

WISCONSIN TAX NEWS

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The conversion to the metric sized containers presents a problem with regard to the Wisconsin excise tax statutes for distilled spirits. The liter (33.8 ounces), which is eventually expected to replace the quart as the most popular size of container for this product, currently exceeds the legal maximum size (32 ounces) permitted to be sold in Wisconsin. The Department intends to propose legislation to the 1977 Legislature which will permit the sale of liter sized bottles of distilled spirits in Wisconsin.

EXCISE TAX BUREAU

Although it is already a little over one year old, the Department's Excise Tax Bureau is still new to many people. It was formed in July, 1975 when the responsibility for enforcing Wisconsin alcohol and tobacco laws (at the retail level) was transferred to this Department from the Department of Justice.

In forming this Bureau, personnel transferred from the Justice Department and personnel already located in this Department were consolidated into a single bureau. By combining the personnel charged with enforcement of alcohol and tobacco laws at the wholesale level, with those involved with enforcement at the retail level, better direction and coordination of related responsibilities is obtained.

The Excise Tax Bureau is headed by J. Kilian Leidiger, Director. Its headquarters are at 505 North Segoe Road, Madison, Wisconsin 53705.

'76 FEDERAL LAW CHANGES DO NOT APPLY

For the taxable year 1976, the Wisconsin individual income tax law conforms with the Internal Revenue Code only as it was amended through December 31, 1975. In other words, federal income tax law changes enacted in 1976 do not apply for purposes of computing 1976 Wisconsin taxable income.

As of the date of this printing, only two federal laws were enacted in 1976 which will affect the computation of Wisconsin taxable income. These are:

1. Public Law 94-253 (enacted March 31, 1976). This law provides that exchanges of stock and securities of certain insolvent eastern railroads for stock or other securities of ConRail will qualify as tax-free exchanges.
2. Public Law 94-267 (enacted April 15, 1976). This law provides tax-free rollover (reinvestment) provisions for distributions that employees receive as a result of an employer discontinuing their retirement plans. If the employee reinvests the entire premature distribution into a new retirement plan, the distribution is not taxed for federal purposes.

NOTE: The Federal Congress just passed a major "tax reform" bill which is expected to be signed into law by the President. It is likely that many of the provisions of that act will affect the preparation of a 1976 Wisconsin tax return. A list of the differences between Wisconsin and federal law for 1976 and an explanation of the adjustments required will appear in the January issue of Wisconsin Tax News.

REPORT ON LITIGATION

(This portion of the WTN summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. In cases which decisions adverse to the Department's position are rendered, it will be noted whether or not the Department acquiesces or will appeal.)

1. Midwestern Gas Transmission Co. v. Department of Revenue, Dane County Circuit Court (NO. 147-343, June 1, 1976). The taxpayer operates an interstate natural gas pipeline. It uses gas taken from the pipeline to operate its two compressor stations located in Wisconsin. The Court held that the use tax should not apply to natural gas used as a fuel in the engines powering the compressors nor to heat and air-condition the stations because it would violate the interstate commerce clause of the U.S. Constitution. The Department has appealed the decision.

2. Gilomen Trailer Sales, Inc. v. Department of Revenue, Wis. Tax Appeals Commission (Docket NO. S-4911, February 18, 1976). The Commission held that a Wisconsin corporation selling semitrailers is not required to impose the 4% tax on a sale of two semitrailers to an Iowa company for use outside Wisconsin. The Commission held that semitrailers are "motor vehicles" under s. 77.54 (5) (a), Wis. Stats. The Department has appealed the decision.

NEW LEGISLATION

(The following is a brief description of several changes which the Legislature made in Wisconsin tax laws during 1976.)

SENATE BILL 379—CHAPTER 186, LAWS OF 1975 (Date Published: March 31, 1976)

1. **Statute of Limitations for Sales and Use Tax Determinations and Refunds.** [Amended ss. 77.59 (3) & (4), effective April 1, 1976]

Sections 77.59 (3) and (4) are amended to clarify that the statute of limitations for issuing sales and use tax determinations and filing claims for refund depends upon the due date and the filing date of the annual information return. This bill does not change the Department's interpretation of ss. 77.59 (3) and (4).

2. **Claims for Refund of Sales and Use Tax Within Two Years of Office Audit Determinations.** [Amended ss. 77.59 (4) & (6), effective April 1, 1976]

A claim for refund of sales and use tax may be made within two years of a determination assessed by office audit on or after January 1, 1975, provided such determination was not appealed and the reporting period was not closed by field audit.

3. **Retailers 1% Discount Does Not Apply to Consumer's Use Tax.** [Amended s. 77.61 (4) (b), effective April 1, 1976]

The discount of 1% allowed to retailers is limited to 1% of the sales and use tax paid or payable on retail sales. The 1% discount may not be claimed on consumer's use tax.

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4. Failing to File or Filing a False and Fraudulent Sales and Use Tax Return. [Amended s. 77.60 (7), effective April 1, 1976]

An "officer of a corporation" is included in the definition of a person who may be guilty of a misdemeanor for failing to file a sales and use tax return or who makes a false and fraudulent return with intent to defeat or evade the tax.

**SENATE BILL 252—CHAPTER 214,
LAWS OF 1975 (Date Published:
April 23, 1976)**

1. Replacement Period for Involuntary Conversions-Corporations. [Amended s. 71.03 (1) (g), effective for 1975 taxable year and thereafter]

For 1974 and prior taxable years, a gain on the involuntary conversion of property was not taxable if the corporation within one year expended the proceeds for the replacement of similar property located in Wisconsin. The amendment to s. 71.03 (1) (g) changes the replacement period from one year to two years.

2. Deductible Dividends for Corporations. [Amended s. 71.04 (4), effective for 1976 taxable year and thereafter]

For 1975 and prior taxable years, corporations were allowed to claim a deduction for dividends received, provided that the declaring corporation met the following requirements:

1. It must have been subject to the franchise or income tax laws of Wisconsin,
2. It must have filed Wisconsin tax returns as required by law, and
3. Its principal business must have been attributable to Wisconsin.

For 1976 and subsequent taxable years, the amendment to s. 71.04 (4) provides that, in addition to the three requirements mentioned above, a fourth requirement must also be met, that is, the dividends must not have been deductible for tax purposes from the gross income of the declaring corporation. Distributions received on savings accounts from Wisconsin savings and loan associations will no longer qualify for the dividend deduction under s. 71.04 (4).

3. Extensions to File for Corporations. [Amended s. 71.10 (5) (a), effective April 24, 1976]

An automatic 3 month extension of time granted by the Internal Revenue Service to corporations for filing their federal tax return will also extend the time for filing their Wisconsin franchise/income tax return, provided a copy of the federal extension is filed with the Wisconsin return. If any additional extension of time is granted by the Internal Revenue Service, it will also extend the time for Wisconsin filing purposes, provided a copy of such federal extension is submitted to the Department of Revenue within 10 days after it is received by the taxpayer from the Internal Revenue Service. Interest shall be 9% per annum during an extension period.

**SENATE BILL 755—CHAPTER 224,
LAWS OF 1975 (Date Published:
May 4, 1976)**

A. INDIVIDUAL INCOME TAXES

1. Update Reference to Internal Revenue Code to December 31, 1975. [Amended s. 71.02 (2) (b), effective for 1976 taxable year and thereafter]

In determining Wisconsin net taxable income for the 1976 taxable year and thereafter, an individual will use the Internal Revenue Code in effect as of December 31, 1975, in computing federal adjusted gross income and itemized deductions. The Wisconsin standard deduction and low-income allowance have not been changed from 1975.

2. Deduction for Keogh Plans. [Created s. 71.05 (1) (b) 6, effective for 1975 taxable year]

A cash basis employer or self-employed person may treat Keogh plan contributions made on or before the due date of his 1975 Wisconsin income tax return (or a later date if an extension of time for filing was obtained) as if they had been made on the last day of his 1975 taxable year. For example, Keogh plan contributions made during the period January 1, 1976 through April 15, 1976, may be claimed as a deduction on a 1975 calendar year Wisconsin return.

Prior to the creation of s. 71.05 (1) (b) 6, contributions to a Keogh plan existing as of January 1, 1974 had to be made in 1975 in order for such contributions to be claimed as a deduction on the 1975 Wisconsin return. Addendum 1.1 to TIM I-24 explains the deductibility of contributions to Keogh plans.

3. Legislator's Tax Home. [Created s. 71.03 (2) (e), effective for taxable year 1976 and thereafter and for any years prior to 1976 which are open to adjustment]

A Wisconsin state legislator's tax home will be within the district from which he or she was elected. Per diem payments received pursuant to s. 13.123 (1) (a) will not be taxable, if used for food and lodging while the legislator was in Madison on legislative business.

B. CORPORATION FRANCHISE/INCOME TAX

1. Eliminate Deduction for Entertaining Public Officials. [Amended s. 71.04 (2), effective for 1976 taxable year and thereafter]

A corporation will not be allowed a deduction for the cost of meals or other items given to, or spent on behalf of a public official. "Public official" includes any elected or appointed official, any candidate for public office and any employee of the United States or of any state or a political subdivision thereof.

2. Eliminate Deduction for Interest Paid for Purchase of its Own Stock. [Amended s. 71.04 (2), effective for 1976 taxable year and thereafter]

A corporation will not be allowed a deduction for interest paid on money borrowed or interest on notes or securities issued to purchase its own capital stock.

3. Dividends Exempt if Received by a Wisconsin Holding Company from an 80% Owned Regulated Corporation. [Created s. 71.03 (2) (f), effective for 1976 taxable year and thereafter]

Dividends will be exempt if received by a Wisconsin holding company from an 80% owned regulated corporation. "Regulated corporation" means a corporation whose business is regulated by a federal or state regulatory agency specifically created to regulate such business and which business is subject to limitations, restrictions or approvals by such agency as to the kind of entity under which business shall be conducted, the manner in which distributions or transfers of assets may be made by such entity, and the prices or rates to be charged

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for, or the manner in which, services or products are furnished to the public. "Wisconsin holding company" means a corporation which has a Wisconsin apportionment fraction of 95% or more.

4. Eliminate Deduction for Federal Income Taxes for Insurance Companies. [Repealed s. 71.01 (4) (a) 11, effective for 1976 taxable year and thereafter]

A deduction for federal income taxes will not be allowed to insurance companies.

5. Carry Forward of Business Losses for Insurance Companies. [Amended s. 71.01 (4) (a) 10, effective May 5, 1976]

Certain insurance plans organized under ch. 148, s. 447.13, s.449.15 and s.450.13, are required to be incorporated pursuant to Senate Bill 17. The amendment to s. 71.01 (4) (a) 10 in Senate Bill 755 will permit any net business loss carry forward permissible for such insurance plans under s. 71.06 to be treated as a net business loss of the successor insurance corporation.

6. Update Reference to the Internal Revenue Code to December 31, 1975 for Insurance Companies, Real Estate Investment Trusts and Regulated Investment Companies. [Amended s. 71.01 (4) (g) and s. 71.02 (1) (a), effective for 1976 taxable year and thereafter]

The reference to the Internal Revenue Code for computing the income of real estate investment trusts and regulated investment companies is changed from December 31, 1972 to December 31, 1975. For insurance companies, the reference is changed from November 5, 1971 to December 31, 1975.

7. Gain or Loss on Sale of Business Property. [Amended s. 71.07 (1m), effective for 1976 taxable year and thereafter]

A gain or loss realized on the disposal of real property or tangible personal property used in the production of business income will follow the situs of the business. Previously, a gain or loss on such property followed the situs of the property.

8. Corporation Business Loss Carry Forward. [Repealed and recreated s. 71.06, effective for 1976 taxable year and thereafter]

For a corporation reporting its income to Wisconsin by the apportionment method, the computation of Wisconsin taxable income involving a business loss carry forward is changed. The Wisconsin portion of the loss will be computed first, taking into consideration both apportionable and non-apportionable income. The net amount will then be carried forward against Wisconsin net income of subsequent years. (Prior to Senate Bill 755, the total company net business loss was offset against total net business income of subsequent years prior to apportionment.)

9. Assessments Against Dissolved Corporations. [Created s. 71.11 (21n), amended s. 180.787, effective May 5, 1976]

Assessments against dissolved corporations will be permitted within 4 years of the date the corporation return was filed or the due date, whichever is later. (Previously, assessments against dissolved corporations had to be issued within 2 years of the date of dissolution.)

C. SALES AND USE TAX

1. Sales Tax on Tips. [Amended ss. 77.51 (11) (c) 2 and 77.51 (12) (c) 1, effective May 5, 1976]

An amount or flat percentage, whether designated as a tip or as a service charge, that is added to the price of meals pursuant to a requirement of the seller furnishing such meals, is a part of the selling price of such meals and will be subject to the tax, regardless of whether the amount or flat percentage may be subsequently paid over in whole or in part by the seller to his employees.

Previously, a flat percentage service charge added to customers' bills by a private club was not taxable if: (a) The charge was imposed pursuant to the club's bylaws; (b) The total amount collected was paid directly to food service employees; and (c) The amount paid to employees was not part of the wages that brought them up to the legal minimum wage. Such flat percentage service charges were determined to be not taxable in the Wisconsin Supreme Court decision of Big Foot Country Club v. Wisconsin Department of Revenue.

A customer tip which is given directly to an employee in cash or which is added by the customer to his bill, which amount is then turned over in full to the employee, has been and continues to be exempt from the sales tax, if the amount of such tip is wholly in the judgment of the customer.

D. EXCISE TAXES

1. Deletion of Wine Tax Table. [Repealed and recreated s. 139.03 (2n), effective May 5, 1976]

The wine tax table has been eliminated; however, the rate of tax per gallon has not been changed.

E. OTHER

1. Individuals and Corporations Required to Give Notice of Federal Adjustments and Amended Returns to Department of Revenue. [Amended ss. 71.10 (10) (a) & (bn), 71.11 (21) (d) & (g), created ss. 71.11 (21) (g) 2 and 71.11 (21m), effective May 5, 1976]

If the Internal Revenue Service changes the taxable income of a taxpayer, within 90 days after its final determination, the taxpayer will be required to report such changes to the Department of Revenue. The taxpayer shall also concede the accuracy of the Internal Revenue Service determination or indicate where it is in error. Such changes by the Internal Revenue Service do not have to be reported to the Department unless they affect the amount of Wisconsin income or Wisconsin tax payable.

Any taxpayer filing an amended return with the Internal Revenue Service or with another state will also be required to notify the Department within 90 days thereof, if any information contained on the amended return affects the amount of Wisconsin income or Wisconsin tax payable.

Within 90 days of the date the Department receives from the taxpayer an amended return or changes made by the Internal Revenue Service, the Department may give notice of an assessment or refund, regardless of any other limitations in Chapter 71. However, if the taxpayer does not report an

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amended return or changes by the Internal Revenue Service to the Department within the required 90 day period, an assessment may be made at any time within 10 years after the date on which the Wisconsin tax return was filed.

F. COLLECTION OF DELINQUENT TAXES

1. Tax Warrants a Lien Against Personal Property. [Amended s. 71.13 (3) (b), effective May 5, 1976]

Warrants filed by the Department in a delinquent tax matter will be a lien against personal property. Previously, such warrants were a lien only against real property.

2. Filing of Delinquent Tax Warrants. [Amended s. 806.13, created s. 805.115, effective May 5, 1976]

Previously, when a taxpayer had delinquent taxes, a tax warrant was filed with the Clerk of Court in the county in which the taxpayer resided. If the taxpayer owned property in another county, a certified transcript of the original warrant was filed in such county. This provision will permit the Department to file a duplicate copy of the warrant rather than a certified transcript.

3. Employer Certification for Delinquent Gift, Sales and Use Taxes. [Amended ss. 71.135, 72.86 (4) and 77.62 (1), effective May 5, 1976]

An employer may be required to withhold additional tax from income of an employee if the employee has delinquent gift or sales and use taxes. Previously, the employer could only be required to withhold additional amounts if the employee had delinquent income or withholding tax.

4. Application of Partial Payments.

[Amended ss. 71.13 (4) (a) & (b) and 77.61 (2), created s. 71.13 (4) (g), effective May 5, 1976]

All payments made on tax delinquencies will be applied to cost, penalties and interest, and any remaining balance to principal. Previously, the statutes did not specify the application of certain payments.

5. Contractor Liable for State Taxes on Public Contracts. [Amended ss. 289.14 (1) and 289.15 (1), effective May 5, 1976]

On public contracts, a primary contractor will be responsible for state taxes. State taxes will also be subject to a lien on any monies due the primary contractor.

SENATE BILL 139—CHAPTER 344, LAWS OF 1975 (Date Published: June 8, 1976)

Exempt Payments to Victims of Crime. [Created s. 71.01 (3) (g)]

Beginning in 1977, victims of serious crimes (for example, murder, burglary or rape) or their dependents may receive compensation from the Department of Industry, Labor and Human Relations. Compensation awards may range from \$200 to \$10,000. Section 71.01 (3) (g), Wis. Stats., is created to provide that such awards may be excluded from the Wisconsin taxable income of the recipients.

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answers may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. Unless otherwise indicated, Tax Releases apply for all periods open to adjustment. NOTE: Many of these were formerly distributed to Department personnel as sales tax memos or reports. It is thought that these positions would be of help to taxpayers and tax practitioners.)

SALES TAX

I. Admissions

A. Tours & Cruises

The sale of admissions to pleasure tours or cruises on boats is taxable. This includes a cruise on a lake or river bordering on the state even though a part of the waterway is beyond the borders of this state. (See Roy A. Franz d/b/a Big River Boat Lines v. Department of Revenue 9 WTAC 117 January 31, 1972). The

Franz case involved pleasure cruises on the Mississippi River to points in Minnesota and Iowa, with such cruises originating and terminating at LaCrosse, Wisconsin.

The transportation of passengers by ship from Milwaukee to a port in Michigan is not taxable if the primary purpose of the trip is to obtain transportation to a port in Michigan, even though the common carrier may advertise the trip as a Lake Michigan cruise. However, the meals and beverages sold by the carrier while in Wisconsin waters are subject to the tax.

B. Bingo Operations

The gross receipts from conducting bingo games are subject to a 4% sales tax, as well as a 2% gross receipts tax imposed under the bingo law. Both taxes are collected by the Bingo Control Board. An organization will not be required to register with the Department of Revenue merely to report the receipts from conducting bingo games.

An organization's requirements for sales tax registration depend entirely upon its activities other than bingo. If its other activities (excluding bingo) qualify as exempt occasional sales, the gross receipts derived from conducting bingo games will not affect this occasional sale status. If the organization has a Seller's Permit because of other activities, it must report the sales tax on bingo receipts to the Bingo Control Board, and the tax on other activities to the Department of Revenue.

Sales of bingo supplies to the organization conducting bingo operations are taxable except: (1) when the sale is to an exempt purchaser, such as a church, or (2) the sale is of merchandise prizes which are to be awarded to winners of the bingo games. In the latter situation the purchaser should give his supplier a properly filled out Resale Certificate.

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