

## WISCONSIN TAX BULLETIN

### FOR ADDITIONAL INFORMATION

A copy of Schedule FC and its instructions are attached to this Bulletin. For additional information or assistance in completing Schedule FC, you may call or visit one of the Department of Revenue's district offices (in Appleton, Eau Claire, Madison or Milwaukee) or the branch office nearest you. The addresses and telephone numbers of the district offices and branch offices are listed in this Bulletin.

For information regarding land preservation (non-tax) aspects of the farmland preservation program, you may write or call:

Dept. of Agriculture, Trade &  
Consumer Protection  
801 West Badger Road  
Madison, WI 53713  
Telephone (608) 266-1721

### INFORMATION REPORTS ARE REQUIRED FOR NONRESIDENT ENTERTAINERS AND ATHLETES

Beginning January 1, 1978, every Wisconsin employer of an entertainment corporation or nonresident entertainer or athlete is 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 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 is 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) requires 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.

Copies of Form 9C may be obtained by writing:

Wisconsin Department of Revenue  
Central Services Section  
P.O. Box 8903

Madison, Wisconsin 53708

Any questions about the requirements of this law may be directed to:

Wisconsin Department of Revenue  
Compliance Bureau  
P.O. Box 8902  
Madison, Wisconsin 53708  
Telephone (608) 266-2776

### DEPARTMENT CONVERTING TIMS TO ADMINISTRATIVE RULES

Technical Information Memoranda (TIMs) have been issued by the Department since 1968. TIMs have been a convenient, informal way of providing tax practitioners, members of the business community and other members of the public with interpretations of specific provisions of Wisconsin tax statutes.

During 1976, the Department began converting TIMs to administrative rules. The procedures for adopting administrative rules are contained in Ch. 227, Wis. Stats.. Whenever a TIM is adopted in rule form, the TIM is withdrawn and a notice of the withdrawal is sent to TIM subscribers.

Administrative rules of the Department are part of the Wisconsin Administrative Code and are available on a subscription basis. The charge for a booklet containing current Department rules is \$1.20 and the annual calendar year subscription service to keep the booklet current is presently \$1.20.

For information on how to obtain a subscription to the Department's administrative rules, you may write:

Document Sales Section  
Department of Administration  
202 South Thornton Avenue  
Madison, WI 53702

### 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.)*

**Department of Revenue vs. Milwaukee Refining Corp.** (80 Wis. 2d 44, Wisconsin Supreme Court, October 4, 1977). The taxpayer was in the business of selling gold to dentists for use in patient care. The taxpayer does not manufacture or refine the gold, but rather purchases it from third parties in the form of small bars and sells the bars, unaltered, to dentists. Dentists then use the gold in rendering professional services, such as providing inlays and bridges, to their patients. The Department took the position that the dentists are the ultimate users and consumers of the gold and assessed sales tax against the taxpayer based on the gross receipts from the sales.

The Court held that the sales of gold to dentists made by the taxpayer were not sales made "at retail" by a "retailer" as the terms are used in s. 77.52 (1), Wis. Stats.. The sales are, therefore, not subject to Wisconsin's sales tax.

### 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.)

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### INCOME TAX

#### I. Individual Retirement Accounts (IRA's) For Nonworking Spouses

Beginning with the 1977 taxable year, federal income tax law allows a total deduction of up to \$1,750 to married taxpayers who make payments to individual retirement accounts (IRA's) established for themselves and their unemployed spouse. The provision allowing an IRA to be established for an unemployed spouse is new, having been enacted on October 4, 1976 as part of the federal "Tax Reform Act of 1976". Since this change to federal law was enacted before December 31, 1976, it also applies for Wisconsin income tax purposes for 1977.

Although prior federal law allowed a husband and wife to each establish their own separate IRA plan, it was only permitted when both spouses were employed. In situations where only one spouse was employed, only that spouse could set up an IRA plan. Thus, under prior law, a married couple, when both spouses were employed, could deduct up to a total of \$3,000 (\$1,500 each) for contributions to their IRA plans. However, when only one spouse was employed, the maximum deduction possible was only \$1,500. Under provisions of the Tax Reform Act of 1976, the family with only one spouse employed may now claim a deduction of up to \$1,750 for 1977.

On a 1977 Wisconsin income tax return, a working spouse who contributes to both his or her own IRA plan and to the unemployed spouse's plan may claim a deduction of up to \$1,750 (subject to limitations imposed by the Internal Revenue Code) for such contributions. The amount of deduction allowable is not required to be allocated between the spouses. The taxpayer need not itemize deductions to claim such amounts, the deduction is to be subtracted from gross income in arriving at adjusted gross income.

#### II. Standard Mileage Rate

In 1977, the Internal Revenue Service issued Revenue Procedure 77-40 increasing the optional standard mileage rate for federal income tax purposes for the first 15,000

miles of business use of an automobile from 15 cents to 17 cents. The increase is effective for all federal taxable years beginning after December 31, 1976.

This new standard mileage rate will apply in the same manner for Wisconsin income tax purposes as it does for federal purposes. The increase was not the result of new federal legislation. Rather, it was accomplished by the Revenue Procedure issued.

No change was made with respect to the standard rate for mileage in excess of 15,000 miles per year. The rate for such mileage remains 10 cents per mile. Also, no change was made in the standard mileage rate (7 cents) allowed where transportation expenses are deductible as a medical expense or charitable contribution.

### SALES TAX

#### I. Gifts and Advertising Specialties

Rule Tax 11.28 (2) (intro), which went into effect on December 1, 1977, may be of special interest to pharmaceutical and other manufacturers, and tavern operators. This subsection is entitled "Gifts, gift certificates, advertising specialties and sales incentive plans" and reads:

"Persons who make gifts of taxable personal property to others are the consumers of the property and the tax shall apply to the gross receipts from the sale of the property to such persons. Such taxable sales include sales of samples, advertising material, display cases, racks and other similar marketing aids to manufacturers, distributors, jobbers and wholesalers acquiring such property for the purpose of giving it to retailers for use in selling merchandise to customers. For example, a paint manufacturer is the consumer of color cards which it provides to retailers without charge to facilitate the sale of the manufacturer's paint. A tavern operator is liable for the tax measured by the tavern operator's purchase price of liquor given free to customers. Samples furnished to doctors by drug manufacturers are deemed consumed by the manufacturer, and the use tax applies to the cost of the ingredients. When a person purchases

property for resale but uses the property for any purpose other than resale, such as giving it to customers or to a charity, the purchaser shall be liable for use tax based on the purchaser's cost of the merchandise."

#### II. Solar Heating Equipment

The sale of solar heating equipment to individual homeowners, contractors, subcontractors or repairers is subject to the Wisconsin sales and use tax. The Wisconsin Statutes do not exempt or give any tax credit for such purchases.

The following are deemed capital improvements to real property: (1) Adding a complete solar heating system which supplements an existing conventional heating system; (2) Adding an entirely new solar central heating system or installing solar heating to heat water for in-ground swimming pools.

The sales tax should not be charged to the customer for the materials used or labor to install such capital improvements. However, the contractor must pay tax to its supplier when acquiring the materials used to make such improvements.

#### III. Travel Time

The sales tax applies to the total charge for furnishing taxable services, including charges for time spent in going to and from the place where the services were performed. Travel time is deemed to be an integral part of the taxable labor and services furnished the customer, and the charges for such travel time are subject to sales tax.

#### IV. Computer and Data Processing Services

The gross receipts from the sale of computer and data processing services became subject to the Wisconsin sales and use taxes effective August 1, 1977. The Department issued Technical Information Memorandum S-38.2, entitled "Automatic Data Processing" (July 20, 1977), which provides general information about the scope of the application of the taxes to computer and data processing services. If you want a copy of this TIM, write to the Department of Revenue, Technical Services Staff, 201 East Washington Avenue, Madison, WI 53702.

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After TIM S-38.2 was issued, the Department received questions regarding computer and data processing services. Information given by the Department in response to questions is set forth in the following paragraphs:

Section 77.51 (11) (a) 2, Wis. Stats., provides that a retailer may not reduce its taxable gross receipts by "the cost of materials used, labor or service cost, interest paid, losses, or any other expense". Therefore, telephone charges, bank service charges or special handling charges paid by a service bureau which are rebilled to customers by the service bureau are part of its gross receipts for purposes of the sales and use tax. In other words, the expenses of a service bureau, or any other retailer, may not be used to reduce its taxable receipts for sales tax purposes.

Similarly, delivery costs or postage charged a customer by the service bureau for returning documents and processed work to the customer are part of its gross receipts and subject to the tax. However, bulk postage charges separately billed the customer by the service bureau, for mailing a customer's processed statements to other persons, are not deemed part of a bureau's gross receipts and are not subject to the tax.

"Storage" charges which are billed to Wisconsin customers for storing data and programs in a computer, whether such computer is located in-state or out-of-state, are subject to the tax. The entire charge for providing time-sharing service is also taxable, including any storage charge. This storage charge generally is a measure of the computer's capacity that is available for use by the customer, and is an integral part of the time-sharing facility.

Any time a separate entity provides computer or data processing service to a related corporation or partnership, the service is subject to the tax. If two CPA firms share the ownership and use of a computer through a separate entity (e.g., a partnership or corporation), the charges by this separate entity to the CPA firms are taxable. This also applies when a bank, which is a separate corporation, provides computer or data processing services to other brother-sister or parent-subsidiary corporations within the group.

Assume that a manufacturer furnishes computer or data processing services to its subsidiary under a "cost-sharing" agreement between the two corporations and the agreement states that such services shall be provided at cost. The gross receipts from such services are subject to the tax.

### V. Pheasants and Poultry

Sales of live pheasants, or other poultry to farms are exempt under s. 77.54 (3m), Wis. Stats. Sales of live poultry to restaurants for meal preparation are also exempt.

Game farms and shooting preserves which transfer pheasants to their customers as part of a recreational facility, and which pay the sales tax on their receipts from the operation of the recreational facility, can purchase the birds without tax by giving a Resale Certificate to their supplier.

Sales of pheasants to persons who are not farmers, and who are not purchasing the birds as a basic food item for human consumption, generally are subject to the sales tax. For example, sales of pheasants to dog kennels which use them for training dogs, or sales to conservation clubs which immediately release them are taxable.

### VI. Farmers (Egg Producers)

The production of eggs by a poultry farmer is deemed farming for sales tax purposes, and qualifies for the farming exemptions. Egg production includes operations normally incidental to the gathering and storage of eggs on the farm premises. Examples of machines used in a modern large laying house which qualify as exempt farm machines under s. 77.54 (3), Wis. Stats., are:

*Automatic chain or belt feeder*  
*Auger which conveys feed from bulk feed bins to automated feeder system*  
*Belt system for egg gathering*  
*Automatic clean-out system for cage houses*  
*Control panel used to regulate feed system or egg gathering*  
*Time clock for controlling lights or machinery*  
*Electric fan and motorized shutter assembly used for ventilation*

*Auxiliary power generator*  
*Egg washing machine*  
*Machines used to cool eggs*  
*Electric debeaker*

Examples of equipment which does NOT qualify as exempt farm machines are:

*Bulk feed bin ("boot" portion may qualify)*  
*Laying cages*  
*Waterers and feeders*  
*Egg baskets and crates, etc. (unless used to transfer eggs to customers)*  
*Egg carts and dollies*  
*Litter, bedding and nesting materials*  
*Hand operated sprayers*  
*Mouse traps*  
*Leg bands and wing bands*

The machines and equipment used by an egg processor for grading, candling and packaging eggs do not qualify for the farmer's exemption when done off the farm premises. Neither does such equipment qualify for the manufacturer's exemption unless a new and different product is developed from the raw eggs.

### VII. Square Dancing Clubs

The total gross receipts of local square dancing clubs are subject to the sales tax without any deduction for such expenses as hall rental or caller fees.

Also, the total gross receipts of the area associations (currently there are 5) in the state are subject to the sales tax. These gross receipts include the \$5 annual dues collected from each of the local square dancing clubs and the total receipts from all events held during the year.

The dues received by the state association from the area associations are not subject to the tax, since they were taxed when received by the area associations.

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## New Corporations

Transfers of property by any individual, partnership or corporation to a new corporation solely in exchange for stock in the new corporation, are not taxable even though the transferor may hold a Seller's Permit. If the transfer of assets is made by someone with a Seller's Permit to a new corporation and if the transferor receives other consideration in addition to capital stock, sales tax is due on the other consideration. The tax is computed by using the following formula:

$$\frac{\text{Other Consideration}}{\text{Total Consideration}} \times \text{Sales Price of Taxable Personalty Transferred}$$

For example, assume that A transfers the following assets to B, a new corporation, with B assuming all of A's liabilities:

Assets Transferred :		Consideration Received :	
Land and Buildings	\$110,000	Cash	\$100,000
Inventory Held for Sale	100,000	Liabilities Assumed	50,000
Furniture and Fixtures (personalty)	90,000	Capital Stock	150,000
TOTAL ASSETS TRANSFERRED	<u>\$300,000</u>	TOTAL CONSIDERATION	<u>\$300,000</u>

Sales Tax Computation:

$$\frac{\text{Cash} + \text{Liabilities Assumed}}{\text{Total Assets Transferred}} \times \frac{\text{Taxable Personalty}}{\text{Transferred}} = \text{Taxable Measure}$$

$$\frac{\$100,000 + \$50,000}{\$300,000} (50\%) \times \$90,000 = \$45,000 \text{ Taxable}$$

A similar situation may arise when a person not holding, or required to hold, a Seller's Permit transfers property, including motor vehicles, to a new corporation and the items transferred (except the motor vehicles) qualify for the occasional sale exemption pursuant to s. 77.54 (7). The following example illustrates the tax computation:

Assets Transferred :		Consideration Received :	
Motor Vehicles	\$16,000	Cash	\$10,000
Other Tangible Personalty	24,000	Capital Stock (or Partnership Interest)	30,000
TOTAL	<u>\$40,000</u>		<u>\$40,000</u>

Tax Computation:

$$\frac{\text{Cash}}{\text{Total Assets Transferred}} \times \text{Motor Vehicles} = \text{Taxable Measure}$$

$$\frac{\$10,000}{\$40,000} (25\%) \times \$16,000 = \$4,000 \text{ Taxable}$$