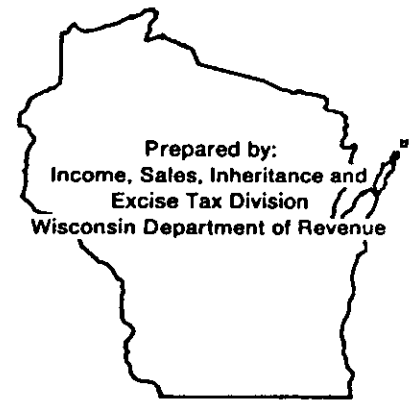


WISCONSIN TAX BULLETIN

July 1991
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NEW TAX LAWS

The Governor's Budget Bill and other tax bills were still pending at the time this Bulletin went to press. If any of these bills become law, a special issue of the *Wisconsin Tax Bulletin* will be published to provide information about the tax law changes.

CRACKDOWN AGAINST TAX EVASION CONTINUES

The Wisconsin Department of Revenue's Intelligence Section investigators continue their crackdown on tax evasion throughout Wisconsin. Recent investigations have resulted in the arrests of nine Wisconsin men in connection with violations of Wisconsin's sales and use tax and income tax laws.

Four of the men were charged with filing a fraudulent sales and use tax statement in connection with motor vehicles they had purchased from private parties. The other five were charged with failing to file Wisconsin income tax returns, or filing false and fraudulent Wisconsin income tax returns.

Donald R. Jadin, 3528 Briar Terrace, Green Bay, and Richard Zuidmulder, 1977 Kane Lane, Green Bay, were both sentenced in Brown County Circuit Court, Green Bay, by Judge Carl R. Fenwick after they each pled guilty to one count of filing a false sales and use tax statement in connection with registration of motor vehicles they

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had purchased from private parties. They each understated the purchase price when registering the vehicles and paid less tax than was due. Judge Fenwick also ordered both men to make restitution of the taxes due.

Randall G. Springen, 6211 Bridge Road, Monona, was charged in Dane County Circuit Court, Madison, with one count of filing a fraudulent sales and use tax return in connection with the registration of a van he purchased from a private party in 1989. Franklin C. Buscher, Jr., 4041 South Brook Road, Franksville, was charged in Racine County Circuit Court, Racine, with one count of filing a fraudulent return in con-

nection with the registration of an automobile he purchased from a private party in 1990. The men were charged with filing false MV-1 reports, which are applications for motor vehicle title/registration combined with state sales and use tax forms.

Peter D. Herpst, 334 North Eight Street, River Falls, and Roland V. Travers, Trevor, were each charged with three counts of failing to file state income tax returns in each of the years 1988, 1989, and 1990. Herpst was charged in Pierce County Circuit Court, Ellsworth, and Travers was charged in Kenosha County Circuit Court, Kenosha. Alvord J. Ellingboe, Jr., 1130 Edgehill Drive, Madison, and William W. Fugate, 38 County Highway N, Edgerton, both accountants, were each charged in Dane County Circuit Court, Madison, with two counts of failing to file state income tax returns at the time required for the years 1988 and 1989.

Edward Mulloy, 10 Meadowbrook Lane, Appleton, was charged in Outagamie County Circuit Court with three counts of filing false and fraudulent state income tax returns. Mulloy was charged with failing to report taxable income in excess of \$75,000 and evading state income tax in excess of \$3,600 for the years 1984, 1985, and 1986.

Filing a false sales and use tax return is a crime punishable by a fine of up to \$500 or imprisonment for up to 30 days, or both. Failing to file a Wisconsin income tax return when required to do so is a crime punishable by a fine of up to \$10,000 or imprisonment for up to nine months, or

both. In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties. Assessment and collection of the additional taxes, penalties, and interest due follows conviction for criminal violation.

TOPICAL/COURT CASE INDEX AVAILABLE

If you need an easy way to research Wisconsin tax questions, you should consider subscribing to the Wisconsin Department of Revenue's Topical and Court Case Index. This index will help you find a particular Wisconsin statute, administrative rule, Wisconsin Tax Bulletin article, tax release, publication, Attorney General opinion, or court decision that deals with your particular Wisconsin tax question.

The index is divided into two parts. The first part, the "Topical Index," gives references to alphabetized subjects for the various taxes. The taxes include individual income, corporation franchise or income, sales/use, withholding, gift, estate and inheritance, cigarette, tobacco products, beer, intoxicating liquor and wine, and motor fuel.

The second part, the "Court Case Index," lists Wisconsin Tax Appeals Commission, Circuit Court, Court of Appeals, and Wisconsin Supreme Court decisions by alphabetized subjects for the various taxes.

The annual cost of this index is \$14, plus sales tax. To order your copy, complete the order blank that appears on page 31 of this Bulletin. The order blank may also be used for subscribing to the Wisconsin Tax Bulletin and for ordering the Wisconsin Administrative Code.

1991 ESTIMATED TAX REQUIREMENTS FOR ESTATES AND TRUSTS

Estimated income tax payments are tax deposits made during the year to prepay the income tax and minimum tax that will be due when an income tax return is filed.

Generally, an estate or trust (except trusts subject to tax on unrelated business income) is required to pay 1991 Wisconsin estimated tax if it expects to owe \$200 or more on a 1991 Wisconsin income tax return (Form 2). Form 1-ES, "1991 Wisconsin Estimated Tax Voucher," is filed with each estimated tax payment.

Grantor trusts which are funded on account of a decedent's death are only required to make estimated tax payments for taxable years which end two or more years after the decedent's death. For example, an individual died on April 25, 1991. A grantor trust which was funded on account of the individual's death is not required to make estimated tax payments for any taxable year ending before April 25, 1993.

For estates and trusts (except trusts subject to tax on unrelated business income), installment payments are due on the 15th day of the 4th, 6th, and 9th months of the taxable year and the 1st month of the following taxable year.

A trust which is subject to tax on unrelated business income is generally required to pay 1991 Wisconsin estimated tax if it expects to owe \$500 or more on a 1991 Wisconsin income tax return (Form 4T). Form 4-ES, "1991 Wisconsin Corporation Estimated Tax Voucher," is filed with each estimated tax payment. Installment payments for such trusts are due on the 15th day of the 3rd, 6th, 9th, and 12th months of the taxable year.

If an estate or trust does not make the estimated tax payments when required or underpays any installment, interest may be assessed.

INFORMATION OR INQUIRIES?

Madison - Main Office
Area Code (608)

Beverage, Motor Fuel,

Cigarette, Tobacco Products .266-6701
Corporation Franchise/Income..266-3645
Estimated Taxes266-9940
Fiduciary, Inheritance, Gift266-1231

Homestead Credit266-8641
Individual Income266-2486
Property Tax Deferral Loan266-1983
Sales, Use, Withholding266-2776
Audit of Returns: Corporation,
Individual, Homestead266-2772
Appeals266-0185
Refunds266-8100
Delinquent Taxes266-7879
Copies of Returns:
Homestead, Individual266-2890
All Others266-0678
Forms Request:
Taxpayers266-1961
Practitioners267-2025

District Offices

Appleton(414) 832-2727
Eau Claire(715) 836-2811
Milwaukee(414) 227-4000

SPEAKERS BUREAU

The department's Speakers Bureau provides speakers to professional organizations and community groups throughout Wisconsin. If you would like a speaker to address your group, please call the Speakers Bureau at (608) 266-8640.

Subjects that may be discussed include updates on individual income, corporate, sales, and withholding tax laws, audit procedures, common taxpayer errors, how tax laws apply to exempt organizations, sales tax problems of contractors or manufacturers, homestead credit, etc.

ADMINISTRATIVE RULE REGARDING INTEREST FROM GOVERNMENT SECURITIES AMENDED

Section Tax 3.095 of the Wisconsin Administrative Code includes a listing of 80 federal, state, municipal, or other local government securities. The rule specifies whether interest or dividends payable on each of those securities is subject to or exempt from Wisconsin income taxes.

Effective July 1, 1991, s. Tax 3.095 was amended to include 25 additional securities not previously included in the listing. A copy of the amended rule appears on pages 26 to 29 of this Bulletin.

If you are interested in subscribing to the Wisconsin Administrative Code, you may use the order blank which appears on page 31 of this Bulletin.

STATE TAX REFUND OFFSET PROGRAMS

Section 71.80(3) and (3m), Wis. Stats., provides that the Department of Revenue may apply a taxpayer's state tax refund against amounts owed to the department. Section 71.93, Wis. Stats., provides for refunds to be applied against debts that the taxpayer owes to another state agency, if the other agency has certified that debt to the Department of Revenue.

The following shows the amounts applied under sec. 71.80 (identified as Refund Offsets) and sec. 71.93 (identified as Agency Setoffs) for each of the fiscal years 1986-87 through 1989-90.

REFUND OFFSETS

	1986-87	1987-88
Individual Income Tax	\$2,475,800	\$2,559,245
Corporation Income or Franchise Tax	36,000	34,126
Withholding	405,800	443,901
Sales Tax	1,778,700	1,644,155
Miscellaneous	3,200	5,952
Total Refund Offsets	\$4,699,500	\$4,687,379

	1988-89	1989-90
Individual Income Tax	\$2,942,232	\$3,781,529
Corporation Income or Franchise Tax	185,987	96,996
Withholding	581,072	560,418
Sales Tax	1,709,268	1,823,598
Miscellaneous	26,842	34,841
Total Refund Offsets	\$5,445,401	\$6,297,382

AGENCY SETOFFS

	1986-87	1987-88
Health and Social Services	\$2,980,800	\$3,425,600
Transportation	8,400	4,600
Justice	0	300
Veterans Affairs	30,500	30,200
Industry, Labor & Human Relations	84,100	154,500
Natural Resources	0	900
Total Agency Setoffs	\$3,103,800	\$3,616,100

	1988-89	1989-90
Health and Social Services	\$3,741,500	\$5,988,469
Transportation	5,500	14,509
Justice	100	1,280
Veterans Affairs	23,400	30,750
Industry, Labor & Human Relations	147,200	238,786
Natural Resources	300	1,108
Total Agency Setoffs	\$3,918,000	\$6,274,902*

*1989-90 Agency Setoffs amount includes set-offs of \$1,200,668 from the one-time additional school property tax/rent credit.

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 state in the process as of July 1, 1991. Part C lists new rules and amendments which became effective in the period from April 2, 1991 to July 1, 1991. Part D lists emergency rules. ("A" means amendment, "NR" means new rule, "R" means repealed, and "R&R" means repealed and recreated.)

A. Rules at or Reviewed by Legislative Council Rules Clearinghouse

- 3.11 Member of a reserve component of the armed forces serving in the Desert Shield or Desert Storm theater of operations-NR
- 11.01 Sales and use tax return forms-A
- 11.05 Governmental units-A

- 11.33 Occasional sales-general-A
- 11.34 Sales of business or business assets-A
- 11.47 Commercial photographers and photographic services-A
- 11.50 Auctions-A
- 11.69 Financial institutions-A
- 11.83 Motor vehicles-A
- 11.84 Aircraft-A
- 11.85 Boats, vessels and barges-A
- 11.88 Mobile homes-A

B. Rules at Legislative Standing Committee

- 4.05 Taxicabs-NR
- 4.54 Security requirements-NR
- 4.55 Ownership and name changes-NR
- 9.68 Ownership and name changes-NR
- 11.03 Elementary and secondary schools and related organizations-A

C. Rules Adopted in Period From April 2, 1991 to July 1, 1991 (including effective date)

- 2.165 Change in taxable year-A (7/1/91)
- 2.39 Apportionment method-R&R (7/1/91)
- 2.40 Nonapportionable income-R (7/1/91)
- 2.48 Apportionment of net business incomes of interstate pipeline companies-A (7/1/91)
- 2.94 Tax sheltered annuities-A (7/1/91)
- 3.095 Income tax status of interest and dividends from municipal, state and federal obligations received by individuals and fiduciaries-A (7/1/91)
- 8.24 Reciprocal shipments of wine-NR (7/1/91)
- 11.001 Forward and definitions-A (7/1/91)
- 11.05 Governmental units-A (7/1/91)
- 11.10 Occasional sales-R (7/1/91)
- 11.11 Waste treatment facilities-A (7/1/91)
- 11.12 Farming, agriculture, horticulture and floriculture-A (7/1/91)
- 11.13 Sale of business or business assets-R (7/1/91)
- 11.16 Common or contract carriers-A (7/1/91)
- 11.26 Other taxes in taxable gross receipts and sales price-A (7/1/91)

- 11.29 Leases and rentals of tangible personal property-A (7/1/91)
- 11.30 Credit sales, bad debts and reposessions-A (7/1/91)
- 11.32 "Gross receipts" and "sales price"-A (7/1/91)
- 11.33 Occasional sales - general-NR (7/1/91)
- 11.34 Sales of business or business assets-NR (7/1/91)
- 11.35 Occasional sales exemption for nonprofit organizations-NR (7/1/91)
- 11.46 Summer camps-A (7/1/91)
- 11.50 Auctions-A (7/1/91)
- 11.51 Grocers' guidelist-A (7/1/91)
- 11.52 Coin-operated vending machines and amusement devices-A (7/1/91)
- 11.57 Public utilities-A (7/1/91)
- 11.63 Radio and television-A (7/1/91)
- 11.65 Admissions-A (7/1/91)
- 11.68 Construction contractors-A (7/1/91)
- 11.72 Laundries, drycleaners, and linen and clothing suppliers-A (7/1/91)
- 11.79 Leases of highway vehicles and equipment-A (7/1/91)
- 11.80 Sales of ice-A (7/1/91)
- 11.81 Industrial gases, welding rods and fluxing materials-A (7/1/91)
- 11.83 Motor vehicles-A (7/1/91)
- 11.84 Aircraft-A (7/1/91)
- 11.85 Boats, vessels and barges-A (7/1/91)
- 11.86 Utility transmission and distribution lines-R&R (7/1/91)
- 11.87 Meals, food, food products and beverages-A (7/1/91)
- 11.88 Mobile homes-A (7/1/91)
- 11.91 Successor's liability-A (7/1/91)
- 11.92 Records and record keeping-A (7/1/91)
- 11.93 Annual filing of sales tax returns-A (7/1/91)
- 11.94 Wisconsin sales and taxable transportation charges-A (7/1/91)
- 11.96 Interest rates-A (7/1/91)

D. Emergency Rules

- 3.11 Member of a reserve component of the armed forces serving in the Desert Shield or Desert Storm theater of operations-NR (effective 4/29/91)

REPORT ON LITIGATION

This portion of the Wisconsin Tax Bulletin summarizes recent significant Tax Appeals Commission and Wisconsin Court decisions. The last paragraph of each decision indicates whether the case has been appealed to a higher Court.

The last paragraph of each WTAC decision in which the department's determination has been reversed will indicate one of the following: (1) "the department has 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 the Commission's decision).

The following decisions are included:

Individual Income Taxes

David P. McCarthy and Susan C. Pearsall (p. 4)
Independent contractor vs. employe

Corporation Franchise or Income Taxes

Appleton Papers, Inc. (p. 5)
Business loss carryforward — merger

Sentry Financial Services Corporation (p. 5)
Allocation of income — between affiliates

Sales/Use Taxes

Arndt Enterprises, Inc. (p. 5)
Farming — ginseng raising

Other

M & I Bank of Plover (p. 5)
DTCS — delinquent tax payment application — foreclosure proceeds

INDIVIDUAL INCOME TAXES

Independent contractor vs. employe. *David Paul McCarthy and Susan Carter Pearsall vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, January 29, 1991). The issue in this

case is whether David P. McCarthy ("the taxpayer") was an independent contractor ("I/C") teacher as claimed on his joint Wisconsin return and related U.S. individual income tax return, including various schedules, for the calendar year 1988. The taxpayer and Susan C. Pearsall, his wife, are both parties to this appeal solely by virtue of their joint filing of a 1988 Wisconsin income tax return for nonresidents and part-year residents.

Based on the taxpayer's claimed I/C status, he filed a federal Schedule C, Profit or Loss from Business (Sole Proprietorship), reporting gross receipts and taking deductions therefrom. Despite this filing, he filed no Schedule SE, Social Security Self-Employment Tax form.

The taxpayer contended that he established independent contractor status under the "20-factor test" of Treasury Regulations promulgated under the Internal Revenue Code. However, these factors are intended only as guides. "The degree of importance of each factor varies depending on the occupation and the factual context in which services are performed." Treas. Reg. § 31.3401(d)-1(h).

Upon evaluating the 20 factors and considering the nature of teaching services in institutions of higher education, the Commission concluded that while some of the factors might indicate I/C status, there are more which would clearly indicate employment, and those factors which are inconclusive or inapplicable work to the taxpayer's detriment, since it is his burden to show the assessment is incorrect. The Commission held that the taxpayer's work arrangement during 1988 must be considered employment and, therefore, he was not entitled to file a Schedule C or deduct expenses of a sole proprietorship.

The taxpayers have not appealed this decision.

CAUTION: This is a small claims decision of the Wisconsin Tax Appeals Commission and may not be used as a precedent. This decision is provided for informational purposes only.

□