

4. If there is a combined payment for both husband and wife, indicate the amount for each spouse.

The address and telephone number for matters relating to declaration vouchers (Forms 1-EP) is:

WISCONSIN DEPARTMENT
OF REVENUE
P.O. BOX 34
MADISON, WI 53786
Telephone (608) 266-9940

New Minimum Payment Levels Required

Chapter 29, Laws of 1977 increased the minimum declaration requirements for 1978 from 70% to 80% of total tax liability. This 80% standard applies to estimated taxes paid by both individuals and corporations.

To avoid the 9% penalty which is imposed on underpayments of estimated tax, individuals and corporations are generally required to make installment payments of 1978 estimated taxes which equal at least 80% of their total tax liability.

EXTENSIONS OF TIME TO FILE TAX RETURNS FOR INDIVIDUALS

Many individuals cannot file their Wisconsin income tax returns by filing deadlines. The statutes provide that extensions of time to file may be granted for many of these returns. This article describes the extensions available and the procedures for requesting them.

A. Forms 1 and 1A

The 1977 individual income tax Forms 1 and 1A are due on April 17, 1978 for persons who are calendar year taxpayers (s. 71.10 (2) (b)). If an individual's fiscal year is other than a calendar year, these returns are due on the 15th day of the 4th month following the close of the fiscal year.

Any extension of time granted by the Internal Revenue Service for filing corresponding federal returns shall extend the time for filing the Wisconsin returns, provided that a copy of the federal extension (Form 4868 for a 60-day extension, or Form 2688 for an additional ex-

tension) is filed with the Wisconsin return (s. 71.10 (5) (b)). If the Internal Revenue Service for any reason refuses to grant an extension or terminates one previously granted, the Wisconsin income tax return is due on the same date as the federal return.

Upon written request and for a satisfactory cause, the department may grant a 30-day extension to file Forms 1 and 1A (s. 71.10 (5) (b)). A form entitled "Application for Extension of Time to File Wisconsin Individual Income Tax Returns" is available from all department offices for these requests. This form should be filed in duplicate and must be received by the department on or before the original due date of the income tax return. One copy of the application will be returned to the filer, indicating whether the request for extension has been granted or denied.

U.S. citizens who are not in the United States or Puerto Rico on April 17, 1978 are allowed an automatic extension until June 15 to file their returns. These persons do not have to request an extension, but should attach a statement to their returns indicating that they were out of the United States and Puerto Rico on April 17.

If an individual who has been granted an extension files a return and has a tax due, the amount due is subject to interest at the rate of 9% per year for the extension period (s. 71.10 (5) (b)). To avoid the payment of interest, individuals may pay the tax due on or before the original due date of the return.

Applications for extensions and related correspondence should be sent to:

WISCONSIN DEPARTMENT
OF REVENUE
P.O. BOX 8903
MADISON, WI 53708

B. Schedule H and Schedule FC

A Wisconsin Homestead Credit Claim (Schedule H) or Farmland Preservation Credit Claim (Schedule FC) should be filed with the individual income tax return if possible. If it must be filed later, the latest date for filing Schedule H is December 31 of the year following the

year for which the claim is filed (s. 71.09 (7) (dm)).

Schedule FC must be filed no later than 12 months after the end of the taxable year to which the claim relates (s. 71.09 (11) (d)). For calendar year taxpayers, the 1977 Schedule FC must be filed by December 31, 1978.

No extensions are provided by statute for filing either Schedule H or Schedule FC claims. Late claims are not permitted.

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.)

Alan Marcuvitz et al vs. Department of Revenue (Wisconsin Tax Appeals Commission, November 30, 1977.) Chapter 39, Laws of 1975, increased the interest rates for income, franchise, withholding and sales and use taxes. The regular rate of interest was increased from 6% to 9% per year and the delinquent rate from 1% to 1½% per month. The law became effective November 1, 1975.

The Department's application of the 9% annual interest rate on assessments was contested in this case. The Department had issued assessments in August 1976 covering the taxable years 1971 and 1972. Interest was applied at the rate of 9% annually from the due date of the 1971 and 1972 Wisconsin income tax returns to the due date for payment of the assessment.

The Commission concluded that interest at 6% per year should be applied from the due dates of the 1971 and 1972 returns to October 31, 1975 and interest at 9% per year should be applied beginning November 1, 1975.

The Department did not appeal this decision.

NOTE: The Department's interpretation of this decision is explained in TIM I-2.3, entitled "Interest Computation - Income, Franchise, Withholding and Sales and Use Taxes" (January 3, 1978) and

TIM I-5.2, entitled "Addition to the Tax Penalty" (January 3, 1978).

Department of Revenue vs. Bailey-Bohrman Steel Corporation (Circuit Court of Dane County, Case No. 157-072, December 16, 1977). The court held that the slitting of raw coiled steel does not constitute "manufacturing" as that term is defined in Wisconsin's sales and use tax law (s. 77.51(27)). The taxpayer's entire operation consisted of taking raw steel coiled stock with a width of up to 48 inches and weighing about 15 tons and decoiling the coiled steel, slitting it into narrower widths and recoiling it for shipment to customers.

The taxpayer claimed that the machinery and equipment used in its steel slitting operation was used in "manufacturing" and was, therefore, exempt for Wisconsin's sales and use tax. The court rejected the taxpayer's exemption claim on the grounds that the taxpayer was not engaged in manufacturing since its operation was simple and did not produce a new article with a different form from the old article.

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

In the Matter of the Estate of Oscar R. Haase a/k/a Oscar Rudolph Haase, Deceased: State of Wisconsin vs. Marine National Exchange Bank of Milwaukee (Wis. 2d , Wisconsin Supreme Court, Case No. 75-815, January 3, 1978.) Certain brokerage commissions in the sale of real estate and stock were deducted as offsets on the fiduciary income tax returns of the Haase estate to reduce the amount of capital gains realized on the sale. The issue was whether these same commissions may be claimed for the second time as administrative expense deductions for inheritance tax purposes. The court held, pursuant to s. 72.015(3), 1969 Wis. Stats. (now s. 72.14(1)(c)), that expenses claimed for income tax purposes could not be deducted a second time for inheritance tax purposes.

Hall Chevrolet Co., Inc. vs. Department of Revenue (Wis. 2d , Wisconsin Supreme Court, January 3, 1978.) The taxpayer was in the business of selling and servicing new and used automobiles. Due to the economic deterioration of the neighborhood in which its facilities were located, the taxpayer sold the property and moved to a more advantageous location.

Taxpayer sustained a loss on the sale of its land and buildings at its old site because of its diminution in value as a result of the deterioration of the neighborhood. Although the taxpayer was permitted to offset a portion of the loss against other income in the year in which the sale took place (under s. 71.05, Wis. Stats.), its total losses for the year exceeded the gain. The taxpayer then attempted to carry forward to subsequent years the losses which could not be applied against income in the year of sale as a net business loss under s. 71.06, Wis. Stats.

The department disallowed the carry forward of the net business loss because it was not "attributable to the operation of a business *regularly* carried on by the taxpayer" (emphasis added) within the language of s. 71.06, Wis. Stats. The Tax Appeals Commission and the Circuit Court for Dane County upheld the department's action. However, the Wisconsin Supreme Court ruled in favor of the taxpayer.

The Wisconsin Supreme Court, in holding for the taxpayer, stated that the question is not whether the transaction was of a kind "regularly" carried on by the taxpayer, but whether the transaction was "attributable" to the operation of a business which was regularly carried on. The Court recognized that there was no total or partial liquidation of the business so that the business after the sale was neither terminated nor permanently reduced in scope. Under these facts, the Court concluded that this loss was attributable to a transaction in the regular course of the taxpayer's regular business which could be carried forward.

NOTE: Because s. 71.06 was amended by Chapter 224, Laws of 1975, beginning with the taxable year 1976, all Wisconsin net business losses incurred by corporations can be carried forward for up to 5 years and used to offset a subsequent year's net business income.

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.)

INCOME TAX

New Jobs Tax Credit

Beginning with the 1977 taxable year, a new *federal* credit is available to qualified employers who hire additional employees. This "new jobs tax credit" was created by the Tax Reduction and Simplification Act of 1977, which added Sec. 44B to the Internal Revenue Code.

Generally, the amount of the jobs credit is based on Federal Unemployment Tax Act (FUTA) wages paid by an employer during the calendar year. Employers who are not subject to FUTA tax, or do not employ agricultural or railroad employees cannot qualify for the jobs credit. If an employer claims this credit, the employer's deduction for wages paid or incurred for the tax year must be reduced by the dollar amount of the credit allowable.

It is not mandatory that an employer claim the jobs credit under the Internal Revenue Code. Therefore, an employer who claims the credit for federal purposes is not required to follow the Internal Revenue Code provisions for Wisconsin. In such situations, the employer's deduction for wages should