use tax returns filed by taxpayers. Please contact us with any questions.

URL: https://taxappeals.wi.gov/Documents/Decisions/2024-/CMFG%20CUMIS%2020S078%20080624%20TAC.pdf

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