

Taxpayers' Appeal Rights of Field Audit Adjustments

Procedures in Appealing Field Audit Adjustments of Income, Franchise, Sales and Use, Excise, or Withholding Tax Returns or Homestead Credit or Farmland Preservation Credit Claims

I. GENERAL INFORMATION

The purpose of this publication is to inform taxpayers of their appeal rights and refund claim procedures when their income, franchise, sales and use, excise, or withholding tax return, or homestead credit or farmland preservation credit claim, has been adjusted in a field audit by the Wisconsin Department of Revenue.

This information is brief and general. Any taxpayer desiring additional information regarding an appeal or refund claim may write or call the Wisconsin Department of Revenue, Mail Stop 5-257, PO Box 8906, Madison WI 53708, telephone (608) 266-0185.

II. THE FIELD AUDIT, ASSESSMENT, AND REFUND PROCESS

A summary of the field audit, assessment, and refund procedures may help taxpayers to understand the appeal process. The following steps are usually involved in conducting a field audit and making an assessment or refund:

- A. An auditor will examine the tax returns and the taxpayer's books and records to verify the correctness of the items reported. In some instances, an auditor may obtain information from third party sources.
- B. After completing the examination, the auditor may determine that adjustments should be made which result in an amount due or a refund. The auditor generally discusses the proposed audit report in a final conference with the taxpayer and/or the taxpayer's representative. The taxpayer is asked to sign a Notice of Proposed Audit Report form indicating full or partial agreement or total disagreement with the proposed audit report.
- C. The auditor's proposed field audit report and workpapers are reviewed by the department's central review staff for correctness, uniformity, and proper application of the law.
- D. The department notifies the taxpayer by mail of the results of the field audit. If there are adjustments, the taxpayer will receive an assessment or refund notice and a copy of the audit report. The notice and report will explain the adjustments, the amount of tax, interest, and penalty (if any), and the taxpayer's appeal rights. If the field audit results in no amount due and no refund, a letter of notification is sent to the taxpayer.

For a more detailed description of the field audit assessment and refund process, refer to Publication 501 "Field Audit of Wisconsin Tax Returns."

III. TAXPAYER'S OPTIONS AFTER RECEIVING A FIELD AUDIT ASSESSMENT OR NOTICE OF REFUND

A. Notice of Refund

If taxpayer agrees: After receiving a notice of refund, a taxpayer may choose not to contest the adjustments. Nothing further need be done. The refund check will follow automatically.

If taxpayer disagrees: If a taxpayer disagrees with a notice of refund, the taxpayer may file an appeal with the department. The appeal must be filed within 60 days after the date the taxpayer received the notice of refund. If the appeal date expired, no appeal was filed, the net result of a multiple year field audit issued under Chapter 71 of the Wisconsin Statutes was a notice of refund, and one or more tax years beginning on or after January 1, 2000 resulted in an assessment, a claim for refund may be made for the assessment year(s) within four years from the notice of refund date. The claim for refund may only be made for items that were adjusted in the assessment years in the multiple year notice of refund.

B. Notice of Amount Due

If taxpayer agrees: After receiving an assessment, a taxpayer may choose not to contest the adjustments. The taxpayer should then pay the total amount due by the date indicated on the assessment.

If the taxpayer cannot pay the full amount due and an appeal is not filed, any remaining amount not paid by the due date will be subject to interest at 1 1/2% per month. In addition, a delinquent tax collection fee will be imposed equal to the greater of \$35 or 6 1/2% of the amount not paid by the original due date and a tax warrant may be issued. After the assessment has gone delinquent, a revenue agent will contact the taxpayer and the taxpayer could request a formal installment payment agreement at that time. However, a formal installment payment agreement cannot be entered into before an assessment has gone delinquent.

If taxpayer disagrees: If a taxpayer disagrees with an assessment and wishes to contest it, the following options are available:

1. A taxpayer may file an appeal with the department. The appeal must be filed within 60 days after the date the taxpayer received the assessment notice.

NOTE: In order to stop the accumulation of interest, which is computed at 12% per year (or 18%

per year for delinquent taxes), a taxpayer may deposit the entire amount of an additional assessment, including any interest and penalty, with the Department of Revenue at any time before the department issues a decision on the appeal. Any deposited amount which is later refunded will bear interest at the rate of 9% per year computed from the date of the deposit to the date refunded. A taxpayer may also pay any portion of an assessment which he or she admits to be correct. Such payment shall then be considered an admission of the validity of that portion of the assessment and may not be recovered in an appeal or any other action or proceedings.

2. In the alternative, a taxpayer may pay the full amount of the assessment without filing a timely objection. If the taxpayer later wishes to contest some or all of the adjustments, a claim for refund may be filed. Generally, this claim for refund must be filed within two years from the date the assessment was issued. However, for tax years beginning on or after January 1, 2000 (taxable years 2000 and after), the claim for refund of an assessment under Chapter 71 of the Wisconsin Statutes must be filed within four years from the date the assessment notice was issued.

A taxpayer field audited for sales and use tax purposes may also file a claim for refund within the general four year statute of limitations provided the amounts refunded are passed on to customers pursuant to their valid refund claims.

If the 60-day period for appealing an assessment to the Department of Revenue has expired and a taxpayer still wishes to contest an assessment, payment of the assessment and filing a claim for refund is the only procedure available.

NOTE: If a taxpayer pays an assessment without filing a timely objection, the interest charged on the additional tax due is 12% per year. If the taxpayer later files a claim for refund within the required two or four year period described above and the refund is granted, interest at 9% per year will be allowed on the tax refunded. The claim for refund should be sent to the Wisconsin Department of Revenue, Audit Bureau, Mail Stop 5-257, PO Box 8906, Madison WI 53708. No special form is required for sales/use tax refund claims. Refund claims for assessments under Chapter 71 of the Wisconsin Statutes need to be on the appropriate amended return. The claim for refund should contain the taxpayer name, address and appropriate taxpayer account number. Identify the tax year in question

and state the facts and reasons for disagreeing with the assessment. The claim for refund may only be made for items that were adjusted in the notice of amount due.

The Audit Bureau will notify the taxpayer in writing whether the claim for refund is approved or denied. If the claim is denied, the taxpayer may file an appeal with the Department of Revenue within 60 days after receiving the denial notice. **CAUTION:** This claim for refund procedure may NOT be used if any part of the assessment was the subject of a timely filed appeal.

NOTE: Regardless of whether the procedure described in item 1 or 2 above is used, to appeal an assessment or file a claim for refund, the interest portion of the assessment or refund is NOT subject to appeal. The imposition of interest is required by law.

IV. THE APPEAL PROCESS

There are five steps in the appeal process which are available to the taxpayer. They must be taken in the following order:

1. Wisconsin Department of Revenue
2. Wisconsin Tax Appeals Commission
3. Circuit Court
4. Court of Appeals
5. Wisconsin Supreme Court

V. APPEAL TO DEPARTMENT OF REVENUE

Any taxpayer (or the taxpayer's representative) may appeal to the Department of Revenue if the taxpayer disagrees with a notice of assessment or refund. An appeal must be in writing, should state the specific reasons for objecting to the adjustments, and include supporting documents. The appeal should be mailed to the Wisconsin Department of Revenue, Mail Stop 5-257, PO Box 8906, Madison WI 53708. E-mail transmissions are not acceptable.

The appeal must be filed within 60 days of the date the taxpayer received the notice of assessment or refund. An appeal is considered filed if it is (1) actually received by the department within the 60 days, or (2) mailed in a properly addressed envelope with postage prepaid, which is post-marked before midnight of the 60th day and received by the department within five days of the 60th day. Except for the two or four year claim for refund provisions described above in III. A and B. 2, an assessment or refund action becomes final if an appeal is not filed with the department within this 60-day period.

Most appeals of field audits are handled by a conference. Conferences may be held in Madison, Milwaukee, Eau Claire or Appleton. Taxpayers may represent themselves or may be represented by another person, such as an attorney or an accountant.

The conferences are informal. The taxpayer may present whatever facts or arguments he or she desires. These may be presented either orally, in writing or both.

The Department of Revenue will notify the taxpayer in writing of its decision on the appeal.

The Department's action on the appeal could result in one of the following: 1) no change to the original notice, 2) a decrease in the amount shown on the original notice, or 3) an increase in the amount shown on the original notice.

Taxpayers who are audited for more than one tax type (for example, both sales/use tax and income tax) and who wish to appeal both must identify each tax type in their appeal letter or file separate appeals for each.

VI. APPEALS TO WISCONSIN TAX APPEALS COMMISSION

The Wisconsin Tax Appeals Commission is entirely separate from the Department of Revenue.

If a taxpayer disagrees with a decision of the Department of Revenue and wishes to contest it, an appeal must be filed with the Commission. The appeal must be filed within 60 days of the taxpayer's receipt of the Department's decision.

NOTE: If the taxpayer chose not to deposit the taxes with the Department prior to the time an appeal is filed with the Commission, the taxpayer may, at any time while the appeal is pending before the Commission or a court, elect to either deposit the total taxes and interest with the State Treasurer or pay the portion of the assessment not being appealed.

VII. APPEAL TO THE COURTS - CIRCUIT COURT, COURT OF APPEALS AND SUPREME COURT

A taxpayer or the Department of Revenue may appeal a Tax Appeals Commission decision to the Circuit Court within 30 days after the date of mailing of the Commission's decision. The taxpayer or the department may then appeal the decision to the Court of Appeals, then to the Wisconsin Supreme Court.