

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.)

INCOME TAX

I. Standard Mileage Rates

The Internal Revenue Service has increased the standard mileage rate for the first 15,000 miles of business use of an automobile during 1979 from 17 cents to 18½ cents. The rate per mile for business use of an automobile in excess of 15,000 miles per year and for automobiles that have been fully depreciated remains at 10 cents a mile.

The rate per mile for use of an automobile for charitable, medical, and moving expense purposes during 1979 has been increased from 7 to 8 cents a mile.

The new standard mileage rates will apply in the same manner for Wisconsin income tax purposes as they do for federal purposes.

II. \$100,000 Exclusion on Sale of Residence

Beginning with the 1979 taxable year, Wisconsin follows section 121 of the Internal Revenue Code permitting individuals age 55 or over to exclude up to \$100,000 of gain from the sale of a personal residence. To qualify for this exclusion, a taxpayer must have reached age 55 before the date of sale and must have owned and used the property as his or her principal residence for at least 3 out of the 5 years before sale.

The Department has received the following inquiries regarding the \$100,000 exclusion on the sale of a personal residence:

1. When married persons own a residence but only one spouse satisfies the eligibility requirements, how is

the gain computed and reported? (For example, one spouse is over age 55 and the other is under age 55 on the date of sale.)

Under federal law, if a husband and wife file a joint return and one spouse satisfies the requirements for the \$100,000 exclusion, then both spouses are deemed to qualify, even though one of the spouses does not meet all the requirements.

Section 71.05 (1) (L), Wis. Stats., provides that married persons compute the amount of the exclusion for Wisconsin on the same basis as married persons filing a joint federal return. Therefore, if one spouse qualifies, the married couple is entitled to the full \$100,000 exclusion for Wisconsin.

The exclusion may be split between spouses in any manner they choose. For example, husband and wife sell their jointly owned personal residence for a \$150,000 gain. The husband qualifies for the exclusion. Each spouse has a gain of \$75,000. The \$100,000 exclusion can be divided between husband and wife in any manner they choose. For instance, if the husband applied \$75,000 of the \$100,000 exclusion to offset his entire share of the gain, then the wife would report a taxable gain of \$50,000 (\$75,000 gain less remaining \$25,000 portion of the \$100,000 exclusion).

If the total gain on the sale of a personal residence is \$100,000 or less, no taxable gain will be reported by either spouse. For example, husband and wife sell their jointly owned personal residence for a \$80,000 gain. The wife qualifies for the exclusion. Each spouse has a gain of \$40,000. Since the \$100,000 exclusion exceeds the total gain of \$80,000, there is no taxable gain to be reported by either spouse.

2. Is this \$100,000 exclusion allowed to taxpayers who establish residence outside of Wisconsin and then sell their Wisconsin residence while residents of another state?

Yes, if all qualifications are met under section 121 of the Internal Revenue Code. The taxpayer may choose to exclude the gain under section 121 for Wisconsin purposes, even though this \$100,000 exclusion is not used for federal purposes. A completed Form 2119 (Sale or Exchange of Personal Residence) clearly marked "For Wisconsin Pur-

poses Only" should be attached to the Wisconsin return.

III. 1978 Special Property Tax/Rent Credit Does Not Affect Computation of 1979 Property Tax Credit

Beginning with the 1979 taxable year, individuals may claim a credit equal to 12% of the property taxes they have paid during the taxable year on their residence and other non-business property. This is a nonrefundable credit which is claimed on line 11 of Wisconsin Form 1 and line 11 of Form 1A. It is provided by s. 71.53 of the Wisconsin Statutes.

A question was asked whether receipt of the 1978 Special Property Tax/Rent Credit affects the computation of the 12% Property Tax Credit claimed on a 1979 return. The answer is "no"; the 12% Property Tax Credit for 1979 is not affected by the amount of 1978 Special Property Tax/Rent Credit received. The following example illustrates this:

A taxpayer who is a resident of Wisconsin for the entire year 1979 pays 1978 property taxes accrued of \$1,440 in 1979. (The property tax bill for 1978 property taxes accrued is generally received by property owners in December 1978 or January 1979.) During 1979, this taxpayer received a 1978 Special Property Tax/Rent Credit totalling \$200 (\$100 credit claimed on a 1978 Wisconsin income tax return filed in 1979 and \$100 received as a separate check in July 1979).

On a 1979 Wisconsin income tax return, this individual should determine the 12% property tax credit by using the full amount (\$1,440) of nonbusiness property taxes paid in 1979. No reduction should be made for the \$200 of 1978 Special Property Tax/Rent Credit received in 1979. Using the computation tables provided in the instructions for the 1979 Wisconsin tax forms, this individual would claim a credit of \$173 on the 1979 tax return.

IV. How to Determine the Additional Standard Deduction or Low-Income Allowance Deduction for Dependents in 1979

Prior to 1979, the deduction for dependents which may be added to the Wisconsin standard deduction or low-

income allowance was based on Wisconsin total income (combined income of husband and wife). Because of a change in law, beginning in 1979 the deduction for dependents may be based on either Wisconsin total income or federal adjusted gross income depending on the residency status of the taxpayer.

If you are a full-year resident of Wisconsin in 1979, your deduction for dependents is based on Wisconsin total income. If you are a part-year resident or nonresident of Wisconsin in 1979, your deduction for dependents is based on federal adjusted gross income.

Because of the change in the manner in which the deduction for dependents is determined in 1979, the 1979 income tax instruction booklets will have two standard deduction and low-income allowance tables: one for full-year residents and one for nonresidents and part-year residents.

The table for full-year residents will show the standard deduction and low-income allowance including the deduction for various numbers of dependents. If you have more dependents than is shown on the table, you must use the chart on the bottom of the page to calculate the "add-on" for additional dependents.

The table for nonresidents and part-year residents shows the standard deduction and low-income allowance for only zero dependents. Nonresidents and part-year residents must use the chart on the bottom of the page to determine their add-on for all dependents claimed.

Married persons must use their combined incomes when determining the deduction for dependents. In the situation where a full-year resident is married to a nonresident or a part-year resident, the Wisconsin income of the full-year resident and the federal adjusted gross income of the nonresident or part-year resident would be combined to determine the deduction for dependents. The deduction for dependents chart on the page for nonresidents and part-year residents standard deduction and low-income allowance table must then be used to calculate the add-on.

Example: A full-year resident of Wisconsin is married to a part-year resident of Wisconsin. Their incomes

are as follows:

<u>Full-year resident</u>	<u>Part-year resident</u>
\$4,000 Wisconsin income	\$3,000 Wisconsin income
<u>2,000</u> Income not taxable to Wis. (U.S. bond interest)	<u>4,000</u> Income not taxable to Wis. (wages received before moving to Wisconsin)
<u>\$6,000</u> Federal adjusted gross income	<u>\$7,000</u> Federal adjusted gross income

The deduction for dependents would be based on \$11,000 (\$4,000 Wisconsin income for the full-year resident plus \$7,000 federal adjusted gross income for the part-year resident).

V. Annuity Payments Made Under Military Survivor Benefit Plan

Armed services reservists, including members of the Wisconsin National Guard, may elect to provide a survivor annuity to a spouse or dependent children. The election is allowed in the Federal Military Survivor Benefit Plan (10 U.S.C. chapter 73, subchapter 2, effective October 1, 1978).

Amounts paid as survivor's benefits under this plan to beneficiaries are fully taxable for Wisconsin income tax purposes in the same manner as the retirement payments would be taxable to retired members of the Wisconsin National Guard. The exemption of \$1,680 for annuities received from a retirement system established for civil service employees of the United States (s. 71.01 (3) (e), Wis. Stats.) does not apply to members of the Wisconsin National Guard since they are not classified as civil service employees. Payments made to retired members of the Wisconsin National Guard would also not qualify for the exemption for the first \$1,000 of taxable compensation which is received from the United States for service as a reserve or active member of the armed forces (s. 71.01 (3) (f), Wis. Stats.).

Survivor annuity payments made under the Federal Military Survivor Benefit Plan are fully exempt from Wisconsin inheritance and estate taxes (s. 72.12 (4) (c) 2a, Wis. Stats.).

VI. Amending Individual Income Tax Returns

The form (Form 1X) for amending individual income tax returns contains a date on it (1979) for the first time. The current version should not, therefore, be used to amend tax returns from prior years.

The proper versions of Form 1X which should be used for amending 1975 through 1979 returns are the following:

- 1979 — Use form with preprinted "1979" date
- 1978 — Use form with the revision date "R. 10-78" printed in lower left-hand corner on page 1
- 1975-77 — Use form with the revision date "R. 9-76" printed in the lower left-hand corner on page 1

SALES TAX

I. Utility Transmission and Distribution Lines

Administrative rule Tax 11.86, entitled "Utility transmission and distribution lines", was published in December 1978. It reversed in part the Department's prior policy set forth in Technical Information Memorandum (TIM) S-46.2 ("Utility transmission and distribution lines"). In that TIM, the Department's policy was that "tangible personal property" included transmission and distribution lines that were erected or installed under easement or license on land owned by others. This interpretation included underground installations, and the gross receipts from underground utility installation were taxable, and materials used in the performance of the contract could be purchased for resale without tax.

Rule Tax 11.86 reversed the policy regarding underground utility facilities. Under the rule, the gross receipts from the sale, lease, rental, repair service or maintenance of underground utility facilities are not subject to the sales and use tax, but the materials used are taxed. The policy under this rule was adopted retroactively to cover transactions on or after September 1, 1970.

The Department has issued a number of refunds to contractors on the basis of rule Tax 11.86. Other tax-

payers who may have paid sales or use tax to the Department under the original interpretation and are now entitled to a refund of that tax may request a refund of that tax.

Unless a taxable year has been field audited and is closed, a taxpayer may file a claim for refund at any time within 4 years after the due date of the sales/use tax annual information return Form ST-12A. For example, if a corporation's due date of the annual information return for 1975 was March 15, 1976, and the year has not been closed by field audit, a claim for refund for 1975 must be filed by March 15, 1980.

II. Notice to TIM Subscribers

Technical Information Memorandum (TIM) S-15.3, entitled "Printed Material Exemptions" has been replaced and superceded by administrative rule Tax 11.19, effective September 1, 1979.

Only 2 sales tax TIM's remain in effect:

A) S-27.4, "Printers' and Typesetters' Sales and Purchases"

B) S-38.4, "Automatic Data Processing"

For further information on how to subscribe to administrative rules, you may write to: Document Sales Section, Department of Administration, 202 South Thornton Avenue, Madison, WI 53702.

III. Marketing Aids

Persons who make gifts of taxable tangible personal property to others are the consumers of the property. The sales or use tax shall apply to the gross receipts from the sale of the property to the persons making the gifts.

Taxable sales include sales of samples, advertising material, display cases, display racks and other similar marketing aids. Commonly, sales are to manufacturers, distributors, jobbers and wholesalers who purchase the property to give 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.

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 is liable for use tax based on the purchaser's cost of the merchandise.

Examples of these principles regarding marketing aids are set forth in the examples below.

A. Samples. Samples furnished to Wisconsin doctors by drug manufacturers are considered consumed by the drug manufacturer in Wisconsin, and the use tax applies to the manufacturers' cost of the ingredients in the samples. If an out-of-state drug manufacturer is engaged in business in Wisconsin, the manufacturer must report the tax on samples distributed when the salesperson delivers the samples to the doctor or when the samples are mailed into Wisconsin.

If a Wisconsin manufacturer distributes free samples throughout the United States, with 3% of the samples being distributed in Wisconsin, the use tax is due only on the cost of the 3% of the samples distributed in Wisconsin.

B. Tie-in Sales. A Wisconsin manufacturer, as an inducement to its sales personnel, provides each salesperson with one free item if the salesperson sells 30 of these same items. If the manufacturer is obligated to furnish the free item by contract or because this is understood to be manufacturer's policy by both parties to the transaction, this is considered a "tie-in sale". No tax is due on the transfer of the free item. In effect, the salesperson receives a discount in the total price of all the items purchased.

C. Display Racks. A book publisher purchases cardboard display racks which are sent along with its books to Wisconsin customers who are retailers of books. The publisher may purchase these display racks without tax for resale if it is contractually obligated to furnish display racks to its customers. For example, if the publisher advertises that a display rack will be furnished with every 100 books purchased, it is deemed contractually obligated to furnish the display racks.

However, if a customer is provided a display rack only upon request, or at the discretion of the publisher, the publisher may not purchase the display racks without tax. These purchases were not for resale.

The primary function of a display rack is to display the seller's product, not to advertise the product sold.

Therefore, display racks do not qualify for an exemption as printed advertising material for use solely outside the state under s. 77.54 (25), Wis. Stats.

D. Grocers' Premiums. A grocer uses taxable tangible personal property as a premium (gift) in connection with sales of taxable items and exempt groceries. For example, if a customer spends \$7.50 in the store, he or she receives a free premium.

The grocer may use a resale certificate when purchasing taxable property which will be given as a premium when a customer purchases taxable property. However, the grocer must pay tax when purchasing a premium distributed in conjunction with exempt grocery sales. Therefore, if a grocer's gross receipts consist of 65% exempt grocery sales and 35% taxable sales, the grocer may purchase 35% of its premiums without tax, and must pay tax on the remaining 65% of premiums.

E. Cigarettes. The Wisconsin and federal excise tax on cigarettes are included in the measure of the use tax due on cigarettes given away in Wisconsin by cigarette manufacturers. For example, if the cost of tangible personal property in a pack of cigarettes is 10¢, and the excise taxes are 24¢ per pack (16¢ state, 8¢ federal tax) the measure of the use tax for this pack is 34¢ (2¢ tax in this example).

IV. Postal Employees' Uniforms

A postal employe is commonly fitted for a uniform at a retailer's place of business. At the time of sale, the retailer prepares a bill which is made out to the employe. The employe takes the bill to his or her supervisor, and subsequently the bill is forwarded to a U.S. Postal Service payroll office. A check for payment of the uniform is then sent directly to the retailer by the U.S. Postal Service. The sale of the uniform is a taxable transaction because the retailer is selling the uniform to the postal employe, rather than directly to the Postal Service.

V. Transfers of Property to a Corporation Pursuant to Its Organization, Merger or Consolidation

Section 77.51(4g) (a) and (c), Wis. Stats., provide that two types of transfers are not considered "sales" for sales tax purposes. Accordingly

the 4% tax would not apply to the following transfers:

(1) The transfer of property to a corporation upon its organization solely in consideration for the issuance of its stock; and

(2) The transfer of property to a corporation, solely in consideration for the issuance of its stock, pursuant to a merger or consolidation.

Example 1 — Exchange of Assets and Related Liabilities Solely for Stock.

Transfers of property to a corporation solely in exchange for the first issue of stock in a newly organized cor-

poration are not taxable, even though the transferor holds a Seller's Permit. For example, assume that Corporation A which has several separate operating divisions, each of which is engaged in an unrelated business, transfers all of the property and the related liabilities of one of its operating divisions to a newly formed Corporation B (at the time it is organized) solely in exchange for its capital stock. This transfer is exempt under s. 77.51 (4g) (a).

Example 2 — Exchange of Assets and Related Liabilities for Stock and Other Consideration.

If the factual conditions are the same as example 1 except that Corporation A receives Corporation B's capital stock plus other consideration (such as cash or bonds), sales tax is due on the other consideration based on the following formula:

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

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

<u>Assets Transferred:</u>		<u>Consideration Received:</u>	
Land and Buildings	\$110,000	Cash	\$75,000
Less: Mortgage	30,000	Capital Stock	75,000
	\$80,000		
Inventory (For Sale)	60,000		
Less: Accounts Payable	20,000		
	40,000		
Furniture and Fixtures	30,000		
(Personalty)	30,000		
Net Assets Transferred	\$150,000	Total Consideration	\$150,000

Sales Tax Computation:

$$\frac{\text{Cash}}{\text{Total Consideration}} \times \text{Taxable Personalty} = \text{Taxable Measure}$$

$$\frac{\$75,000}{\$150,000} (50\%) \times \$30,000 \text{ (furniture and fixtures)} = \$15,000 \text{ Taxable}$$

Example 3 — Merger or Consolidation.

The transfer of assets and related liabilities to a corporation solely in exchange for its capital stock pursuant to a merger or consolidation are non-taxable transfers, even though the transferor holds a Seller's Permit. If consideration other than capital stock (e.g., cash or notes) is issued to the transferor the transaction is subject to the tax, to the extent taxable personal property is involved in the transaction. The formula used in example 2 to determine the taxable measure should also be used in a merger or consolidation, if consideration other than capital stock is issued.

NOTES: (1) These examples and formulas do not apply whenever the liabilities transferred exceed the basis of the property transferred by the transferor. If a tax applies to motor vehicles transferred, the purchaser must pay the tax due when the vehicle

is registered with the Wisconsin Department of Transportation.

(2) This tax release replaces the tax release entitled "New Corporations" on page 7 of the January 1978 *Wisconsin Tax Bulletin*. The policies set forth in this release apply to all periods open to adjustment under the statute of limitations in s. 77.59, Wis. Stats.

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.)

Midcontinent Broadcasting Company of Wisconsin, Inc. v. Department of Revenue (Wisconsin Court of Appeals, District IV, August 28, 1979) The taxpayer, who operated

two television broadcasting stations, obtained a seller's permit to sell phonograph records advertised on its television stations. The phonograph records were advertised on the television stations as a service to viewers. During the 4 year period after obtaining a seller's permit (1967-1970), the taxpayer reported taxable receipts from record sales of about \$27,000, compared to nontaxable radio and television broadcasting receipts of almost \$8 million.

In October 1970, while it had a seller's permit, the taxpayer sold all the tangible and intangible business assets used in the operation of its television broadcasting stations. The tangible personal property included in the transaction amounted to about \$775,000, and the asserted sales tax on this amount approximated \$31,000.

Among taxpayer's contentions was that the sale of its broadcasting assets was an exempt "occasional