

This year's mailing list for bulk order blanks contains the names of all persons and organizations who placed orders for 1979 forms. If you are not on this mailing list and do not receive a Form P-744, you may request the bulk order blank by contacting any department office or by writing to the Wisconsin Department of Revenue, Central Services Section, Post Office Box 8903, Madison, WI 53708.

REMINDER! TAXPAYERS MUST NOTIFY DEPARTMENT OF FEDERAL ADJUSTMENTS AND AMENDED RETURNS

If an individual or corporation taxpayer's federal income tax return is adjusted by the Internal Revenue Service (IRS), and the adjustments affect the amount of Wisconsin income reportable or tax payable, such adjustments must be reported to the Wisconsin Department of Revenue within 90 days after they become final. In addition, taxpayers filing an amended return with the IRS or another state must also notify the department within 90 days of filing if any information contained in the amended return affects the amount of Wisconsin income reportable or tax payable.

If a taxpayer fails to notify the department of federal audit adjustments or an amended return filed, the statute of limitations for adjusting the Wisconsin return for the year involved is extended from the normal 4 year period to 10 years. Administrative Rule Tax 2.105 provides additional information regarding this reporting requirement and indicates when adjustments made by the IRS are considered to become final.

To simplify the filing of an amended return, Wisconsin Form 1X for individuals and Form 4X for corporations may be used. These forms are available at any department office. The amended Wisconsin return or copy of the federal audit report should be sent to:

Wisconsin Department of Revenue
Audit Bureau
Post Office Box 8906
Madison, Wisconsin 53708

REMINDER! EMPLOYERS MUST SUBMIT COPIES OF CERTAIN EMPLOYEE WITHHOLDING EXEMPTION CERTIFICATES TO THE DEPARTMENT

Effective April 30, 1980, Wisconsin law (Section 71.20 (8) (f) as created by Chapter 221, Laws of 1979) requires employers to submit copies of employee withholding exemption certificates to the department whenever they are required to provide such information to the Internal Revenue Service (IRS). The copies must be submitted to the department within 15 days after they are filed with IRS.

For both federal and Wisconsin purposes employers are required to submit copies of any employee's withholding exemption certificate if: 1) the number of exemptions claimed is 10 or more, or 2) the employee is claiming complete exemption from withholding and he or she earns more than \$200 per week.

SALES AND USE TAX NEWSLETTER NOW PRINTED AS PART OF THE WTB

A copy of the department's sales and use tax newsletter entitled "Tax Report" has been included in the mailing of the last several issues of the Wisconsin Tax Bulletin (WTB). Beginning with this issue of the WTB, the "Tax Report" will be reproduced as part of the bulletin (see page 14).

Generally the "Tax Report" is published three times each year (in March, June and September) and mailed to all sales tax registrants. It will be reproduced (without change) and appear as part of the next WTB published after those dates. Because the "Tax Report" will not be changed when it is placed in the WTB, it is possible that some articles may duplicate information included in the WTB.

DO YOU HAVE SUGGESTIONS FOR ARTICLES?

The Wisconsin Tax Bulletin is designed to provide current and accurate information on topics of general interest to taxpayers and tax practitioners. Articles pertain primarily to income, franchise, sales and use, inheritance, gift, motor fuel, cigarette, and beer and liquor taxes.

To make this bulletin more useful to its readers, the department is seeking suggestions for topics and areas of reader interest for articles in future issues. Send your suggestions to: Wisconsin Tax Bulletin, Technical Services Staff, Post Office Box 8910, 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.)

INCOME TAXES

I. Standard Mileage Rates

The Internal Revenue Service has issued Revenue Procedure 80-32 increasing the optional standard mileage rate for the first 15,000 miles of business use of an automobile from 18½ cents to 20 cents. It also increased the standard rate for mileage in excess of 15,000 miles per year from 10 cents per mile to 11 cents per mile.

The rate per mile for use of an automobile for charitable, medical, and moving expense purposes has been increased from 8 to 9 cents a mile.

The new standard mileage rates are effective for transportation expenses paid or incurred in 1980 and thereafter. The rates will apply in the same manner for Wisconsin income tax purposes for 1980 and thereafter as they do for federal purposes.

II. Taxable Status of Interest From Transit Bond of Washington Metropolitan Area Transit Authority

Under federal law, the Secretary of Transportation is authorized to guarantee payment of principal and interest on bonds issued by the Transit Authority. Since the U.S. government, acting through the Secretary of Transportation, guarantees the payment of principal and

interest, the bonds constitute obligations of the United States. Interest from such securities is not taxable for Wisconsin under s. 71.05 (1) (b) 1, Wis. Stats.

III. Tax Treatment of Farmland Preservation Credit and Alternative Energy System Credit

The Department of Revenue received rulings from the Internal Revenue Service (IRS) regarding the federal income tax treatment for Wisconsin's farmland preservation credit (including treatment of repayments) and alternative energy system credit.

A. Farmland Preservation Credit

The IRS has ruled that farmland preservation credits are considered a recovery of the property tax upon which the credit is based. Therefore, for federal income tax purposes, the tax benefit rule of Section 111 of the Internal Revenue Code governs the taxability of the receipt of farmland preservation credits. The federal tax treatment of credits received is influenced by whether a claimant takes a deduction for such property taxes and when this deduction is taken as follows:

(1) Claimants who have already deducted property taxes upon which the credit is based on their federal income tax return must include the farmland preservation credits in gross income to the extent of any federal income tax benefit received. A deduction of property taxes produces no tax benefit if it could have been disallowed without increasing the claimant's income tax for the year of deduction, or for any earlier year (through loss carrybacks) or later year (through loss carryovers).

(2) Claimants who have not deducted and will not deduct such property taxes on their federal income tax returns receive no tax benefit and, therefore, are not required to include the credits in gross income.

(3) Claimants who will deduct the property taxes upon which the credits were claimed are not required to include the credits in gross income; however, such claimants must reduce their deductions for property taxes by the amount of the credits. For example, a claimant files

a 1979 Schedule FC (Wisconsin Farmland Preservation Credit Claim) based on real estate taxes levied in 1979 but not paid until 1980. If this claimant deducts the 1979 real estate taxes on a 1980 federal return, then the deduction must be reduced by the amount of credit received in 1980.

The second issue of this IRS ruling concerns the federal income tax status of payback amounts of farmland preservation tax credits. Under certain circumstances, the owner of the farmland can become responsible for paying back part or all of the farmland preservation tax credits received. The ruling stated that this repayment of credits is a nondeductible expense, except to the extent the repayment is a business expense or an expense for the production of income as described in sections 162 and 212 of the Code, respectively.

Note: For Wisconsin tax purposes, all amounts received under the farmland preservation program must be included in Wisconsin taxable income on the recipient's Wisconsin individual income tax return or corporation franchise/income tax return for the year in which the credit is received, regardless of how treated for federal purposes. This is required by s. 71.09 (11) (c), Wis. Stats.

B. Wisconsin Alternative Energy System Credit

For systems which were installed during April 20, 1977 through the close of an individual's 1978 tax year, the Wisconsin alternative energy system credit was an income tax credit provided by s. 71.09 (12), Wis. Stats. For systems installed after an individual's 1978 tax year, the credit is granted under s. 101.57 as a direct payment to the individual by the Wisconsin Department of Industry, Labor and Human Relations (DILHR).

The IRS has ruled that alternative energy system credits provided by sections 71.09 (12) and 101.57 of the Wisconsin Statutes to individuals installing solar, wind or waste conversion energy systems on real property located in Wisconsin are taxable. The amount of credit received must be included in the recipient's federal adjusted gross income. The full cost of the alternative energy system (not reduced by the

credit received) should be used to increase the basis of the property upon which it is installed. This tax treatment is the same for both federal and Wisconsin.

IV. Payment of Employee's FICA by Employer

In some instances, an employer will pay an employee's share of FICA (social security) tax. Under Section 61 of the Internal Revenue Code and IRS Revenue Ruling 74-75, this payment is considered to be additional wages. The employer is viewed as having given the employee cash which the employee uses to pay his or her debt. Therefore, for federal and Wisconsin income tax purposes the employer's payment of an employee's share of FICA tax is taxable income to the employee.

For example, an employee earns wages of \$15,000 in 1980. The employer pays the employee's share of the FICA tax of \$919.50 (\$15,000 x 6.13%). The employee must report total compensation paid of \$15,919.50 (\$15,000 + \$919.50) on a 1980 income tax return.

V. Addition to the Tax Exception for Ex-Subchapter S Corporations

Every corporation subject to taxation under Wisconsin law must file a Declaration of Estimated Tax and pay the estimated tax thereon in equal installments if it can reasonably expect to have a tax liability of \$2,000 or more. If a required installment is not paid by its due date or is insufficient in amount, a 9% "addition to the tax" may be imposed on the amount of the underpayment for the period of the underpayment.

Beginning with calendar year 1979 and corresponding fiscal years, corporations filing under the federal Subchapter S law are also subject to Wisconsin's Subchapter S provisions. A question has arisen regarding whether a corporation for the first taxable year after it has revoked its Subchapter S status may be allowed to use the exception under s. 71.22 (10) (b) to avoid the addition to the tax.

Under s. 71.22 (10) (b), Wis. Stats., an exception to the "addition to the tax" is available when a corporation has made estimated tax payments which equal or exceed an

amount that would have been due by recomputing its preceding year's tax using the current year's tax rates based on information shown on its return, and the law applicable to, the preceding taxable year. In this particular case, there would be no Wisconsin liability existing for the prior year since the corporation filed under Subchapter S.

The answer to the question is that s. 71.22 (10) (b) applies to a corporation for the first year after it has revoked its Subchapter S status. By completing line 11 of 1980 Form 4U (Underpayment of Estimated Tax by Corporations), a corporation can determine if it is liable for an addition to the tax for underpayment. For purposes of this computation, the preceding year's net income used in the computation is the net income without consideration of the Subchapter S deduction.

REPORT ON LITIGATION

(This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. The last paragraph of each decision indicates whether the case has been appealed to a higher court.)

The following decisions are included:

Income and Franchise Taxes

- R.P. Behling vs. Wisconsin Department of Revenue
- Business and Institutional Furniture vs. Wisconsin Department of Revenue
- Department of Revenue vs. Exxon Corporation
- Eugene T. Dowty vs. Wisconsin Department of Revenue
- Raymond W. Koch vs. Wisconsin Department of Revenue
- Russell J. Neumann vs. Wisconsin Department of Revenue
- Carl L. Petsch vs. Wisconsin Department of Revenue
- Louis Webster, Sr., Alex Askenette, Sr., Sue Askenette vs. Wisconsin Department of Revenue

Sales/Use Taxes

- Astra Plating, Inc. vs. Wisconsin Department of Revenue
- Business and Institutional Furniture, Inc. vs. Wisconsin Department of Revenue
- Fort Howard Paper Company vs. Wisconsin Department of Revenue
- Leicht Transfer & Storage Co., Inc. vs. Wisconsin Department of Revenue
- Martens Marts, Inc. vs. Wisconsin Department of Revenue
- Miss Wisconsin Pageant, Inc. vs. Wisconsin Department of Revenue
- North-West Services Corporation and North-West Telephone Co. vs. Wisconsin Department of Revenue
- Rice Insulation, Inc. vs. Wisconsin Department of Revenue
- Frank A. Teskie, D/B/A Teskie & Teskie vs. Wisconsin Department of Revenue
- Wisconsin Bridge and Iron Company vs. Wisconsin Department of Revenue
- The Wisconsin Electric Railway Historical Society vs. Wisconsin Department of Revenue

Gift Tax

- Dolores Haas and Robert W. Kessenich, Donees, and the Estate of Katherine H. Kessenich vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

R.P. Behling vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, May 22, 1980). During the years 1974-77, taxpayer, R.P. Behling, was a resident of Menomonie, Wisconsin. The taxpayer taught full-time during the school year and one-half time during the summer vacation months at the University at Stout during these years. In addition to his teaching profession the taxpayer was a licensed fishing guide and during the summer vacation months he sold his services as a fishing guide in the Hayward-Stone Lake area.

On his 1974-77 Wisconsin individual income tax returns, the taxpayer annually reported from \$250 to \$325 of income from his fishing guide efforts and deducted related expenses in amounts ranging from

\$2,357 to \$4,017 annually, resulting in substantial losses each year. For each year involved taxpayer included as a deductible expense depreciation on his cottage at Stone Lake, Wisconsin, based on $\frac{3}{4}$ of its cost as well as $\frac{3}{4}$ of its utilities. Taxpayer used his cottage for personal as well as fishing guide activities.

The department issued an assessment for the years 1974 through 1977 disallowing one-half of the losses claimed by the taxpayer. This disallowance was based on two grounds: lack of substantiation and the allegation that the taxpayer's fishing guide operation was more of a hobby than a venture for profit.

At the hearing before the Commission taxpayer conceded he did not have receipts or cancelled checks to substantiate the expenses he had claimed as deductions for each of the years involved. In addition, the taxpayer did not offer any evidence as to the cost basis of his cottage on Stone Lake, Wisconsin.

The Commission held that the department can by law require a taxpayer to substantiate deductions claimed and that the taxpayer failed to substantiate, with credible evidence, any of the expenses he incurred in his fishing guide activities.

Because the taxpayer's case failed for lack of substantiation, the issue of whether the taxpayer carried on his fishing guide operation as a hobby or venture for profit became moot.

The taxpayer has appealed this decision to the Circuit Court.

Business and Institutional Furniture, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June 11, 1980). Taxpayer is engaged in the business of making mail order sales of furniture and other items for industrial use. Principal customers are churches and schools.

During the taxable years 1973, 1974 and 1975, taxpayer did not own any factories and manufactured no goods. All goods sold were purchased from suppliers. Taxpayer had offices in Milwaukee, Atlanta and Los Angeles. Each of the three offices handled sales to purchasers located in designated states. Sales were made to purchasers in every