

WISCONSIN TAX BULLETIN

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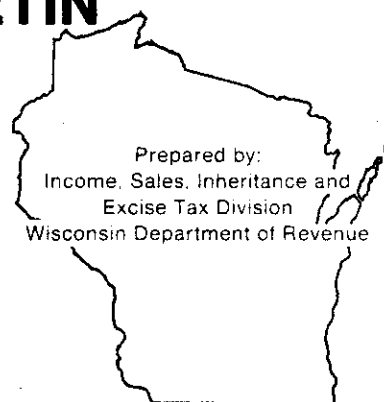
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NEW TAX LAWS

The Wisconsin Legislature has enacted changes to the Wisconsin tax laws. Attached to this issue of the Wisconsin Tax Bulletin is a supplement containing brief descriptions of the new laws enacted as of March 15. Any laws enacted after this date will be reported in the July Bulletin.

COUNTY SALES TAX BEGINS APRIL 1, 1986 IN BARRON AND DUNN COUNTIES

On April 1, 1986, the $\frac{1}{2}\%$ county sales and use tax began for Barron and Dunn Counties. The *Tax Report* included with the January 1986 *Wisconsin Tax Bulletin* (page 21) explains how this new county tax applies to retailers and other persons.

On page 38 of this bulletin is a copy of the March 1986 *Tax Report* which was sent in late March to all retailers who have a seller's permit. A copy of the revised sales and use tax return (Form ST-12) is shown on page 2 of this March *Tax Report*.

Note: Brown County will not have a county tax. Although the December 1985 *Tax Report* indicated Brown County would have a county tax beginning April 1, 1986, the Brown County Board in February 1986 adopted an ordinance to repeal the tax.

SALES FACTOR CHANGED FOR MULTI-STATE CORPORATIONS

The May 9, 1985 Wisconsin Tax Appeals Commission decisions in *United States Steel Corporation vs.*

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Wisconsin Department of Revenue and International Business Machines Corporation vs. Wisconsin Department of Revenue altered the Wisconsin sales factor computation under s. 71.07 (2) (c), 1983 Wis. Stats., and Wis. Adm. Code Section Tax 2.39 (5).

However, in February 1986, a new law, 1985 Wisconsin Act 120, was enacted. This new law reversed in part the effect these decisions had on the sales factor computation. On page 22 of this bulletin is a Tax Release which reviews the *U.S. Steel* and *IBM* decisions by the Wisconsin Tax Appeals Commission as they are related to the sales factor issue. The Tax Release also explains the effects of 1985 Wisconsin Act 120 on the sales factor computation, including the option to apply this new law to tax years prior to the 1986 taxable year.

REFUND QUESTIONS

Do you have a question about your income tax or homestead credit refund check? First, wait at least 10 weeks after filing your Form 1, Form 1A or Schedule H. Then, call or write to: Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708, (608) 266-8100.

In your inquiry be sure to include your name and social security number, the name and social security number of your spouse if you are married, your address, the approximate date you filed your return, and your phone number where you can be reached during the day.

NEW PROPERTY TAX DEFERRAL LOAN PROGRAM

The State of Wisconsin has a new program to loan money to individuals who are age 65 or older to help them pay the property taxes on their homes. Persons age 65 or older with total household incomes for 1985 of \$20,000 or less might qualify for a loan to pay their 1985 property taxes. This new loan program does not replace the Wisconsin Homestead Credit Program. Participants in the new loan program may also file a Homestead Credit Claim.

Applications must be filed by June 30, 1986 for 1985 property taxes payable in 1986. See *Wisconsin Tax Bulletin* #45, January 1986 for more details or contact any Department of Revenue office to request an information brochure about the property tax deferral loan program.

EXTENSIONS TO FILE FOR INDIVIDUALS

Forms 1 and 1A

Any extension of time granted by the Internal Revenue Service for filing federal returns also extends the time for filing the corresponding Wisconsin individual income tax returns. A copy of the federal extension (Form 4868 for a 4-month extension, or Form 2688 for an additional extension) must be filed with the Wisconsin return. If the Internal Revenue Service for any reason refuses to grant an extension or terminates one previously granted, the Wisconsin income tax return is due on the same date as the federal return.

If you are not applying for a federal extension, but need extra time for a Wisconsin return, a 30-day extension of time to file may be requested on Wisconsin Form 1-101, "Application for Extension of Time to File Wisconsin Individual Income Tax Return." The application for extension must be submitted on or before April 15, 1986.

If an individual who has been granted an extension files a return and has a tax due, the amount due is subject to interest at the rate of 12% per year for the extension period (s. 71.10(5)(b), Stats.). To avoid the payment of interest, individuals may pay the tax due on or before the original due date of the return. A Wisconsin "Declaration Voucher", 1985 Form 1-ES, should be submitted with any payment made. This will ensure that the payment is properly credited to the individual's account. Individuals using a federal extension can obtain a 1985 Form 1-ES from any Department of Revenue office. Individuals applying for a Wisconsin extension may use the 1985 Form 1-ES that is attached to the bottom of the application for the Wisconsin extension.

U.S. citizens who are not in the United States or Puerto Rico on April 15, 1986 are allowed an automatic extension until June 16 to file their returns. These persons do not have to

request an extension, but should attach a statement to their returns indicating that they were out of the United States and Puerto Rico on April 15.

Applications for extensions and related correspondence should be sent to:

Wisconsin Department of
Revenue
P.O. Box 8903
Madison, Wisconsin 53708

Schedules H (Homestead) and FC (Farmland Preservation Credit)

No extensions of time are available for filing claims for the above credits.

1985 Homestead claims must be filed no later than December 31, 1986. Farmland preservation credit claims for 1985 must be filed no later than 12 months after the farmland owner's 1985 taxable year ends (e.g., December 31, 1986 for calendar year taxpayers).

INDIVIDUALS' 1986 ESTIMATED TAX REQUIREMENTS

Estimated income tax payments are tax deposits made during the year to prepay the tax that will be due when the individual's income tax return is filed. If the individual does not make the estimated tax payments when required, a penalty may be assessed.

Every individual, or married couple filing jointly, is required to file a 1986 declaration of Wisconsin estimated tax (Form 1-ES) if the individual or couple expects to have a balance due of \$100 or more with their 1986 income tax return.

The due date for individuals and couples required to file a 1986 declaration during the first quarter of 1986 is April 15, 1986. Installment payments are also due on June 16, 1986, September 15, 1986 and January 15, 1987 for calendar year taxpayers.

Nonresidents as well as residents are required to file declarations of estimated tax. A trust or estate is not required to file a declaration for 1986, but must file a declaration for its 1987 taxable year and thereafter (except that a declaration of estimated tax does not have to be filed for the first taxable year of an estate).

CORPORATIONS: 4TH QUARTER ESTIMATES DUE EARLIER

A corporation must make installment payments of estimated tax if it can expect to have a tax liability for the year of over \$500. Installment payments for 1986 taxable years are due on the fifteenth day of the third month, sixth month, ninth month and twelfth month of the taxable year (under prior law the 4th quarter installment payment was not due until the fifteenth day of the first month after the close of the taxable year).

If a required installment is not paid by its due date, an addition to the tax may be assessed on the amount of the underpayment for the period of the underpayment. In determining the underpayment for 1986, the percentage of tax that is required to be prepaid is 90% of the net tax liability shown on the return.

Corporations should keep in mind the change in Wisconsin law (1983 Wisconsin Act 27) concerning exceptions 1 and 2 (s. 71.22(10)(a) and (b), Stats.) to avoid the addition to the tax. Beginning with 1984 taxable years, corporations with Wisconsin net income of \$250,000 or more are no longer eligible for these exceptions. These exceptions continue to apply to corporations with less than \$250,000 of net income.

Corporations' installment payments of estimated tax are reported on Form 4-ES, the Wisconsin Corporation Declaration Voucher. Corporations who received a preprinted Form 4-ES in the mail are urged to file on that form rather than on a facsimile, since the preprinted forms are color coded and are less costly and faster to process.

OFFICE AUDITING: NUMBER AND TYPE OF ADJUSTMENTS MADE

Office auditing plays a crucial role in the Department's responsibility of administering the state's income tax laws. Both the income tax returns of individuals and the franchise/income tax returns of corporations are routinely office audited. Usually a taxpayer's returns covering a three-year period are audited at one time.

An office auditor examines tax returns to verify the correctness and completeness of the information be-

ing reported. For example, income, deductions, exemptions and credit items are reviewed to see that taxes have not been either underpaid or overpaid. When an office auditor requires additional information to complete the review of a return, the information is typically requested from the taxpayer by letter. In some instances the request may be made by telephone.

In the 1984-1985 fiscal year, nearly one million corporation and individual income tax returns were office audited. Such audits resulted in 34,300 assessments of additional tax against individuals and 5,300 against corporations. These assessments amount to about \$41 million in additional tax. In addition, this auditing activity generated 18,300 refunds totalling \$16.3 million.

Some of the problem items most frequently involved in office audit adjustments include:

- Incorrect amounts of credit claimed for estimated tax payments made.
- Incorrect amounts of itemized deductions are claimed.
- Treatment of capital gain income or loss is incorrectly reported.
- Homestead Credit and Farmland Preservation Credit claims filed in error.
- Incorrect amounts of net operating loss carryover.
- Incorrect amounts of personal exemptions.
- Incorrect computations in part-year and nonresident tax situations.
- Failure to report minimum tax.

NEW BUREAUS CREATED

The Compliance Bureau of the Wisconsin Department of Revenue has been split into two separate bureaus which will be called the Tax Processing Bureau and the Compliance Bureau. The original Compliance Bureau was previously the largest bureau in the Department.

The Tax Processing Bureau will have 130 permanent employees and the equivalent of 93 staff years of limited term employees. The bureau is responsible for processing in excess of 5,000,000 documents, depositing

and accounting for revenues collected and storing taxpayer files.

The Compliance Bureau will have 233 permanent employees. The bureau is responsible for registering taxpayers for sales and withholding taxes, obtaining returns from nonfilers, providing taxpayer assistance and collecting delinquent taxes.

Jerome Pionkowski, previous Director of the Compliance Bureau, assumed the responsibilities for managing the Income, Sales, Inheritance and Excise Tax Division on July 22, 1985. Diane Hardt has been named Director of the new Tax Processing Bureau, and Eugene Fitzgerald is the new Director of the Compliance Bureau.

JAIL TERMS FOR CRIMINAL VIOLATIONS OF WISCONSIN STATE INCOME TAX LAWS

A Milwaukee man has been ordered to serve eight months in jail and pay \$650 in fines for criminal violations of the Wisconsin state income tax law. Christopher L. Niesl was sentenced in Dane County Circuit Court, Branch 7, by Circuit Judge Moria Krueger after a probation hearing. Judge Krueger ordered Niesl to serve three months in jail and pay a \$250 fine on the first count and she ordered him to serve five months in jail and pay a \$400 fine on the second count.

Niesl was charged with failing to file state income tax returns on gross income of more than \$39,000 for 1980 and \$38,000 for 1981. Niesl was convicted on both counts after a jury trial in November, 1983 and ordered to serve probation by Judge Krueger on February 9, 1984. Niesl did not comply with the conditions of probation.

A Madison attorney has been ordered to serve probation, pay \$750 in fines and serve thirty days in the Dane County jail for criminal violations of the Wisconsin state income tax law. J. Thomas Haley was placed on two years probation in Dane County Circuit Court, Branch 12. Reserve Judge Frederic P. Kessler withheld sentencing and ordered Haley to serve two years probation to run concurrently on each of two counts of failing to file state income tax returns on time. He was charged with

failing to file timely state income tax returns on gross income of more than \$31,000 for 1980 and \$39,000 for 1981. He was found guilty on both counts after trial by a jury in November, 1985. Under the conditions of probation, Haley must pay a \$500 fine on the first count and serve thirty days in jail. He must pay a \$250 fine on the second count, pay all taxes due for 1980 and 1981, file future returns on time and contribute 200 hours of volunteer community service.

Failure to file a Wisconsin state income tax return is a crime punishable by a fine of not more than \$500 or imprisonment not to exceed six months or both for income tax returns due prior to July 20, 1985. Beginning July 20, 1985, the criminal penalty is a \$10,000 fine or imprisonment not to exceed nine months or both. In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the civil tax liability. Assessment and collection of the additional taxes, penalties and interest due follows conviction for criminal violations.

GIFT TAX RETURNS DUE APRIL 15

1985 Wisconsin gift tax reports must be filed if the total value of taxable gifts given by one donor (person giving the gift) to one donee (person receiving the gift) exceeds \$10,000. Gift tax reports of the donee and donor for 1985 must be filed by April 15, 1986.

The donor reports gifts made on Form 7. On this form the donor enters the description and value of the gifts made to each donee.

The donee reports the gifts he or she received on Form 6, and includes the description and value of the gifts received from one donor. If the donee received gifts from more than one donor during that year, the donee must file a separate report of gifts received from each donor.

The gift tax due is figured on Form 6. In determining the 1985 gift tax due, an annual exemption of \$10,000 is allowed for all gifts made during a calendar year by one donor to one donee. Gifts to a spouse are completely exempt from Wisconsin gift tax. A lifetime personal exemption of \$25,000 is allowed for gifts to lineal issue (children, grandchildren), lin-

real ancestors (parents, grandparents), the wife or widow of a son, the husband or widower of a daughter, an adopted or mutually acknowledged child, and a mutually acknowledged parent. There is no lifetime exemption allowed to other donees.

Beginning in 1986 the lifetime exemption for property transferred to lineal issue and lineal ancestors (children, grandchildren, parents, grandparents) etc., will increase to \$50,000. Also, for gifts occurring on or after January 1, 1986 the top marginal gift tax rate is reduced from 30% to 20%.

REMINDER! DEPENDENTS WITH UNEARNED INCOME

There is a special filing requirement for dependents with unearned income. Persons who are claimed as a dependent by another taxpayer, and who have unearned income (for example, interest or dividends) of \$1,000 or more are required to file a Wisconsin income tax return.

A dependent with unearned income may elect to itemize deductions for 1985 or claim the standard deduction. If the standard deduction is claimed, the amount of deduction is limited to the lesser of the total earned income or the standard deduction. For example, if the dependent had total income of \$1,700 consisting of wages of \$500 and interest of \$1,200, his or her standard deduction is limited to \$500.

DO YOU HAVE SUGGESTIONS FOR 1986 TAX FORMS?

For 1986 the individual income tax forms (Forms 1 and 1A) will be redesigned and simplified. Do you have suggestions for helping to simplify these forms and instructions? Do you have suggestions for improving any other Wisconsin tax forms and instructions?

Send your suggestions to the Wisconsin Department of Revenue, Director of Technical Services, P.O. Box 8933, Madison, WI 53708. Please be specific and send your suggestions in early. The Department appreciates hearing from you.

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 March 1, 1986. Part C lists new rules and amendments which were adopted in 1986.

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

A. Rules at Legislative Council Rules Clearinghouse

- 11.03 Elementary and secondary schools-A
- 11.05 Governmental units-A
- 11.65 Admissions-A
- 17.01 Administrative provisions-NR*
- 17.02 Eligibility-NR*
- 17.03 Application and review-NR*
- 17.04 Repayment of loan-NR*

*These rules will be part of a new chapter, Chapter 17, which will contain rules relating to the Wisconsin Property Tax Deferral Loan Program.

B. Rules at Legislative Standing Committees

None

C. Rules Adopted in 1986 (in parentheses is the date the rule became effective)

- 2.045 Information returns: form 9c for employers of nonresident entertainers, entertainment corporations or athletes-R (1/1/86)
- 3.22 Real estate and personal property taxes of corporations-R (1/1/86)
- 3.30 Depreciation and amortization, leasehold improvements: corporations-R 1/1/86)
- 3.31 Depreciation of personal property of corporations-R (1/1/86)
- 3.61 Mobile home monthly parking permit fees-R (1/1/86)
- 11.71 Computer industry-NR (3/1/86)
- 11.83 Motor vehicles-A (3/1/86)

D. Emergency Rules

Chapter 17, relating to the property tax deferral loan program (2/18/86).

The following sales tax rules to incorporate county sales/use tax provisions will be published and effective in mid-March, 1986:

- 11.001 Definitions and use of terms-A
- 11.32 "Gross receipts" and "sales price"-A
- 11.68 Construction contractors-A
- 11.83 Motor vehicles-A
- 11.92 Records and record keeping-A
- 11.95 Retailer's discount-A
- 11.97 "Engaged in business" in Wisconsin-A

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:

Individual Income Taxes

- John Clifford
Federal income taxes—no effect on state tax
- Chris Culver
Splitting of income—husband/wife
- Wendy L. LaBadie
Basis of assets
- Andre Leveque
Tax sheltered annuity
- Robert E. Nash
Contributions, charitable
- James O. Werner
Splitting of income—husband/wife
- Roy A. Zamecnik
Penalty—fraud