

Income/Franchise:

Wisconsin Tax Appeals Commission Says P.L. 87-272 Only Affords Protection on Sales of TPP, Not Services

Case No. 19-I-258, Wis. Tax App. Comm. (5/23/22). The Wisconsin Tax Appeals Commission (Commission) held that an out-of-state corporation selling travel services to Wisconsin residents through at least 100 in-state independent consultants was subject to Wisconsin corporate franchise tax for the tax years at issue, concluding among other reasons that such in-state activity is *not* protected by P.L. 86-272 despite the taxpayer's assertion otherwise. In doing so, the Commission explained that the plain language of this federal statute protects activities of foreign corporations on "sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State" and that the travel services at issue in this case "are not tangible personal property." Under the facts, the out-of-state corporation had contracts with at least 100 independent travel consultants located in Wisconsin, who were paid a commission for sales of travel services to in-state customers, and there was no evidence in the record suggesting that these consultants did the work for which they were paid from outside of Wisconsin. The Commission held that pursuant to the facts at hand the independent consultants in Wisconsin regularly solicited business from potential customers in Wisconsin, sold travel services to customers in Wisconsin who received those services in Wisconsin, and therefore the travel company was "doing business" in Wisconsin under state law during each of the years at issue. Please contact us with any questions.

URL: <https://taxappeals.wi.gov/Documents/Decisions/2022-/ASAP%20Cruises%2019.M.258%20RO.pdf>

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