and equipment and delivered directly into the consumer's storage tank in an amount of not less than 200 gallons is exempt from motor fuel tax if the supplier obtains from the consumer an annual exemption certificate prescribed by the Department of Revenue.

Any person who purchases regular leaded gasoline tax-free must file an annual report not later than April 15 of the year following the reporting period. The Department of Revenue may not renew the exemption certificate of any person who fails to file the exemption report.

Under prior law, a consumer of motor fuel could file a claim for refund with the Department of Revenue for motor fuel tax paid on motor fuel for nonhighway use.

2. Authorize Suppliers of Special Fuel to Report and Pay Tax on Deliveries to Retailers (1985 Wisconsin Act 302, amend ss. 78.40(1), 78.44, 78.45, 78.47 and 78.49(3), effective May 7, 1986.)

Suppliers of special (diesel) fuel may report and pay the special fuel tax on deliveries to retailers. The suppliers will then bill the retailers for the tax. Under prior law, retailers were responsible for reporting and paying the special fuel tax on deliveries of fuel received from suppliers.

3. Provide Requirements for Timely Filing of Motor Fuel, Beverage, Cigarette and Tobacco Products Tax Returns and Other Documents (1985 Wisconsin Act 302, amend s. 78.67, create ss. 139.11(2m), 139.38(2m) and 139.835, effective for returns and other documents required to be filed on or after May 7, 1986.)

Motor fuel, beverage, cigarette and tobacco products tax returns are considered timely filed if mailed in a properly addressed envelope with the correct postage, postmarked on or before the due date and received by the Department of Revenue within 5 days of the due date.

4. Exclude Fermented Malt Beverages From the Definition of Intoxicating Liquor (1985 Wisconsin Act 302, amend s. 125.02(8), effective May 7, 1986.)

Fermented malt beverages are not included in the definition of intoxicating liquor. Thus, all fermented malt beverages, no matter what percentage weight of alcohol they contain, are subject to regulation as fermented malt beverages and not as intoxicating liquor. Under prior law, the definition of intoxicating liquor included fermented malt beverages containing 5% or more alcohol by weight.

5. Amend Description of Premises on Alcohol Beverage Applications (1985 Wisconsin Act 302, amend s. 125.04(3)(a)3, effective May 7, 1986.)

In describing the premises where alcohol beverages are sold or stored on Alcohol Beverage Applications, both the sales and storage areas must be described.

6. Create Exception to the Requirement to Mail Copy of Application for License to Sell Alcohol Beverages to the Department of Revenue (1985 Wisconsin Act 302, amend s. 125.04 (4)(a), effective May 7, 1986.)

Copies of applications for temporary picnic beer licenses need not be filed with the Department of Revenue.

7. Repeal Penalties for 2nd or Subsequent Offense for a Violation of Alcohol Beverage Laws (1985 Wisconsin Act 302, repeal s. 125.11 (1)(c), amend s. 125.11(1)(a)(title), effective May 7, 1986.)

The mandatory forfeiture provisions relating to the forfeiture of any alcohol beverage license and the forfeiture of the right to purchase alcohol beverage stamps because of a 2nd or subsequent offense for a violation for which a specific penalty is not provided are repealed.

8. Permit Representation by the Attorney General for Prosecution of Violations of Alcohol Beverage, Cigarette and Tobacco Products Laws (1985 Wisconsin Act 302, create ss. 125.145, 139.26, 139.45 and 139.86, effective May 7, 1986.)

The Secretary of Revenue may request the Attorney General to represent the state or assist a district attorney in prosecuting any case arising under the alcohol beverage, cigarette or tobacco products laws.

9. Permit the Issuance of "Class B" Liquor Licenses to Country Clubs (1985 Wisconsin Act 302, amend s. 125.51(5)(a)1, effective May 7, 1986.)

The state may issue "Class B" liquor licenses to country clubs notwithstanding the quotas of the local governing body.

10. Permit Gifts of Samples of Intoxicating Liquor to "Class A" and "Class B" Licensees (1985 Wisconsin Act 302, amend s. 125.65(1), create s. 125.69(2)(g), effective May 7, 1986.)

Authorized sales persons may give a sample of a brand of intoxicating liquor to a "Class A" licensee who has not previously purchased that brand from the permittee. Also, a manufacturer, rectifier or wholesaler may give a sample of a brand of intoxicating liquor to a campus or "Class B" licensee who has not previously purchased that brand from that manufacturer, rectifier or wholesaler.

11. Permit Sales by Manufacturers, Rectifiers or Wholesalers (1985 Wisconsin Act 302, create s. 125.69(2)(f) and (h), effective May 7, 1986.)

A manufacturer, rectifier or wholesaler may sell consumable merchandise intended for resale, including selling or loaning containers, to a campus or "Class B" licensee and permittee in the regular course of business.

12. Express Tax Rates in Terms of Metric Containers (1985 Wisconsin Act 302, repeal s. 193.03(2m)(a) (figure) and (b) (figure), (2t)(figure) and (2w), renumber s. 139.03(2m)(intro.) to s. 139.03(2m) and s. 139.03(2t) (intro.) to s. 139.03(2t) and amend s. 139.03(2m) and (2t) as renumbered, amend s. 139.03(2n) and (2x)(b), effective May 7, 1986.)

The tax rates on wine and distilled spirits are expressed in terms of metric containers rather than gallons. The rate of tax is 6.605 cents per liter on wine containing 14% or less of alcohol by volume and 11.89 cents per liter on wine containing more than 14% of alcohol by volume but not in excess of 21% of alcohol by volume.

The rate of tax on distilled spirits is 85.86 cents per liter. The rate of tax on distilled spirits manufactured or distilled in Wisconsin from whey which is produced in Wisconsin is 43.59 cents per liter.

13. Permit Persons Changing Their Domicile to Wisconsin to Bring Liquor and Wine Into Wisconsin as Household Goods (1985 Wisconsin Act 302, amend s. 139.03(5)(a), effective May 7, 1986.)

Persons who change their domicile from another state or a foreign country to Wisconsin may bring into Wisconsin distilled spirits and wine which constitute household goods. Prior law prohibited persons entering Wisconsin from having distilled spirits or wine in their possession.

14. Permit Persons Who Arrive in Wisconsin After Spending 48 Hours in a Foreign Country to Bring 4 Liters of Liquor and Wine Into Wisconsin Tax-Free (1985 Wisconsin Act 302, amend s. 139.03(5)(b), effective May 7, 1986.)

Any person, except an underage person, who arrives in Wisconsin after spending at least 48 hours in a foreign country may possess and bring into Wisconsin a total of 4 liters of distilled spirits and wine without paying the state tax. Prior law provided that persons could bring one gallon of liquor and wine into Wisconsin tax-free.

15. Provide Confidentiality Rule for Fermented Malt Beverage and Intoxicating Liquor Tax Returns, Reports, Schedules, Exhibits or Other Documents (1985 Wisconsin Act 302, create s. 139.11(4), effective May 7, 1986.)

The confidentiality provisions of s. 71.11(44)(a) and (c) to (h) as they relate to income and gift tax returns apply to fermented malt beverage and intoxicating liquor tax returns. However, the Department of Revenue shall publish brewery production and sales statistics and shall publish or permit the publication of statistics on the total number of gallons of the types and brands of intoxicating liquor sold in Wisconsin. Under prior law, beer, liquor and wine tax returns were open to public inspection.

16. Provide Limited Manufacturer's Permits Expire on August 1 (1985 Wisconsin Act 302, amend s. 125.52 (4), effective May 7, 1986.)

Limited manufacturer's permits expire on August 1 of each year rather than July 1.

17. Allow Transfers of Permits to Another Premise (1985 Wisconsin Act 302, amend s. 125.04(12)(a), effective May 7, 1986.)

An alcohol beverage warehouse permit, a winery permit or an intoxicating liquor wholesaler's permit may be transferred to another premise within the state.

18. Correct Erroneous Term by Replacing "Licenses" With "Licensees" (1985 Wisconsin Act 135, amend s. 125.33(2)(L), effective March 20, 1986.)

Section 125.33(2)(L), which was created as s. 125.33(1)(c)11 by 1983 Wisconsin Act 182 and renumbered by 1983 Wisconsin Act 538, is amended by replacing "licenses" with "licensees" to conform with the intent of the bill.

19. Define Sale of Cigarette and Tobacco Products (1985 Wisconsin Act 302, amend ss. 139.30(12) and 139.75(9), effective May 7, 1986.)

The definition of "sale" is expanded to include soliciting orders and sales for future deliveries.

20. Provide Additional Condition Regarding Refund of Cigarette Tax to Indian Tribes (1985 Wisconsin Act 302, create s. 139.323(5), effective May 7, 1986.)

An additional condition that must be met by Indian Tribes requesting refunds of cigarette tax is that the retailer has not sold the cigarettes to another retailer or to a jobber.

21. Extend Penalty for False Cigarette Reports to All Persons (1985 Wisconsin Act 302, amend s. 139.44 (2), effective May 7, 1986.)

The penalty for filing a false cigarette report now applies to all persons and is not limited to permittees.

22. Permit Department to Waive Tobacco Products Tax Penalty for Unintentional Miscalculation (1985 Wisconsin Act 302, amend s. 139.77 (6), effective May 7, 1986.)

If additional tobacco products tax is assessed, the Department of Revenue may waive the 10% penalty if the additional tax due is a result of an unintentional miscalculation on the report.

23. Provide for Administration and Enforcement of Tobacco Products Law (1985 Wisconsin Act 302, amend s. 139.83, effective May 7, 1986.)

The provisions of the cigarette tax law as they relate to seizure and confiscation also relate to the administration and enforcement of the tobacco products law.

24. Permit Department to Require Surety Bond for Tobacco Products (1985 Wisconsin Act 302, create s. 139.84, effective May 7, 1986.)

Persons liable for the tobacco products tax may be required to post a surety bond.

25. Change Criteria for a Cigarette Retailer to Also Be a Cigarette Distributor or Jobber (1985 Wisconsin Act 313, amend s. 139.34(5), effective May 7, 1986.)

A person who owns and operates a cigarette retail outlet may receive a cigarette distributor or jobber permit if more than 50% of the person's sales of cigarettes are at wholesale to retailers, vending machine operators or multiple retailers neither owned, controlled nor operated by that person. Under prior law, a cigarette retailer was not precluded from receiving a permit as a cigarette distributor or jobber if a substantial part of the person's sales of cigarettes were at wholesale.

OTHER

1. Permit Claims for Income or Franchise Tax Refunds After Field Audit (1985 Wisconsin Act 261, amend s. 71.10(10)(d) and (e), effective for field audit assessments issued on or after April 30, 1986.)

A claim for refund may be made within 2 years after the tax was

assessed by field audit, if the assessment was paid and not protested by the filing of a petition for redetermination.

If a claim is filed under this provision, the Department of Revenue may make an additional assessment in respect to any item of income or deduction that was a subject of the prior assessment.

This provision does not extend the time period during which the Department of Revenue may assess, or the taxpayer may claim a refund, in respect to any item of income or deduction that was not a subject of the prior assessment.

Under prior law, claims for refund could not be made after a field audit assessment became final.

2. Permit Claims for Sales Tax Refunds After Field Audit (1985 Wisconsin Act 261, amend s. 77.59 (4)(a), create s. 77.59(8m), effective dates are indicated below.)

a. Effective for field audit assessments issued on or after April 30, 1986, a claim for refund may be made within 2 years after the tax was assessed by field audit, if the tax was paid by the retailer and not protested by the filing of a petition for redetermination.

If a claim for refund is filed, the Department of Revenue may make an additional assessment in respect to any item that was a subject of the prior assessment.

b. Beginning April 30, 1986, sales tax refunds may be made to retailers within the regular 4-year refund period in s. 77.59(4)(intro.), even if the retailer was field audited, if the retailer's customers have filed valid claims for refunds with the retailer and if the refund is passed on to those customers.

Under prior law, claims for sales tax refunds could not be made after a field audit assessment became final.

3. Permit Department to Petition for a Court Order Requiring a Person to File a Tax Return (1985 Wisconsin Act 261, amend s. 71.11(30), effective April 30, 1986.)

If a taxpayer who is required to file an income or franchise tax return fails to do so, the Department of Revenue may petition the Circuit Court to issue a court order requiring that person to file a return. Under prior law, the Department of Revenue could petition the court for a writ of mandamus requiring that person to file a return.

4. Permit Deposit of Additional Assessment During Appeal (1985 Wisconsin Act 261, amend s. 71.12(1)(b) and (2), effective April 30, 1986.)

A taxpayer can deposit the amount of an additional assessment of a tax at any time during an appeal for redetermination by the Department of Revenue, or at any time while the petition is pending before the Tax Appeals Commission or an appeal of that petition is before a court.

Prior law provided that a taxpayer could deposit an additional assessment only when a petition for redetermination was filed with the Department of Revenue or when an application for a hearing was filed before the Tax Appeals Commission.

5. Permit Withholding from Sick Pay Payments (1985 Wisconsin Act 261, amend s. 71.20(11m), effective April 30, 1986.)

Individual taxpayers may require payers of sick pay to withhold amounts for Wisconsin income taxes from sick pay payments.

6. Require Reporting of Rent, Interest, Dividends or Royalties of $600 or More (1985 Wisconsin Act 261, amend s. 71.10(15), effective for the 1986 taxable year and thereafter.)

Persons deducting rent, interest, dividends or royalties on their income tax returns must notify the Department of Revenue of the name and address of Wisconsin residents to whom payments of $600 or more were made during the taxable year. Prior law required the payer to notify the Department of Revenue of payments of $100 or more.

6 MONTH EXTENSION OF TIME TO FILE AVAILABLE TO CORPORATIONS

Federal law provides that corporations can receive from IRS a 6-month extension of time to file their federal corporate income tax returns (federal Form 1120 series) by filing Form 7004, "Application for Automatic Extension of Time to File Corporate Income Tax Return".

Any extension of time granted by IRS for filing a federal return will also extend the time for filing the corresponding Wisconsin return. Therefore, corporations allowed a 6-month extension by IRS will also be allowed a 6-month extension to file their Wisconsin income/franchise tax return (Form 4 or 5). A copy of the federal extension must be attached to the Wisconsin return when it is filed.

ATTORNEY CONVICTED OF FAILING TO FILE WISCONSIN INCOME TAX RETURN

A Madison attorney has been ordered to serve probation and pay $615 in fines and costs for a criminal violation of the Wisconsin state income tax law.

Roger G. Schnitzler was placed on 2 years probation in Dane County Circuit Court, Branch 5, by Circuit Judge Robert R. Pekowsky on March 10, 1986. Under the conditions of probation, Schnitzler must pay a $500 fine plus court costs and file state income tax returns on time during the probationary period. Schnitzler was charged with failing to file a timely state income tax return on gross income of more than $54,000 for 1980. He was found guilty on January 16, 1986.

Failure to file a Wisconsin state income tax return is a crime punishable by a fine of not more than $500 or imprisonment not to exceed 6 months or both for income tax returns due prior to July 20, 1985. Beginning July 20, 1985, the criminal penalty is a $10,000 fine or imprisonment not to exceed 9 months or both. In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the civil tax liability.

WOMAN CHARGED WITH HOMESTEAD FRAUD

A woman suspected of filing 126 fraudulent homestead tax credit claims with the state during a four-year period was charged April 14, 1986 with three criminal counts.

Mary Thomas, 48, of 1129 North 13th Street, Milwaukee, was charged with three counts of homestead credit claim fraud, a felony.

"We have information supporting about 126 claims signed and/or prepared by her," Assistant District Attorney Matthew V. Richmond said during Thomas' initial court appearance. Richmond said the claims listed 74 different addresses and 54 different people, many of whom were fictitious. The fraudulent claims sought payments totaling $87,759 for the tax years 1981 through 1984, Richmond said. However, $23,180 actually was paid out. Thomas entered a not-guilty plea.

The criminal complaint cited three fraudulent claims:

• A 1983 claim for herself in which Thomas illegally received $676 by falsifying her income and rent and forging the names of a landlord and tax preparer.

• A 1982 claim from which Thomas illegally received $796 by falsifying income and rent and forging a landlord's signature.

• A 1984 claim fraudulently filed by Thomas for a man in exchange for $150. Richmond said he decided not to issue additional charges against Thomas because the three counts carried significant penalties totaling 15 years in prison and $30,000 in fines upon conviction.

ALLEGED SCHEME BRINGS CHARGES

Three charges of failing to file state income tax returns were issued April 14, 1986 against a 47-year-old Eau Claire man, who investigators say used a fund-transfer scheme involving a religious organization to escape taxes.

Leonard S. Svee, president of Mid-State Tubeforming in Eau Claire, was scheduled to make an initial appearance in Eau Claire County Circuit Court April 29.

A complaint issued by the district attorney's office alleges that between 1982 and 1984, Svee wrote 71 checks worth $42,150 on his business account to Life Science Church of Truth.

During the same period, Svee wrote $42,084 in checks on the church's account. Those checks were cashed by Svee's wife, Arlene, a few days later, according to the complaint.

JAIL TERM FOR OPERATING AS A SELLER WITHOUT A SELLER'S PERMIT

A Mosinee man has been ordered to serve 90 days in jail and 2 years probation for criminal violations of state tax laws.

Stanley Bartus was sentenced on April 2, 1986 in Marathon County Circuit Court by Circuit Judge Ronald D. Keberle on 12 counts of operating as a seller of tangible personal property without a seller's permit. He was convicted February 18 after a jury trial.

Judge Keberle ordered Bartus to serve 30 days in the Marathon County Jail on each of the first 3 counts to run consecutively for a total of 90 days and ordered probation for 2 years on each of the next 9 counts to run concurrently. Under the conditions of probation, Bartus must file all missing tax returns and make restitution of state sales taxes. Bartus must begin serving the sentence immediately unless he files an appeal and posts a $5,000 bond.

Operating as a seller after a state seller's permit has been revoked or failing to file Wisconsin state sales tax returns is a crime punishable by a maximum fine of $500 or 30 days in jail or both.

DO YOU HAVE SUGGESTIONS FOR ARTICLES?

The Wisconsin Tax Bulletin is designed to provide current and accurate information on topics of general interest to taxpayers and tax practitioners. Articles pertain primarily to income, franchise, sales and use, inheritance, gift, motor fuel, cigarette, and beer and liquor taxes.

To make this bulletin more useful to its readers, the department is seeking suggestions for topics and areas of reader interest for articles in future issues. Send your suggestions to: Wisconsin Tax Bulletin, Technical Services Staff, Post Office Box 8933, Madison, WI 53708.

NEW ISI&E DIVISION RULES AND RULE AMENDMENTS IN PROCESS

Listed below, under Parts A and B, are proposed new administrative rules and amendments to existing rules that are currently in the rule adoption process. The rules are shown at their stage in the process as of July 1, 1986. Part C lists new rules and amendments which were adopted in 1986. Part D lists emergency rules now in effect. ("A" means amendment, "NR" means new rule, "R" means repealed and "R&R" means repealed and recreated.)

A. Rules at Legislative Council Rules Clearinghouse

11.03 Elementary and secondary schools-A
11.05 Governmentalunits-A
11.65 Admissions-A

B. Rules at Legislative Standing Committees

11.001 Definitions and use of terms-A
11.32 "Gross receipts" and "sales price"-A
11.68 Construction contractors-A
11.83 Motor vehicles-A
11.92 Records and record keeping-A
11.95 Retailer's discount-A
11.97 "Engaged in business" in Wisconsin-A
17.01 Administrative provisions-NR*
17.02 Eligibility-NR*

17.03 Application and review-NR*
17.04 Repayment of loan-NR*

*These rules will be part of a new chapter, Chapter 17, which will contain rules relating to the Wisconsin Property Tax Deferral Loan Program.

C. Rules Adopted in 1986 (in parentheses is the date the rule became effective)

2.045 Information returns: form 9c for employers of nonresident entertainers, entertainment corporations or athletes-R (1/1/86)
3.22 Real estate and personal property taxes of corporations-R (1/1/86)
3.30 Depreciation and amortization, leasehold improvements: corporations-R (1/1/86)
3.31 Depreciation of personal property of corporations-R (1/1/86)
3.61 Mobile home monthly parking permit fees-R (1/1/86)
11.71 Computer industry-NR (3/1/86)
11.83 Motor vehicles-A (3/1/86)

D. Emergency Rules

Chapter 17, relating to the property tax deferral loan program (effective 2/18/86).

The following sales tax rules to incorporate county sales/use tax provisions were published and became effective on March 24, 1986:

11.001 Definitions and use of terms-A
11.32 "Gross receipts" and "sales price"-A
11.68 Construction contractors-A
11.83 Motor vehicles-A
11.92 Records and record keeping-A
11.95 Retailer's discount-A
11.97 "Engaged in business" in Wisconsin-A

REPORT ON LITIGATION

This portion of the WTB summarizes [illegible] *determination has been reversed will indicate one of the following: (1) "the department appealed," (2) "the department has not appealed but has filed a notice of nonacquiescence" or (3) "the department has not appealed" (in this case the department has acquiesced to Commission's decision).*

The following decisions are included:

Individual Income Taxes

Carl F. Isonhart
Statute of limitations

Arthur F. Jackson
Constitutionality of taxes

Arthur F. Jackson
Negligence penalty
Capital losses
Not-for-profit activity

Diane C. (Mentch) Nelson
Gain or loss—property transferred pursuant to divorce

Klaus Wacker
Foreign income taxes paid

Corporation Franchise/Income Taxes

Avon Products, Inc.
Nexus

Brown Deer Medical Building, Ltd.
Appeals—deposit of contested taxes

H.K. Ferguson Company
Allocation of income—separate accounting

McHenry Sand & Gravel Co., Inc.
Net business loss carryforward

Milwaukee Seasoning Laboratories, Inc.
Nexus
Allocation of income—apportionment

Pabst Brewing Company
Apportionment, sales factor—dock [illegible]

Sales/Use Taxes

Anderson Laboratories, Inc.
Manufacturing exemption
Negligence penalty

Johnson and Johnson, a partnership, d/b/a Asphalt Products Co., and Asphalt Products Co., Inc.
Construction contractors

Thiry Daems Cheese Factory, Inc.
Manufacturing exemption

Vita Plus Corporation
Manufacturing exemption

INDIVIDUAL INCOME TAXES

Carl F. Isonhart vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 20, 1985). The issue before the Commission was whether the Wisconsin Department of Revenue can assess the 1978 reported changes after the four-year statute of s. 71.11(21) (bm), Wis. Stats.

The 1978 tax year of the taxpayer was closed to audit on April 15, 1983, pursuant to s. 71.11(21) (bm), Wis. Stats. On July 11, 1983, the IRS furnished a report adjusting the taxpayer's 1978 and 1979 tax years. An amended return for 1979 was filed with the Wisconsin Department of Revenue during September 1983 within 90 days of the IRS notice. The changes for 1978 were furnished to the Department of Revenue, but no tax was paid.

Section 71.11(21)(g)2, Wis. Stats., authorizes the Wisconsin Department of Revenue to assess a tax within 90 days after the required notice under s. 71.11 (21m) is received. The Department of Revenue issued an assessment for the 1978 tax year within 90 days.

The Commission held that the Wisconsin Department of Revenue can assess beyond the four-year statute limitation [illegible]