

WISCONSIN TAX BULLETIN

For information about eligibility requirements, instructions on how to file, or obtaining the form, Schedule H, contact any of the Department's 36 offices throughout the state or write to the Department of Revenue, P. O. Box 80, Madison, WI 53701.

BULK ORDERS OF TAX FORMS

The order blank (Form P-744) for requesting a bulk supply of 1977 Wisconsin income tax forms was mailed in early October. Bulk orders of income tax forms requested by professional tax preparers are subject to a minimal handling charge. However, no charge is made for forms which will be used for distribution to the general public such as is commonly done by many banks, post offices, and libraries.

Persons ordering bulk supplies of tax forms are again asked to determine their order amounts as accurately as possible. Orders for forms should be placed as early as possible. This will aid the Department in identifying possible shortages of forms.

If you are not currently on the Department's mailing list to receive the bulk order blank and would like one, call any Department office or write to the Department of Revenue, Central Services Section, P. O. Box 58, Madison, WI 53701.

INFORMATION REPORTS WILL BE REQUIRED FOR NONRESIDENT ENTERTAINERS IN 1978

Beginning January 1, 1978, every Wisconsin employer of an entertainment corporation or nonresident entertainer or athlete will be required to report to the Department certain information about each Wisconsin performance within 90 days of the performance. This law covers performances for which the contract price exceeds \$1,950. The reporting requirement was enacted in the 1977-79 Budget Act (Chapter 29, Laws of 1977).

Under the new law, an "employer" is any Wisconsin resident person or firm which engages the services of a nonresident entertainer or athlete or an entertainment corporation. In the absence of such "employer", the person required to report to the Department

will be the resident person last having receipt, custody or control of proceeds of the entertainment event.

The law defines "entertainment corporation" as a domestic or foreign corporation which derives income from amusement, entertainment or sporting events in this state or from the services of an entertainer.

The information report (Form 9C) will require such information as the name, address and Wisconsin tax identification number (if any) of the employer; the entertainer's stage name, true name, address and social security number or the name and address of the entertainment corporation; and the date, place and total amount of remuneration received for each performance.

Form 9C, which is presently being developed, should be available in December 1977 and may be obtained at that time by writing: Wisconsin Department of Revenue
Central Services Section
P. O. Box 58 (Use P. O. Box 8903 as of January 1, 1978)
Madison, Wisconsin 53701 (Use zip 53708 as of January 1, 1978)

Any questions about the requirements of this law may be directed to:
Wisconsin Department of Revenue
Compliance Bureau
P. O. Box 39 (Use P. O. Box 8902 as of January 1, 1978)
Madison, Wisconsin 53701 (Use zip 53708 as of January 1, 1978)
Phone: (608) 266-2776

REPORT ON LITIGATION

(This portion of the WTB 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.)

Sterling Custom Homes Corp. vs. Department of Revenue (Circuit Court of Dane County, Case No. 154-305, May 16, 1977.) The sole issue before the court was whether Sterling Custom Homes Corporation ("Sterling") (a) was involved in selling tangible personal property in the form of building materials to contractors or builders, or

(b) was the contractor or builder and the consumer of the materials furnished.

Sterling prefabricated custom-built homes and marketed them through 15 regional sales managers who worked with local builders, contractors and realtors. Customers purchased homes from a local builder, contractor or realtor and the building permit was normally issued in the name of the builder or contractor. Sterling's contracts were with the builder-contractor. Sterling did not deal directly with the home owner, other than advising the builder-contractor of the cost of the exterior house shell. The builder-contractor forwarded each customer's plans and specifications to Sterling, which prefabricated the home in its manufacturing plant.

The builder-contractor prepared the foundation for the home and installed dry-wall, plumbing, heating and wiring in the shell. After the foundation had been prepared, Sterling's drivers delivered the sections of the exterior shell to the job-site and participated in the placement of the shell on the foundation. Sterling selected the type of crane and operator best suited to the setting and assembly of the component parts on the foundation which was done in accordance with Sterling's erection drawings.

The court found that, under these conditions, Sterling was a contractor performing a real property construction activity. It therefore was the consumer of the personal property used in this construction activity and had to pay sales and use tax on the cost of such property.

The Department has appealed this decision to the Wisconsin Supreme Court.

Moebius Printing Co. vs. Department of Revenue (Circuit Court of Dane County, Case Nos. 152-169 and 152-238, May 13, 1977.) Prior to May 12, 1972, the sales and use tax law contained a use tax exemption for advertising materials printed outside Wisconsin which were transported outside the state for use solely outside the state. The exemption resulted from s. 77.51(16), Wis. Stats., which excluded from the definition of "storage" and "use" the "keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state."

On May 12, 1972, a sales tax exemption was established for printed material designed to advertise and promote the sale of merchandise or to advertise the services of indi-

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vidual business firms, if such printed material is used solely outside the state. (s. 77.54 (25), Wis. Stats.)

The issue in this case was whether the retailer was entitled to a sales tax exemption for advertising materials purchased in Wisconsin and shipped outside the state for exclusive use outside the state prior to May 12, 1972.

The court held that the retailer was entitled to the exemption. It stated that the legislative intent reflected that such a sales tax exemption existed prior to May 12, 1972 and that s. 77.54 (25) merely clarified the law in 1972.

The Department has appealed this decision to the Wisconsin Supreme Court.

Department of Revenue vs. James T. Jacobson (Circuit Court of Bayfield County, Case No. 7519, July 6, 1977.) The taxpayer was employed as a Wisconsin state trooper during the years 1970 through 1973, inclusive. The sole issue was whether the meal reimbursement funds he received from his employer were includable in gross income for Wisconsin income tax purposes.

The taxpayer contended that the meal reimbursements were excludable under s. 119 of the Internal Revenue Code. That section provides that to be excludable, meals must be furnished for the convenience of the employer and on the business premises of the employer.

The state highway patrol had certain policies regarding troopers' meals. Among them, troopers are not allowed to carry bag lunches or consume them on the roadside or in their vehicle. They must eat in close proximity to their assigned sector and may not go home for meals. The meals shall be eaten at the convenience of troopers when the workload allows. Troopers must be available to respond to emergencies at all times, and troopers are reimbursed for actual out-of-pocket expenses incurred as the result of such policies.

In this case, the taxpayer was stationed in northern Wisconsin and had not included his meal reimbursement in gross income. The taxpayer claimed that the meals were furnished in cash reimbursement form, for the convenience of the employer and pursuant to the employer's standards.

The Court overturned the Wisconsin Tax Appeals Commission and held that the meal reimbursements are taxable income. The Court held that the cash reimbursement was not the same as "meals" and did not, as such, fit within the statutory exemption language.

St. Michael Hospital of Franciscan Sisters, Milwaukee vs. David Adamany, as Secretary of the Department of Revenue, and Becker Construction Co., Inc. (Circuit Court of Milwaukee County, Case No. 449-303, July 7, 1977.)

The hospital claimed that its purchases of construction materials which were incorporated into a hospital addition constructed by Becker Construction Company, were exempt from the sales and use tax. The Department of Revenue assessed the construction company sales taxes, interest and penalties. The hospital's contract with the construction company provided that the hospital would reimburse the construction company for any amounts assessed.

The hospital went directly to circuit court asking for a declaratory judgment and the Secretary of Revenue moved that this action be dismissed until normal administrative remedies had been exhausted. The Court held that it had the jurisdiction and authority to void the Department's assessment against the construction company and denied the motion to dismiss.

The Department has appealed this decision to the Wisconsin Supreme Court.

Phillip Cullen vs. Department of Revenue (Circuit Court of Dane County, Case No. 152177, July 7, 1977.) Snowmobiles, all-terrain vehicles and boats were rented to the public by the taxpayer at the Lake Geneva Playboy Club-Hotel. The taxpayer owned the snowmobiles and all-terrain vehicles and the club owned the boats. Taxpayer contracted in writing with the club to maintain the equipment and operate on a commission basis for the benefit of club guests. A fact in dispute was who collected the fees, the taxpayer or the club.

The contract was silent on who was responsible for paying the sales tax. The issue before the Court was whether Mr. Cullen or the club had the responsibility of reporting the tax on these rental receipts. The Tax Appeals Commission affirmed the Department's assessment against Mr. Cullen.

The Court held that the Commission's findings of facts were in error and remanded the case to the Commission for further review. Changing the findings of fact may affect the conclusions of law issued by the Commission. The Court stated, however, that as a matter of law, the club, which owned the boats, was legally responsible for the sales tax on the rentals and commissions for the boats. It left open the question of whether the operator could also be liable for such taxes.

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. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.)

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 - Entry Fees

A. Entry Fees Paid by Professionals

Snowmobile race entry fees are not subject to the sales tax when the primary motive of the majority of persons entering the contest is "business" and not "recreation". At large snowmobile races, commonly most of the entrants are manufacturers who ship semitrailer loads of their snowmobiles to the event. They pay an entry fee (e.g., \$25) with the motive of winning some portion of the event and using the success for advertising purposes. Under these conditions, receipts from snowmobile entry fees (both fees of professional and amateur entrants) are not taxable because the majority of entrants are not pleasurable or recreationally occupied by the event.

Entry fees of both professional and amateur entrants are also not taxable for other sporting-type contests in which the primary motive of the majority of entrants is business, not recreation. Such events include golf tournaments, rodeos and auto races.

B. Entry Fees Paid to Enter Fishing Contests

A fee paid for entering a fishing contest on public waters is not taxable as an admission to a recreational facility. If the contest is held on a lake, river or other public waters and anyone may enter the recreational facility, the entry fee is generally a device for collecting funds to be used as prizes and is not taxable.

II. Mailing Services

If a Wisconsin printer's in-state or out-of-state customer requests a completed order (except exempt printed advertising material