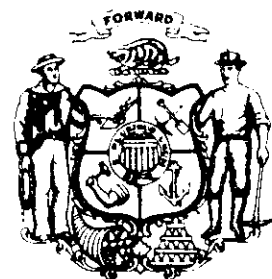


WISCONSIN TAX BULLETIN



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WISCONSIN ADOPTS FEDERAL TAX-FREE "ROLLOVER" PROVISIONS

Assembly Bill 210, signed by Governor Lucey on February 18, 1977, provides welcome tax relief to Wisconsin taxpayers who receive distributions from retirement plans that were terminated by their employers. This new Wisconsin law adopts provisions of a federal tax law (P.L. 94-267) enacted in 1976. It allows employees who receive amounts from terminated retirement plans the option of making tax-free reinvestments ("rollovers") of such amounts in new retirement plans. The bill was published on February 24, 1977 as Chapter 1, Laws of 1977.

This new law conforms Wisconsin's treatment of such retirement plan distributions with that provided under federal law. It applies retroactively to distributions received on or after July 4, 1974, as well as to those received in 1976 and subsequent years.

In order to qualify for the tax-free treatment, an employee generally must reinvest the entire distribution in a new plan within 60 days after receiving it. However, in the case of distributions received during the period July 4, 1974 through November 1, 1976, an exception to the 60 day rule is provided. A distribution received during that time period could have been reinvested as late as December 31, 1976 and still qualify for the tax-free treatment.

Some taxpayers who received such distributions may be entitled to a refund. If a person filed a 1974, 1975 or 1976 Wisconsin return and paid income tax on a distribution which is exempt by this new law, a claim for refund should be filed with the Wisconsin Department of Revenue. Wisconsin amended return Form 1X, which is available at any department office, may be used to file the refund claim.

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For additional information about this new law, you may wish to read Technical Information Memorandum I-35, entitled "Exemption of Retirement Plan Distributions under Federal Public Law 94-267 (Tax-Free Rollover)", dated March 3, 1977.

REMINDER! FIRST INDIVIDUAL 1977 ESTIMATED TAX PAYMENT IS DUE APRIL 15

Every individual, whether or not a resident of Wisconsin, is required to file a declaration of Wisconsin estimated tax if:

1. The individual derives income taxable in Wisconsin other than or in addition to wages which are withheld upon for Wisconsin income tax purposes; and
2. The individual expects the Wisconsin income tax liability to exceed withholding upon wages, if any, by \$60 or more.

A trust or estate is not required to file a declaration.

Individuals required to file a 1977 declaration during the first quarter of 1977 must do

so on or before April 15. Most taxpayers paying estimated tax are required to file and make an estimated tax payment at this time. Most also will make installment payments on June 15, September 15 and January 15.

When completing a 1977 Wisconsin estimated tax form (Form 1-ES), you will note it has been completely redesigned as part of an overall change that the Department has made to a modified voucher system. When more than one installment payment will be required, the reminder notices for payment two, three and four will all be sent at the same time, the first week in June 1977. The reminder notices will consist of three payment vouchers. The Department will not indicate payment amounts on the vouchers. Rather, it will be the taxpayer's responsibility to see that the proper payment is made each quarter. No other reminder or billing notice will be sent to taxpayers.

The new Form 1-ES has been designed so that the portion retained by the taxpayer has an area to record the date and amount of each payment and an area for use in revising the original estimate should it increase or decrease substantially during the year. It will no longer be necessary to file any amended estimated tax forms; any revised amount of an installment payment may simply be entered on the next payment voucher filed.

APRIL 15 IS INCOME TAX FILING DEADLINE

April 15 is the deadline for filing a 1976 calendar year Wisconsin individual income tax return. Taxpayers waiting until the deadline to file should be sure that their returns bear an April 15 postmark. Returns postmarked after April 15 are considered filed late and, as such, are subject to late filing fees.

The Wisconsin Homestead Credit Claim (Schedule H) for 1976 is not due until December 31, 1977. However, if an individ-

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ual is filing an income tax return and also claims homestead credit, the Department prefers that the Schedule H accompany the income tax return. If an individual has already filed a 1976 income tax return but later wishes to claim homestead credit, a Schedule H should be filed no later than December 31, 1977.

Taxpayers should carefully check returns for completeness before filing. Many of the last minute returns received each year are incomplete in some respect. This causes needless delays in the Department's processing system and in the issuance of refunds.

To help speed up the handling of tax returns, we again offer the following suggestions to avoid the most common errors:

1. Proper wage statements should be attached.
2. A complete copy of the federal income tax return (Form 1040 and all accompanying schedules) should be included with the Wisconsin Form 1 (but not with the Wisconsin short form 1A).
3. If both husband and wife have income, both spouses must sign the return.
4. Including a taxpayer's telephone number will permit the Department to contact the taxpayer quickly if additional information is needed.
5. The municipality and county in which the taxpayer lived in 1976 should be identified. This is easily done by checking the proper box and entering the name of the taxpayer's city, village, or township and county. No entry is necessary for nonresidents.
6. The taxpayer's school district number should be entered on the appropriate line.
7. If there is a tax due, a check for the tax due should be made payable to the Wisconsin Department of Revenue and stapled to the Wisconsin return. The check and return should be sent to the Department at P. O. Box 268, Madison, Wisconsin 53701.
8. If a refund is due, it should be entered on the proper line. The return should be addressed to the Department at P. O. Box 59, Madison, Wisconsin 53701. (Returns with neither a tax nor a refund due should also be sent to this address.)
9. Proper verification of any credit claimed for tax paid to other states must be enclosed. The instructions in the income tax booklet describe the verification needed.

10. With homestead credit claims, a copy of the real estate tax bill or rent certificate must be enclosed.

If an error is discovered on a return after it is filed with the Department, an amended return should be filed. Wisconsin Form 1X may be used. It has been designed to make amended returns easier to file and process. The form may be obtained at any Department office.

Taxpayers who are unable to file returns by April 15 and wish to avoid late filing fees should request an extension from the Internal Revenue Service. An extension for filing a federal income tax return will also extend the time for filing a Wisconsin return. A copy of the automatic 60-day federal extension application, Form 4868 (or an approved extension request, Form 2688) should be attached to the Wisconsin return when filed. In lieu of applying for extensions from the IRS, extensions of 30 days are granted by the Department for satisfactory cause. Requests for such extensions must be made prior to April 15 and should be directed to the Department at P. O. Box 58, Madison, Wisconsin 53701.

HIGHLIGHTS OF 1977-79 BUDGET BILL

On January 25, 1977, Governor Patrick J. Lucey's 1977-79 Budget Bill was introduced in the Legislature. The bill, Senate Bill 77, was referred to the Joint Committee on Finance for review and public hearings.

This portion of the bulletin summarizes the income, sales, inheritance and excise provisions of that bill. Section numbers following each summary identify the provisions of SB 77 relating to that item.

1. INDIVIDUAL INCOME TAX

A. For 1977 and subsequent taxable years, the reference date of the Internal Revenue Code for individuals would be changed from December 31, 1975, to December 31, 1976, with two exceptions: 1) itemized deductions for child care expenses would still be permitted and 2) changes to the special tax treatment of certain pollution control facilities enacted in the Tax Reform Act of 1976 would not be allowed. The principal effect of this date change will be to adopt most of the Tax Reform Act of 1976. (SECTIONS 790 and 791)

B. Increase the minimum individual income tax declaration requirement from the current 70% to 80%, beginning with tax year 1978. (SECTIONS 808 and 1657 (38) (i))

C. Nonresident entertainers and professional athletes who do not regularly engage in business in Wisconsin would be required to make a cash deposit or file a surety bond with the Department of Revenue prior to a performance, to cover estimated state tax liability. Promoters and employers of such persons would be responsible for withholding income tax if advance deposits or bonds are not provided. (SECTIONS 789, 792, 793, 800, 801, 802, 805, 806, 807 and 1655 (38) (b))

2. CORPORATE FRANCHISE/INCOME TAX

A. Increase the minimum corporate income tax declaration requirement from the current 70% to 80%, beginning with tax year 1978. (SECTIONS 809 and 1657 (38) (i))

B. Eliminate the corporate deduction for sales and use tax penalties. (SECTIONS 810 and 1657 (38) (f))

C. For 1977 and subsequent taxable years, change the reference date of the Internal Revenue Code from December 31, 1975 to December 31, 1976, for regulated investment companies, real estate investment trusts (REIT's) and insurance companies. In addition, the option of using the 1976 or the current year code as amended, which is currently available only to insurance companies, would be extended to regulated investment companies and REIT's. (SECTIONS 785 to 788 and 1657 (38) (j))

3. SALES AND USE TAX

A. Extend the 4% sales and use tax to cover the following: 1) Occasional sales of snowmobiles, mobile homes, trailers, and semi-trailers. (SECTIONS 843, 851, 853, 855 and 1657 (38) (d)) 2) Sales of motor vehicles and truck bodies to nonresidents for immediate delivery to another state. (SECTIONS 852 and 1657 (38) (d)) 3) Sales of telephone answering services, background music services and computer and data processing services. (SECTIONS 844 and 1657 (38) (k))

B. Require automatic renewal of sales tax seller's permits, without reapplication and without any additional fee, every two years. Renewals would not be issued to taxpayers owing \$400 or more in delinquent sales and use taxes, any part of which have been delinquent for at least 5 months. (SECTIONS 845 to 850 and 854)

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4. INHERITANCE AND GIFT TAXES

Allow any gift tax paid to be used as a credit to offset any inheritance tax due on the same property. (SECTION 814)

5. MOTOR AND SPECIAL FUEL TAXES

A. Change the motor fuel tax reporting and payment requirement from the wholesaler to the terminal level. (SECTIONS 395, 856 to 887 and 1657 (38) (b) 1)

B. Change motor fuel tax collection procedures by: 1) imposing interest at 18% per year on delinquent taxes; and 2) giving the Department authority to collect delinquent motor fuel taxes, including the use of warrant procedures. (SECTIONS 879 to 881 and 1657 (38) (b) 2)

C. Allow purchasers of special fuel, at their option, to pay the tax to either the supplier or the state if such fuel will be used entirely on highways. (SECTIONS 874 and 1657 (38) (b) 1)

6. INTEREST

Make interest rates charged for delinquent taxes more uniform. Income, withholding and sales delinquent tax interest rates are currently 18%; the Budget Bill would set the excise tax delinquent rates at the same level. (SECTIONS 879, 1134, 1135, 1138 and 1657 (38) (b) 2 and (e)) Inheritance and gift tax interest rates would be changed from 8% to 9%. (SECTIONS 811, 813 and 1657 (38) (g))

7. HOMESTEAD CREDIT PROGRAM

Expand the Homestead Credit Program by an increase in the ceiling for property taxes from \$535 to \$800, an increase in the income ceiling from \$7,500 to \$8,000 and the introduction of a family size factor in calculation of benefits. A claimant may exceed the \$8,000 ceiling by \$750 for a spouse and up to 2 dependents (maximum of \$2,250), allowing a family of four to have an income up to \$10,250 and still be eligible for benefits. The maximum benefit would be increased from \$428 to \$640. (SECTIONS 794 to 799)

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.)

WKBH Television, Inc. v. Department of Revenue (75 Wis. 2d 557, Wisconsin Supreme Court, Case No. 75-170, February 1, 1977). In June 1969, WKBH adopted a plan of complete liquidation and in January 1970 it sold its properties pursuant to the plan. It then liquidated and distributed all of its assets within one year of the adoption of the plan on a prorata basis to its shareholders. At times pertinent to the case 53.5 percent of the shares of stock were owned by Wisconsin residents who must report a prorated portion of the gain on their tax returns, and 46.5 percent were owned by nonresidents.

WKBH reported as taxable Wisconsin income 46.5 percent of the gain it computed on the sale of its assets, to the extent the gain was distributed to nonresident shareholders. It subsequently filed a claim for refund of these taxes. The court found that WKBH was not entitled to a refund, as 46.5 percent of the gain on the sale of the assets which represents nonresident ownership is subject to Wisconsin income tax.

Department of Revenue v. Exxon Corp.

(Circuit Court of Dane County, Case No. 151-344, January 31, 1977). The issue in this case is how the income of this major oil company should be apportioned to Wisconsin. The years involved were 1965 through 1968 when Humble Oil and Refining Company, a wholly-owned subsidiary of Standard Oil Company of New Jersey, operated in Wisconsin. The latter company subsequently changed its name to Exxon.

The three principal operating and functional departments of the corporation in the years involved were exploration and production, refining, and marketing, each organized into regional geographic divisions. The taxpayer only carried on marketing operations in Wis-

consin. None of the taxpayer's refined gasoline or fuel oil was sold in Wisconsin, as they were obtained from Pure Oil Company through an exchange agreement. Motor oils, greases and other packaged products were produced outside Wisconsin and sold in Wisconsin. Other items such as tires, batteries and accessories were centrally purchased in Houston and sold in Wisconsin.

During the period under review, the company had a uniform credit card system throughout the United States. There was also centralized advertising, purchasing, accounting and management from the main office in Houston.

The Department treated the taxpayer as a unitary business and imposed a Wisconsin tax on the apportioned income of the three operating departments (exploration and production, refining and marketing). In computing the apportionment formula, the Department weighted one of the three apportionment factors (manufacturing costs). The manufacturing percentage was given less weight because many of the items sold by the company were not manufactured by it.

The court determined that the taxpayer is a unitary business subject to apportionment. However, the income of the exploration and production department is situs income which is not apportionable to Wisconsin. The Department has appealed this decision to the Wisconsin Supreme Court.

Joan Hargarten et al d/b/a Chattel Changers v. Department of Revenue (Wisconsin Tax Appeals Commission, February 9, 1977).

Chattel Changers is a three-member partnership. It is engaged in the business of selling household goods of others to the public. The sales take place on the premises of the owner of the goods. Usually the household goods are sold because of the discontinuance of the household.

Advertising of each two or three day sale is handled by Chattel Changers, which inventories and prices the goods. Chattel Changers sells the goods to the public. The owner must be off the premises at the time of the sale. The Commission held that Chattel Changers is a retailer required to report the sales tax on these sales of household goods.

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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.)

SALES TAX

I. Exemption Certificates

A. Certificates Are Required

Under the general sales and use tax law, all gross receipts from sales of tangible personal property are subject to the 4% tax unless a statute exempts the sale. The burden of proving that a sale is exempt is upon the seller, unless that person takes an exemption certificate in an approved form in good faith from the purchaser.

Some sellers, however, are making sales without tax without obtaining exemption certificates from purchasers as required by law. In this situation, the Department must increase the seller's taxable sales by the amount of the unsubstantiated deductions.

If a seller accepts an approved resale or other exemption certificate in good faith, he or she is not liable for the tax. The good faith of the seller will be questioned if the seller accepts a certificate with knowledge which gives rise to the reasonable inference that the purchaser does not intend to resell the property or use it for an exempt purpose. For example, knowledge that a purchaser is not engaged in the business of selling the type of property purchased may indicate that the resale certificate was not accepted in good faith. A certificate cannot be taken in good faith for an exemption which is not provided for by law.

Continuous exemption certificates (including continuous resale certificates) approved by the Department do not allow a purchaser to issue "this time only" pur-

chase orders canceling the continuous tax exemption certificate for the one transaction only. The notation "taxable" on a purchase order is not sufficient to relieve a purchaser of the responsibility for his or her previously issued continuous certificate, unless it is accompanied by a separate letter explaining the inapplicability of the previously issued certificate to the particular order.

B. Manufacturers Exemption Certificates

A supplier who has accepted a properly completed "Manufacturers Exemption Certificate" (Form S-207m) in good faith, marked for "continuous" use, may make sales to the manufacturer without tax if the property sold qualifies for one of the five exempt uses provided for on the form, and if the seller has no knowledge that any of the property will be used for a non-exempt purpose.

Each order of the manufacturer should refer to the Form S-207m on file, or in some other manner indicate that the purchaser is claiming an exemption for the particular order. It is not necessary for the purchaser to indicate on each purchase order the exact type of exemption claimed for each item or group of items purchased, as long as the purchaser claims the entire order qualifies for exemption from the tax.

II. Household Goods Sales

A recent innovation in the sale of household goods on the premises of the owner is to have a person ("X") handle the sales to the public. In most cases the household goods are disposed of because of the discontinuance of the particular household. Generally, these sales are handled throughout the year by this person in the following manner:

1. Advertising of the two or three day sales event is handled by "X".
2. The goods are inventoried and priced by "X".
3. The owners may be required to be off the premises at the time of the sale, and do not participate in the sale.
4. Payment for the goods is made directly to "X", who retains a fee for making the sales and settles with the owner at a later date.

A person such as "X" is a retailer and is responsible for reporting and remitting the 4%

sales tax on the gross receipts from these sales. See the Joan Hargarten d/b/a Chattel Changers v. Dept. of Revenue (Wisconsin Tax Appeals Commission, February 9, 1977).

III. Loose-Leaf Services

Many loose-leaf services or reports concerning taxes, law, business and other subjects are issued to a subscriber initially in the form of a complete volume or volumes. Supplements containing current information are then regularly issued to the subscriber at average intervals of less than three months. Replacement volumes containing updated material are sometimes issued annually with the renewal of a subscription. The subscriber pays a lump-sum price for both the volumes and the supplements.

The supplements generally are exempt periodicals, but the initial volumes and the replacement volumes are taxable. An allocation of the lump-sum price between the volumes and the supplements may properly be based upon the amount which the publisher charges to replace a lost or destroyed volume.

IV. Monument Dealers

Most monument dealers contract with a purchaser to place a monument with an inscription in position in a cemetery. Such dealers are installing or applying tangible personal property which, when installed or applied, constitutes an addition or capital improvement to real property. Accordingly, they are contractors and must pay the tax on the cost of materials acquired to their suppliers.

V. Towing Service

If towing service is provided customers in conjunction with the repair, other service or maintenance of the property being towed, it is a taxable service. It makes no difference whether the non-towing service is done by the person performing the towing service or someone else.

House moving, relocating mobile homes, tugboat service or pulling a car onto a highway are not taxable services.

Wrecker operators who haul motor vehicles exclusively for others may qualify for an exemption on the purchase of their wrecker, if they are not engaged in servicing or repairing motor vehicles. However, if they accept calls to start vehicles, they are engaged in a private business venture (not exclusively hauling for

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others), and do not qualify for the exemption on the purchase of their wrecker. They must report the 4% tax on the gross receipts from such servicing of motor vehicles along with any other taxable receipts from repairing, maintaining or towing of motor vehicles.

VI. Moving Machinery

The dismantling, moving and reinstallation of machines or equipment, which were in a plant previously, are not taxable, if not related to the taxable repair, service or maintenance of such property.

VII. Parking

Section 77.52 (2) (a) 9 imposes tax on the gross receipts from providing parking spaces for motor vehicles. Landlords who charge tenants for parking, or who allow a discount to tenants that do not use parking facilities, must pay a sales tax on their gross receipts from providing parking. If a discount is allowed when parking is not provided, the landlord's taxable gross receipts for parking must include the difference between the discounted price and the amount received when parking facilities are provided.

However, some landlords may qualify for occasional sale treatment (and not have to pay the tax) if they do not have a seller's permit, if their only taxable receipts are derived from the rental or furnishing of not more than three motor vehicle parking spaces, and if the gross receipts from such charges are less than \$500 per calendar year. If either standard is exceeded in a calendar year, the occasional sale exemption does not apply and the landlord must pay the sales tax on parking revenues.

VIII. Royalties

Payments made by a construction contractor to the owner of a gravel pit which are based on the number of tons of gravel removed are subject to the 4% tax.

IX. Taxable Services

A. Delivery and Point of Sale

The imposition of the sales or use tax on taxable services depends upon the place of delivery or use of the property on which the service is performed, and not upon where the taxable service is performed. The following are illustrative examples:

1. A dry cleaner located in Beloit has a pick-up route including territory in Illinois. The receipts from dry cleaning or laundry services of clothing picked up in Illinois and returned to Illinois by the dry cleaner are not subject to the Wisconsin 4% tax, even though the actual service is performed in Wisconsin. In the opposite situation (i.e., Illinois dry cleaner selling in Wisconsin), the charges made to Wisconsin customers for dry cleaning are taxable.
2. An out-of-state customer brings a television set to a Wisconsin repair shop. When the Wisconsin repairman delivers the set out-of-state to the customer it is a non-Wisconsin sale and not taxable. If the set is picked up by the customer in Wisconsin, the Wisconsin 4% tax applies.
3. Assume that an aircraft of a Wisconsin resident requires repairs in a neighboring state which has a 3% tax rate, and in which only the repair parts (not labor) are taxed. The person incurs a 4% Wisconsin use tax on the entire repair charge (including parts and labor) upon returning the aircraft to Wisconsin, against which may be credited the tax paid in the neighboring state. If the repairs are performed in another state with a tax rate that is 4% or more (and only parts are taxed), Wisconsin is entitled to a 4% tax on the repair labor.

EXAMPLE:

	Wis. 4% Tax Rate	Purchases in Other States			
		5% Tax Rate		3% Tax Rate	
		Tax Paid Other State	Additional Wisconsin Tax Due	Tax Paid Other State	Additional Wisconsin Tax Due
Repair part: \$2,000	\$ 80	\$100	\$ -0-	\$60	\$20
Repair labor: \$1,000	40	-0-	40	-0-	40
Totals	<u>\$120</u>	<u>\$100</u>	<u>\$40</u>	<u>\$60</u>	<u>\$60</u>

B. Resale of Taxable Services

Taxable services may be purchased without tax for resale in the same manner as tangible personal property. The following are examples:

1. A used car dealer receives a car as a trade-in which needs a tune-up and minor repairs to make it salable. Not having a repair facility, the dealer has an independent repairman do the work. The dealer may issue a Resale Certificate to the repairman for both parts and labor since the car is to be resold.
2. A motor vehicle dealer periodically takes automobiles in inventory to a car wash facility. The dealer may issue a Resale Certificate to the car wash operator for this service and not pay tax on it.

The resale principle does not apply, however, when the service is performed on property not held for resale. For example, when a motor vehicle dealer's tow truck is damaged in a collision, and the dealer does the repair work, the dealer owes use tax measured by the purchase price of the repair parts. If an outside repairman does the work, the total charge to the dealer (parts and labor) is taxable.