

WISCONSIN TAX BULLETIN

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CHANGES IN INCOME TAX FORMS FOR 1983

Included in the last 4 pages of this issue are preliminary proof copies of the 1983 Wisconsin Form 1 and 1A. Although still subject to change before printing, these proofs will give you an idea of how the 1983 forms will appear.

Some of the major changes which have been made for 1983 include the following:

Minnesota Income Question Added (line 5b, Form 1; line 5, Form 1A) — Taxpayers are requested to indicate whether or not they earned wages or other compensation for working in Minnesota in 1983 during a time while they were a resident of Wisconsin. The amount of any Minnesota income is to be entered in the spaces provided. This information is needed for purposes of the Wisconsin-Minnesota income tax reciprocity agreement.

Interest and Dividend Income (line 7, Form 1A) — The ceiling on the amount of interest and dividend income which may be reported on the Wisconsin short-form return has been removed. Taxpayers having more than \$400 of interest income or \$400 of dividends will be required to complete a schedule which appears on page 2 of Form 1A to provide information about the payers and amounts of interest and dividend income received.

Endangered Resources Donation (line 54, Form 1; line 19, Form 1A) — A line is provided for taxpayers to make donations to Wisconsin's new endangered and nongame wildlife program which will be administered by the Department of Natural Resources. Amounts donated will reduce a taxpayer's refund or

increase the balance due with the return.

10% Surtax (line 47, Form 1; line 12, Form 1A) — The 10% surtax which is imposed for 1983 will be included in the Tax Table which appears in the instructions for the income tax forms. A separate computation will not be required for the surtax.

IN THIS ISSUE

	Page
Changes in Income Tax Forms for 1983	1
Payments of 1983 Estimated Tax May Have to Be Increased	1
Wisconsin Tax Brackets Will Not Be Indexed for 1983	2
IRC Provisions Relating to PIK Program Commodity Payments Apply for Wisconsin New Law: Effective Date Changed to November 1, 1983 for Motor Fuel Tax Provision	2
6 Month Extension of Time to File Available to Corporations	2
Reminder: Landscaping and Lawn Maintenance Services Are Taxable	2
Persons Convicted for Failure to File	3
Bulk Orders of Tax Forms	3
New ISI&E Division Rules and Rule Amendments in Process	3
Report on Litigation	5
Tax Releases	
Individual	10
Franchise	11
Sales/Use	12
Index to Wisconsin Tax Bulletins, Issues 1 to 34	14
Proofs of 1983 Forms 1 and 1A	29

PAYMENTS OF 1983 ESTIMATED TAX MAY HAVE TO BE INCREASED

As a result of the two law changes described below it may be necessary to increase Wisconsin estimated tax payments for 1983.

10% Surtax Added

The 1983-85 budget bill (1983 Wisconsin Act 27) which became law July 2, 1983 added a 10% surtax to the Wisconsin income tax rates for individuals. The 10% surtax applies to the tax on income received during 1983 and 1984.

The surtax will add 10% to an individual's gross tax for 1983 and 1984. The surtax will be computed before gross tax is reduced by any tax credits (for example, personal exemption credits and property tax and rent credits). For married persons, the surtax will be determined separately for each spouse.

The statutes require that the 10% surtax payable for 1983 is to be prorated equally among, and paid with, any installment payments of estimated tax that are due after July 1, 1983. However, it should be noted that the 12% penalty for underpayment of estimated tax will *not* apply if total timely payments of 1983 estimated tax are equal to the tax shown on a taxpayer's 1982 return (line 53 minus credits allowable on lines 58, 59 and 60). This exception to the underpayment penalty is provided by s. 71.21(14)(a), Wis. Stats.

Property Tax And Rent Credits Reduced

Another law change in the 1983-85 budget bill which may affect estimated tax payments for 1983 is a reduction in the Wisconsin property tax and rent credits from 12% to 10%. Also, in computing the property tax credit, only property taxes paid on a person's "principal dwelling"

may be used. Property taxes on non-business property other than an individual's principal dwelling (e.g., summer cottage or hunting land) may no longer be used in computing the credit.

In late August the Department of Revenue sent a notice to individuals who had made a first or second installment payment of 1983 Wisconsin estimated tax alerting them that it may be necessary to adjust the amount of their remaining installment payments.

WISCONSIN TAX BRACKETS WILL NOT BE INDEXED FOR 1983

As a result of a provision in 1983 Wisconsin Act 27 (the 1983-85 budget bill), the Wisconsin income tax brackets will not be indexed for the 1983, 1984 and 1985 tax years. The brackets which applied for 1982 will continue to apply for each of the tax years 1983 through 1985. The 1982 brackets were as follows:

\$	0 - 3,900	3.4% *
	3,900 - 7,700	5.2%
	7,700 - 11,700	7.0%
	11,700 - 15,500	8.2%
	15,500 - 19,400	8.7%
	19,400 - 25,800	9.1%
	25,800 - 51,600	9.5%
	51,600 and over	10.0%

*For tax years 1983 and 1984 a 10% surtax applies in addition to these percentage rates.

IRC PROVISIONS RELATING TO PIK PROGRAM COMMODITY PAYMENTS APPLY FOR WISCONSIN

Many Wisconsin farmers are participating in the federal payment-in-kind (PIK) program during 1983. The federal Internal Revenue Code provides that agricultural commodities received under PIK are to be included in the recipient's taxable income in the year in which the commodity is sold (which may not be the year in which it is received), or if the commodity is fed to livestock owned by the farmer, in the year the livestock is sold. As a result of provisions enacted in Wisconsin Act 27 (the 1983-85 budget bill), the federal treatment will apply for Wisconsin for both individuals and corporations.

NEW LAW: EFFECTIVE DATE CHANGED TO NOVEMBER 1, 1983 FOR MOTOR FUEL TAX PROVISION

One of the provisions enacted in the 1983-85 budget bill (1983 Wisconsin Act 27) was an amendment to s. 78.07(1)(b). This provision was explained in WTB #33 (July, 1983 issue) on p. 32 as follows:

"Motor Fuel Tax Imposed on First Sale (Amend s. 78.07(1)(b), effective July 2, 1983) Motor fuel tax will be paid by the first licensed wholesaler receiving motor fuel from a Wisconsin terminal.

Prior to this law change, the motor fuel tax was paid by a licensed wholesaler when the product was unloaded into the wholesaler's storage facilities or delivered into the storage facilities of one of the wholesaler's customers. For example, if motor fuel was withdrawn from a terminal and sold to licensee A and licensee A then sold it to licensee B, the tax was paid by licensee B.

The change places the responsibility for payment of the tax on the first person (licensee A) withdrawing motor fuel from a refinery or terminal.

In addition, it will no longer be required that tax-free withdrawals by a licensed wholesaler from a Wisconsin terminal be withdrawn in 4,000 gallon lots or more."

After the budget bill was enacted, the legislature in a special session enacted 1983 Wisconsin Act 28. This act changed the effective date of the amendment to s. 78.07(1)(b) from July 2, 1983 to November 1, 1983. The language in 1983 Wisconsin Act 28 reads as follows:

"SECTION 1. Effective date. Notwithstanding 1983 Wisconsin Act 27, section 2204(intro.), the treatment of section 78.07(1)(b) of the statutes by that act takes effect on November 1, 1983. From July 2, 1983, to October 31, 1983, section 78.07(1)(b) of the 1981 statutes is in effect."

6 MONTH EXTENSION OF TIME TO FILE AVAILABLE TO CORPORATIONS

Federal law provides that corporations can receive from IRS a 6-month extension of time to file their federal corporate income tax returns (federal Form 1120 series) by filing Form 7004, "Application for Automatic Extension of Time to File Corporate Income Tax Return".

Section 71.10(5)(a), Wis. Stats., provides that any extension of time granted by IRS for filing a federal return will also extend the time for filing the corresponding Wisconsin return. Therefore, corporations allowed a 6-month extension by IRS will also be allowed a 6-month extension to file their Wisconsin income/franchise tax return (Form 4 or 5). A copy of the federal extension must be attached to the Wisconsin return when it is filed.

REMINDER: LANDSCAPING AND LAWN MAINTENANCE SERVICES ARE TAXABLE

Beginning May 1982, landscaping and lawn maintenance services became subject to the 5% sales tax.

The gross receipts from providing the following services are taxable under s. 77.52(2)(a)20, Wis. Stats., when performed on lawn or garden areas, including residential, business, commercial and industrial areas, cemeteries, golf courses, athletic fields and stadiums as well as when performed in parking lot areas, near or adjacent to buildings or other developed areas.

- Landscaping services, including landscape planning and landscape counseling.
- Lawn maintenance services and other lawn services, including planting, sodding, mowing, raking, weeding, thatching, spraying, and fertilizing lawns.
- Garden services, including plowing, rototilling, planting, spraying, pruning, trimming, surgery and removal of shrubs, stumps and trees.
- Shrub and tree services, including planting, bracing, fertilizing, spraying, pruning, trimming, surgery and removal of shrubs, stumps and trees.

Although some of these services also involve realty improvements, the services are still taxable. For example,

the sale and laying of sod for \$1,000 involves both a taxable service and a realty improvement. The total charge of \$1,000 is considered a taxable service and is subject to the 5% Wisconsin sales/use tax under s. 77.52(2)(a)20.

The above services are taxable, regardless of whether performed by landscapers, architects, construction contractors or any other persons.

PERSONS CONVICTED FOR FAILURE TO FILE

Merle Griesbach of Appleton, Wisconsin was sentenced March 2, 1983 in Outagamie County Circuit Court by Reserve Circuit Judge Frederick P. Kessler on 19 counts of operating as a seller after his Wisconsin seller's permit had been revoked and on 10 counts of failing to file Wisconsin sales tax returns.

Judge Kessler ordered Griesbach to serve 30 days in the Outagamie County jail on each of the first 4 counts to run consecutively for a total of 120 days and ordered probation for 2 years on each of the next 3 counts to run consecutively for a period of 6 years. Under the conditions of probation, Griesbach must file all missing sales tax returns within 60 days and make restitution of state sales taxes of at least \$3,700 within 6 months. Griesbach must also terminate any connections with the Universal Life Church and recover any property he has previously deeded over to the Universal Life Church. Judge Kessler also ordered Griesbach to serve 2 years probation on the next 13 counts and then suspended sentencing on the remaining 9 counts.

A Princeton attorney has been ordered to pay \$500 in fines for criminal violations of the Wisconsin income tax laws. Spencer A. Markham, 102 West Water Street, Princeton, Wisconsin, was convicted in January, 1983 in Dane County Circuit Court, after he entered no contest pleas to 2 counts of failing to file Wisconsin income tax returns. He was ordered to pay a \$250 fine on each count or serve 30 days in jail. Markham was charged with failing to file state income tax returns on gross income of more than \$23,000 for 1978 and \$28,000 for 1979.

Ronald L. Goss, 4666 Markgraff Road, Fall Creek, Wisconsin, was

convicted in Eau Claire County Circuit Court after he entered guilty pleas to 2 counts of failing to file Wisconsin income tax returns. Goss has been ordered to pay \$1,000 in fines or serve 100 days in jail for criminal violations of the Wisconsin state income tax laws. Circuit Judge Karl F. Peplau ordered Goss to pay a \$500 fine on each count by April 18, 1983 or serve 100 days in the Eau Claire County jail. Goss was charged with failing to file state income tax returns on gross income of more than \$30,000 for 1979 and \$30,000 for 1980.

On April 29, 1983 James B. Udelhoven from Edgerton, Wisconsin was convicted on three counts of failure to file Wisconsin income tax returns. Dane County Circuit Judge Mark A. Frankel ordered Udelhoven to serve 2 years probation on each of the 3 counts to run consecutively and pay a \$500 fine. Under the conditions of probation, Udelhoven must pay the \$500 fine plus a \$60 penalty assessment and \$20 court costs, pay all taxes and interest due for the years 1979, 1980, and 1981 and file all income taxes due while on probation.

Udelhoven was charged with failing to file state income tax returns on gross income of more than \$24,000 for 1979, \$33,000 for 1980 and \$42,000 for 1981.

Richard K. Sattler was convicted in Milwaukee County Intake Court and ordered to pay a fine of \$1,000 plus costs and serve 30 days in Milwaukee County House of Corrections for filing a false cigarette inventory return. Charges were brought against Sattler after an investigation by the Intelligence Section of the Wisconsin Department of Revenue. Sattler, Vice-President of the D. Kurman Company of Milwaukee was found guilty of filing a false inventory return in June 1982 when he reported having approximately 9,500 cartons of stamped cigarettes on hand when the company actually had more than 28,000 cartons on hand. The inventory return was required because the per package cigarette tax increased from 20¢ to 25¢ effective May 1, 1982.

Urban P. Van Susteren of Appleton, Wisconsin was convicted July 26, 1983 in Dane County Circuit Court on three counts of failing to timely file individual state income tax re-

turns and two counts of failing to timely file state corporation franchise tax returns. He was ordered to pay a \$500 fine on each count within 60 days or serve a 60 day jail sentence. Van Susteren was charged with failing to file individual income tax returns on gross income of more than \$74,000 for 1979, \$85,000 for 1980 and \$75,000 for 1981. He was also charged with failing to file corporation franchise tax returns, as president of Westgate Motel Corporation, on corporation net income of more than \$3,400 for 1979 and \$2,900 for 1980.

BULK ORDERS OF TAX FORMS

In October, the department will mail out the order blank (Form P-744) which practitioners and other persons or organizations should use to request bulk orders of 1983 Wisconsin income tax forms. As in past years, professional tax preparers are subject to a handling charge on their orders. No charge is made for forms used for distribution to the general public (for example, in a bank, library or post office).

Orders should be placed as early as possible after you receive the order blank. By receiving the orders early, the department can better identify possible shortages of specific forms.

This year's mailing list for bulk order blanks contains the names of all persons and organizations who placed orders for 1982 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.

NEW ISI&E DIVISION RULES AND RULE AMENDMENTS IN PROCESS

Listed below, under parts A and B are proposed new administrative rules and amendments to existing rules that are currently in the rule adoption process. The rules are shown at their stage in the process as of October 1, 1983. Part C lists new rules and amendments which have been adopted in 1983.

("A" means amendment, "NR" means new rule, "R" means repealed and "R & R" means repealed and recreated.)

A. Rules at Legislative Council Rules Clearinghouse

- 2.82 Nexus-A
11.71 Automatic data processing-NR

B. Rules at Legislative Standing Committees

- 11.03 Elementary and secondary schools and related organizations-A
11.05(3) Governmental units-A
11.15 Containers and other packaging and shipping materials-A
11.16 Common or contract carriers-A
11.19 Printed material exemptions-A
11.26 Other taxes in taxable gross receipts and sales price-A
11.32(3) "Gross receipts" and "sales price"-A
11.48 Landlords, hotels and motels-A
11.50 Auctions-A
11.52 Coin-operated vending machines and amusement devices-A
11.65 Admissions-A
11.68 Construction contractors-A

C. Rules Adopted in 1983 (in parentheses is the date the rule was adopted)

- 1.001 Definition-A, (10-1-83)
1.01 Assessment districts-A, (10-1-83)
1.10 Depository bank requirements for withholding tax deposit reports-A, (10-1-83)
1.11 Requirements for examination of returns-A, (10-1-83)
1.13 Power of attorney-A, (10-1-83)
2.03 Corporation returns-A, (10-1-83)
2.04 Information returns; forms WT-9, 9b, and 9X for corporations-A, (10-1-83)
2.045 Information returns; form 9c for employers of non-resident entertainers, entertainment corporations or athletes-A, (10-1-83)
2.05 Information returns, forms 8 for corporations-A, (10-1-83)
2.06 Information returns required of partnerships

- and persons other than corporations-A, (10-1-83)
2.081(5) Indexed income tax rate schedule for 1982-NR, (1/1/83)
2.085 Claim for refund on behalf of a deceased taxpayer-A, (10-1-83)
2.09 Reproduction of income tax forms-A, (10-1-83)
2.11 Credit for sales and use tax paid on fuel and electricity-A, (10-1-83)
2.12 Amended income and franchise tax returns-A, (10-1-83)
2.13 Moving expenses-A, (10-1-83)
2.16 Change in method of accounting for corporations-A, (10-1-83)
2.19 Installment method of accounting for corporations-A, (10-1-83)
2.26 "Last in, first out" method of inventorying for corporations-A, (10-1-83)
2.42 Apportionment method-R, (10-1-83)
2.43 Nonapportionment method-R, (10-1-83)
2.44 Permission to change basis of allocation-A, (10-1-83)
2.45 Apportionment in special cases-A, (10-1-83)
2.73 Involuntary conversion by corporations-A, (10-1-83)
2.83 Requirements for written elections as to recognition of gain in certain corporation liquidations-A, (10-1-83)
2.87 Reduction of delinquent interest rate under s. 71.13 (1)(b), Stats.-A, (10-1-83)
2.88 Interest rates-A, (10-1-83)
2.89 Penalty for underpayment of estimated tax-A, (10-1-83)
2.92 Withholding tax exemptions-A, (10-1-83)
2.935 Reduction of delinquent interest rate under s. 71.20 (5)(c), Stats.-A, (10-1-83)
2.945 Spousal individual retirement contributions-NR, (1/1/83)
2.95 Reporting of installment sales-A, (10-1-83)
2.955 Credit for income taxes paid to other states-A, (10-1-83)
2.96 Extension of time to file corporation franchise or income tax returns-A, (10-1-83)
2.98 Disaster area losses-R, (10-1-83)
2.99 Computing 1975 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1974-R, (10-1-83)
2.991 Computing 1976 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1975-R, (10-1-83)
2.992 Computing 1977 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1976-R, (10-1-83)
4.50 Assignment, use and reporting of Wisconsin state tax number-A, (7/1/83)
7.21 Labeling-A, (7/1/83)
7.22 Tied house law; volume and quantity discounts-R, (7/1/83)
7.23 Activities of brewers, bottlers and wholesalers-A, (7/1/83)
8.02 Revenue stamps-occupational tax-A, (7/1/83)
8.11 Reports-A (7/1/83)
8.21 Purchases by the retailer-A, (7/1/83)
8.22 Purchases made outside of state-A, (7/1/83)
8.35 Interstate shipments-A, (7/1/83)
8.42 Wine containers-A, (7/1/83)
8.43 Empty containers-A, (7/1/83)
8.66 Merchandise on collateral-A, (7/1/83)
8.76 Salesperson-A, (7/1/83)
8.81 Transfer of retail liquor stocks-A, (7/1/83)
8.85 Procedure for apportionment of cost of administration of s. 176.05 (23), Stats.-A, (7/1/83)
8.86 Tied house law; volume and quantity discounts-R, (7/1/83)
9.12 Refunds-military-A, (7/1/83)
11.001 Definitions and use of terms-A, (2/1/83)
11.01 Sales and use tax return forms-A, (2/1/83)
11.05(2) Governmental units-A, and (3) (2/1/83)

- 11.08 Medical appliances, prosthetic devices and aids-A, (2/1/83)
- 11.10 Occasional sales-A, (6/1/83)
- 11.12 Farming, agriculture, horticulture, and floriculture-A, (7-1-83)
- 11.14 Exemption certificates (including resale certificates)-A, (6/1/83)
- 11.16 Common or contract carriers-A, (2/1/83)
- 11.17 Hospitals, clinics and medical professions-A, (2/1/83)
- 11.26 Other taxes in taxable gross receipts and sales price-A, (2/1/83)
- 11.32(4) "Gross receipts" and
and (5) "sales price"-A, (2/1/83)
- 11.38 Fabricating and processing-A, (2/1/83)
- 11.39 Manufacturing-A, (7-1-83)
- 11.49 Service station and fuel oil dealers-A, (6/1/83)
- 11.51 Grocers' guidelist-A, (6/1/83)
- 11.57 Public utilities-A, (6/1/83)
- 11.66 Communications and CATV services-A, (2/1/83)
- 11.67 Service enterprises-A, (6/1/83)
- 11.69 Financial institutions-A, (2/1/83)
- 11.84 Aircraft-A, (6/1/83)
- 11.85 Boats, vessels, and barges-A, (2/1/83)
- 11.87 Meals, food, food products and beverages-A, (6/1/83)
- 11.93 Annual filing of sales tax returns-A, (2/1/83)
- 11.96 Interest rates-A, (6/1/83)
- 11.97 "Engaged in business" in Wisconsin-A, (2/1/83)
- 11.98 Reduction of delinquent interest rate under s. 77.62 (1), Stats.-A, (6/1/83)

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 last paragraph of each WTAC decision in which the department's determination has been reversed will indicate one of the following: 1) "the department appealed", 2) "the department has not appealed but has filed a notice of nonacquiescence" or 3) "the department has not appealed" (in this case the department has acquiesced to Commission's decision).

The following decisions are included:

INCOME AND FRANCHISE TAXES

John Gamerdinger vs. Wisconsin Department of Revenue

Edward Kraemer & Sons, Inc. vs. Wisconsin Department of Revenue

Joseph V. Lemberger, Jr. vs. Wisconsin Department of Revenue

NCR Corporation vs. Wisconsin Department of Revenue

Overly, Inc. vs. Wisconsin Department of Revenue

Topp Corporation vs. Wisconsin Department of Revenue

SALES/USE TAXES

Ibtisam Ahmad vs. Wisconsin Department of Revenue

A.F. Gelhar Co., Inc. vs. Wisconsin Department of Revenue

Wisconsin Department of Revenue vs. Gene E. Greiling

Wisconsin Department of Revenue vs. Edward Kraemer & Sons, Inc.

Lerman Tire Service vs. Wisconsin Department of Revenue

Wisconsin Department of Revenue vs. Milwaukee Brewers Baseball Club

County of Racine, c/o Nick R. DeMark vs. Wisconsin Department of Revenue, and Grant Fuhrman, Custodian d/b/a Racine County Jail Concession Fund vs. Wisconsin Department of Revenue

HOMESTEAD CREDIT

Avis L. Blasch vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

John Gamerdinger vs. Wisconsin Department Of Revenue (Wisconsin Tax Appeals Commission, June 10, 1983). The issue in this case is the department's disallowance of taxpayer's 1974 through 1977 farm losses, based upon the determination that the taxpayer's farming operation was not an activity engaged in for profit within the meaning of section 183(a) of the Internal Revenue Code. The department allowed deductions of farm expenses only to the extent of income. The taxpayer, John Gamerdinger, asserted that his farming operation was engaged in for profit and that he should be permitted to deduct his farm expenses in their entirety.

Taxpayer acquired his farm in 1967. The farm consists of twenty acres; ten acres are suitable for planting crops. Prior to moving to the farm Gamerdinger and his family lived in an urban location. Taxpayer had no farming background.

During the years involved (1974-1977) the taxpayer planted oats, timothy and alfalfa. Gamerdinger made no sales of crops during these years. The grains raised were used to feed and bed his livestock. Taxpayer employed no outside services to help him with planting and taking care of his crops.

Gamerdinger raised cattle during the years involved. In 1975 he owned a total of 3 holsteins and 2 angus. In 1976 one holstein was butchered, and Gamerdinger and his family consumed the meat themselves. He then sold the remaining holsteins for cash and traded the 2 angus for 2 horses.

In 1974 it was the taxpayer's intention to begin breeding holsteins rather than angus. His decision was based on advice from his neighbor that he could get more money for holsteins and holsteins were more tame than angus.

In 1976 he decided to change from holsteins to horses. Taxpayer planned to sell the horses for \$500 in a year or one and a half years. At the time of the hearing before the Commission, Gamerdinger still had the same three horses, a pony and one boarded horse.

Taxpayer purchased, updated, repaired and added extensively to the farm improvements and equipment.