

SUMMARY OF 1978 INDIVIDUAL RETURNS FILED

During the first six months of 1979, 2,153,000 Wisconsin income tax returns, 251,000 Homestead Credit claims, and 2,400 Farmland Preservation Credit claims were filed for 1978. This compares to 2,034,000 Wisconsin income tax returns, 250,000 Homestead Credit claims, and 700 Farmland Preservation Credit claims filed for 1977. In total, 240,000 more returns and claims were filed for 1978 than 1977.

The 2,153,000 income tax returns for 1978 were filed by 2,930,000 individuals. The combined return of a husband and wife is considered one return.

1,755,000 individuals received income tax refunds, which averaged \$139 each. The average refund individuals received for 1977 returns was \$118.

479,000 individuals owed additional tax with their 1978 returns. The average payment was \$291, an increase over the average payment of \$213 made with 1977 returns.

Homestead Credit refunds issued averaged \$261 per claimant, a decrease from the average refund of \$265 issued last year.

An average payment of \$1,205 was issued to each Farmland Preservation claimant. The average payment for the previous year was \$870.

\$184,000,000 was received by homeowners and renters as a result of the 1978 Special Property Tax/Rent Credit.

During the month of April 700,000 tax returns were received which represented 30% of all 1978 income tax returns received by the Department.

HOMESTEAD, FARMLAND PRESERVATION, AND SPECIAL PROPERTY TAX/RENT CREDIT FILING DEADLINES

Less than three months remain for Wisconsin residents to file claims for the 1978 Homestead Credit or 1978 Special Property Tax/Rent Credit, and for farmland owners to file a 1978 Farmland Preservation Credit claim.

December 31, 1979 is the last day allowed for filing a claim for 1978 Homestead Credit and the 1978 Special Property Tax/Rent Credit. It is also the last day for filing a 1978 Farmland Preservation Credit claim for farmland owners who are calendar year taxpayers.

Homestead Credit should be claimed on Schedule H and Farmland Preservation Credit on Schedule FC. The 1978 Special Property Tax/Rent Credit may be claimed on a Wisconsin income tax return (Form 1 or 1A), Schedule H or a special Schedule PC.

If you previously filed a 1978 Wisconsin income tax return and now wish to file either a homestead or farmland preservation claim, write the words "income tax return previously filed" at the top of your homestead or farmland preservation claim. Attach a complete copy of your income tax return to your claim and write "duplicate" at the top of your income tax return.

If you qualify for the 1978 Special Property Tax/Rent Credit, but did not claim it on your Wisconsin income tax return, you may still claim the credit by filing either Schedule PC or an amended return. If no other changes are to be made to your income tax return as originally filed, you may file Schedule PC. In filing Schedule PC, do not mark it "Amended" and do not submit a duplicate copy of your tax return with Schedule PC.

So far this year, 251,000 Homestead claims and 2,400 Farmland Preservation claims have been received. These claims have provided more than \$65 million in rent and property tax rebates. The 1978 Special Property Tax/Rent Credit has provided more than \$184 million in benefits to 1,500,000 claimants. Some of the requirements which must be met to qualify for benefits under these programs for 1978 are as follows:

Homestead Credit (available only to individuals). A claimant:

- Must have been a full-year Wisconsin resident.
- Must have been at least 18 years of age on December 31, 1978.
- Must have a household income of less than \$9,300 (\$9,900 if claimant, spouse, or dependent is 65 or older).
- Must have lived all or part of 1978 in property subject to real estate taxes.
- Must not have been claimed as a dependent on someone else's 1978 federal income tax return (does not apply to persons 62 or older).
- Must not be receiving general relief or Aid to Families with

Dependent Children (AFDC) at the time of filing the claim.

- Must not have claimed farmland preservation credit for 1978.

Farmland Preservation Credit (available to individuals and corporations owning farmland). A claimant:

- Must have been a full-year Wisconsin resident (corporations must have been organized under Wisconsin law and in existence for the entire 1978 taxable year).
- Must be the owner of at least 35 acres of farmland which is subject to agricultural use restrictions and which produced at least \$6,000 in gross farm profits (or \$18,000 in the last three years combined).
- Must have household income of less than \$38,429. (The first \$7,500 of nonfarm wages, tips and salaries earned by the household may be excluded from household income).

1978 Special Property Tax/Rent Credit (available only to individuals).

A claimant:

- Must have been a full-year Wisconsin resident during 1978.
- Must have paid rent or had property taxes accrue on a Wisconsin homestead for 1978.
- Must not have been claimed as a dependent on another person's 1978 federal income tax return (does not apply to persons 62 or older in 1978).

For additional information concerning the eligibility requirements for these programs, instructions on how to file and the necessary claim forms, contact any Wisconsin Department of Revenue office or write to the Department of Revenue, P.O. Box 8906, Madison, WI 53708.

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.)

SALES TAX

I. Coupons Issued by Manufacturers

Manufacturers frequently mail coupons to consumers which are redeemable for taxable merchandise (e.g., soap or paper products) or which may be used to purchase such merchandise at a reduced sales price at any retail store. The transfer of a bar of "free" soap or "discounted" soap to a customer by a retailer in exchange for a coupon issued by the soap manufacturer is considered a sale. The consideration for the sale upon which the sales tax is imposed is the amount the manufacturer reimburses the retailer plus the amount (if any) that the consumer pays when redeeming the coupon. This consideration constitutes taxable gross receipts of the retailer. For example, if the customer uses a 25¢ manufacturer's coupon and \$1.24 cash to purchase a box of soap with a retail price of \$1.49, the retailer has taxable gross receipts of \$1.49.

For additional information on this topic, see administrative rule Tax 11.28, entitled "Gifts, advertising specialties, coupons, premiums and trading stamps".

II. Industrial Gases Used by Manufacturers

Industrial gases purchased by a manufacturer for use as a fuel are subject to the sales or use tax. This includes a manufacturer's purchase of oxygen, acetylene or other gases for use as a fuel in welding torches. However, shielding gases which do not burn or provide a source of power are exempt, when consumed or destroyed by a manufacturer in the manufacture of tangible personal property destined for sale.

Even though the purchase of the gas may be exempt, the charge (sometimes called "demurrage") by the gas supplier for retention by the customer of gas cylinders is subject to the sales tax.

For additional information on this and related topics, see administrative rule Tax 11.81, entitled "Industrial gases, welding rods and fluxing materials".

III. Sandwiches, Heated Foods or Beverages

Gross receipts from sales of heated foods or heated beverages are taxable, regardless of whether the item purchased is consumed on or off the seller's premises. Thus, the tax applies when:

- A supermarket sells chicken or ribs roasted on a rotisserie.
- A bakery sells hot coffee.
- A fish market sells hot prepared fish.

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.)

Affiliated Bank of Middleton vs. Department of Revenue (Wisconsin Tax Appeals Commission, June 6, 1979.) Taxpayer held a sales tax seller's permit. It owned a building which was permanently attached to a cement foundation and had permanent water, sewer and electrical connections. The Commission stated that, for property taxation, the building was taxed as real property and not as personal property.

In September 1974, taxpayer agreed to sell the building to a savings and loan association for use at a different site as a branch building. Taxpayer employed a house mover who disconnected the permanent water, sewer and electrical connections, separated the building by hoisting it on a flat bed trailer and hauling it. At its new location, the building was immediately placed on a permanent cement foundation and permanent water, sewer and electrical connections were made. No wheels were ever attached to the building in the moving process. The purchase price represented the price of the building moved on the land of the purchaser.

The Department contended that the sale was a sale of tangible personal property subject to the sales tax. Taxpayer contended that the sale was of real property, not subject to the sales tax. The Commission held in favor of the taxpayer.

The Department has appealed this decision.

Burch Construction Co. vs. Department of Revenue (Wisconsin Tax Appeals Commission, May 31, 1979.) Taxpayer was in the business of constructing highways and sewers. In 1970, taxpayer's volume of highway construction business significantly declined due to diminished interstate highway construction. In 1972, taxpayer underbid a sewer construction project and incurred a \$400,000 loss. In June 1973, taxpayer auctioned off its surplus highway construction equipment grossing about \$351,000 which was distributed as follows: about \$3,700 as auction commission, about \$315,000 as payment of taxpayer's debts, about \$32,000 available for operations.

Taxpayer remained in the highway construction business after the auction with heavier emphasis on sewer construction. During each of its fiscal years covering the period 1968 to 1977, taxpayer purchased and sold a significant amount of construction equipment and auctions similar to its June 1973 auction were common in the construction industry. Taxpayer realized a capital gain on the June 1973 auction sale of its construction equipment, due in part to depreciation previously claimed. The auction was made for compelling business reasons and was attributable to the then present and continuing operations of taxpayer's business. On its 1973 Wisconsin income/franchise tax return, taxpayer carried forward losses from the previous 2 taxable years and offset them against the gain realized at the auction.

On June 30, 1973, taxpayer adopted a plan of partial liquidation under sections 331(a)(2) and 346 of the Internal Revenue Code. Under the plan, 60% of the outstanding capital stock of Burch Construction Company was redeemed by the corporation reducing the number of shareholders from 6 to 1. After the partial liquidation, taxpayer retained over \$300,000 in assets and remained active in the construction business. No auction proceeds were used to redeem corporate stock.

The Department disallowed the carry forward of the business losses from the 2 taxable years preceding 1973 because they were not "attributable to the operation of a trade or business regularly carried on by the taxpayer" (emphasis added) within the language of s. 71.06, Wis. Stats.