

the Department of Revenue for an offset of sales taxes erroneously paid.

The Court must decide the issue of whether or not Badgerland and Dairyland are "persons" within sec. 77.59(4), Wis. Stats.

The department held that the taxpayers are not "persons" within sec. 77.59(4), Wis. Stats., because they were not the

ones who were required to pay the sales tax and were not the ones who paid the sales tax to the department. It was A. O. Smith, the department says, who was required to pay the sales tax and who in fact did pay such tax.

The Court held that A. O. Smith was the retailer and the seller and, therefore, the required person under sec. 77.58(3)(a), Wis. Stats., to file sales and use tax re-

turns. The taxpayers were not the required persons to pay the sales and use taxes to the department and cannot file a claim for a refund or an offset for sales taxes erroneously paid.

The taxpayers have appealed this decision to the Court of Appeals.

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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 answer 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.)

The following Tax Releases are included:

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INDIVIDUAL INCOME TAXES

1. Differences in Wisconsin and Federal Tax Treatment of Educational Assistance Program Benefits

Statutes: Sections 71.01(6), Wis. Stats. (1987-88), 71.02(2)(d)11 and 12, Wis. Stats. (1985-86)

Facts and Question: Section 127 of the Internal Revenue Code (IRC) provides that gross income of an employee does not include amounts paid or expenses incurred by an employer for educational assistance to the employee if the assistance is furnished pursuant to a qualified educational assistance program.

Generally, the Wisconsin Statutes require that Wisconsin individual income taxpayers use the IRC as amended to December 31 of the prior year to determine Wisconsin net income. For example, for the 1988 taxable year, the IRC as amended to December 31, 1987, with some modifications, is used to determine 1988 Wisconsin net income.

Is the amount of exclusion allowable for Wisconsin for payments under an educational assistance program the same as for federal tax purposes?

Answer: Because Wisconsin generally uses the provisions of the IRC as amended to December 31 of the prior year, there are differences in some years in the amount of exclusion allowable. The maximum amount that may be excluded from gross income under an educational assistance program is as follows:

| Tax Year | Maximum Allowable Exclusion | |
|----------|-----------------------------|-----------|
| | Federal | Wisconsin |
| 1985 | \$5,000 | \$5,000 |
| 1986 | \$5,250 | 0 |
| 1987 | \$5,250 | \$5,250 |
| 1988 | \$5,250 | 0 |

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2. Farm Loss Carryover

Statutes: Section 71.05(6)(a)10 and (b)9 and 10, Wis. Stats. (1987-88)

Note: This Tax Release applies only with respect to taxable year 1988 and thereafter.

Background: Effective for taxable year 1986 and thereafter, sec. 71.05(6)(a)10, Wis. Stats. (1987-88), limits the amount of farm loss that may be deducted each year. The limitations are based on the amount of the taxpayer's nonfarm Wisconsin adjusted gross income.

Section 71.05(6)(b)10, Wis. Stats. (1987-88), effective for the 1988 tax year and thereafter, allows a subtraction for farm losses which were not allowed in prior years because of the limitations in sec. 71.05(6)(a)10, Wis. Stats. (1987-88). The farm losses may be carried over for 15 years and subtracted to the extent that they are not offset against farm income of any year between the loss year and the taxable year for which the subtraction is claimed. The farm losses may be subtracted only to the extent that they do not exceed the net profits or net gains from the sale or exchange of capital or business assets in the current taxable year from the same farming business or portion of that business to which the limits on deductible farm losses applied in the loss year.

Question 1: Are net losses used in the computation of net profits or net gains from the sale of capital or business assets?

Answer 1: No. Net losses are not used when determining net profits or net gains from the sale or exchange of capital or business assets. Section 71.05(6)(b)10, Wis. Stats. (1987-88), provides the subtraction for the farm loss carryover to the extent that the farm losses do not exceed "the net profits or net gains from the sale or exchange of capital or business assets." There is no provision which provides for the use of net losses.

Example: A taxpayer has a farm loss carryover from 1987 of \$30,000. For 1988, the taxpayer reports the following income (loss) from the same farming business to which the limits applied in 1987:

| | |
|--|------------|
| Net farm profit from Schedule F | \$ 20,000 |
| Net loss from the sale of business assets: | |
| Gain from sale of raised dairy cattle held more than 24 months | \$ 1,000 |
| Loss on sale of farm equipment held more than 1 year | (6,000) |
| Net loss | \$(5,000) |

The taxpayer would claim a subtraction of \$20,000 for the farm loss carryover on his or her 1988 Wisconsin tax return.

Question 2: Can a taxpayer be subject to the farm loss limitations in the same year he or she is claiming a subtraction for a farm loss carryover?

Answer 2: Yes. A taxpayer can be subject to the farm loss limitations in the same year he or she is claiming a subtraction for a farm loss carryover. The farm loss limitation and the amount of farm loss carryover that can be subtracted are computed separately.

Example: A single taxpayer has a farm loss carryover from 1987 of \$10,000. For 1988, the taxpayer reports the following income (loss):

| | |
|--|-----------|
| Nonfarm income | \$120,000 |
| Net farm loss from Schedule F | (20,000) |
| Ordinary gain from the sale of farm equipment from Form 4797 | 6,000 |

The \$20,000 farm loss and the \$6,000 gain from the sale of farm equipment are from the same farming business to which the limits applied in 1987.

Because the taxpayer has nonfarm income of \$120,000, the maximum farm loss that can be deducted for Wisconsin tax purposes is \$15,000. Thus, the taxpayer must add \$5,000 (\$20,000 minus \$15,000) to his or her federal adjusted gross income (the starting point for computing Wisconsin taxable income). The taxpayer would also claim a subtraction of \$6,000, which is the amount of farm loss carryover that can be used to offset the gain from the sale of farm equipment.

Question 3: Does the Wisconsin capital gain exclusion affect the amount of farm loss carryover that may be claimed?

Answer 3: No. The Wisconsin exclusion for 60% of the capital gain from assets held more than one year is provided by sec. 71.05(6)(b)9, Wis. Stats. (1987-88), and the farm loss carryover by sec. 71.05(6)(a)10, Wis. Stats. (1987-88). As the two statutes are mutually exclusive, a taxpayer can claim both the capital gain exclusion and the farm loss carryover.

Example: A taxpayer has a farm loss carryover from 1986 of \$25,000. For 1988, the taxpayer reports the following income for federal tax purposes:

| | |
|---|----------|
| Interest income | \$30,000 |
| Capital gain from the sale of farm equipment held more than one year (Form 4797 and Schedule D) | 10,000 |
| Federal adjusted gross income | \$40,000 |

The gain from the sale of farm equipment is from the same farming business to which the limits applied in 1986. The taxpayer can claim both a \$6,000 subtraction for the 60% capital gain exclusion and a \$10,000 subtraction for a farm loss carryover.



3. Moving Expenses Allowable When Taxpayer Retains Wisconsin Domicile

Statute: Section 71.07(5)(a)4, Wis. Stats. (1987-88)

Note: This Tax Release applies only with respect to taxable years 1987 and thereafter.

Facts and Question: The federal Tax Reform Act of 1986 provides that, effective for the 1987 tax year and thereafter, qualified moving expenses may be claimed as an itemized deduction. (Prior to 1987, moving expenses were claimed as an adjustment to income.)

Section 71.07(5)(a)4, Wis. Stats. (1987-88), provides that, for the 1987 taxable year and thereafter, moving expenses allowed as a federal itemized deduction may be used to compute the Wisconsin itemized deduction credit, except for expenses to move from Wisconsin.

Can qualified moving expenses be used for computing the Wisconsin itemized deduction credit when the taxpayer moves from Wisconsin to another state but retains his or her Wisconsin domicile?

Answer: Yes. Qualified moving expenses may be used to compute the Wisconsin itemized deduction credit if the taxpayer retains his or her Wisconsin domicile after moving to another state and continues to be subject to Wisconsin's taxing jurisdiction.

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INDIVIDUAL AND CORPORATION FRANCHISE OR INCOME TAXES

1. Appeal of Interest Charge for Underpayment of Estimated Taxes

Statute: Section 71.84(1) and (2), Wis. Stats. (1987-88)

Background: Section 71.84(1) and (2), Wis. Stats. (1987-88), provides for the imposition of "interest" on the underpayment of estimated taxes by corporations, individuals, estates, and trusts for taxable years 1988 and thereafter. Previously, a "penalty" was imposed for underpayment of estimated taxes.

Question: May a taxpayer petition the Department of Revenue for a redetermination under sec. 71.88(1), Wis. Stats. (1987-88), with respect to interest imposed for taxable years 1988 and thereafter for underpayment of estimated taxes pursuant to sec. 71.84(1) and (2), Wis. Stats. (1987-88).

Answer: Yes. A petition for redetermination may be filed with the department's Appellate Bureau under sec. 71.88(1), Wis. Stats. (1987-88) with respect to interest imposed for underpayment of estimated taxes.

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FARMLAND PRESERVATION CREDIT

1. Farmland Preservation Credit - Who Is the Claimant?

Statutes: Sections 71.58(1) and 71.59(2)(intro.) and (a) and (3), Wis. Stats. (1987-88)

Background: In general, the person who may claim a farmland preservation credit is the owner of the Wisconsin farmland on which the claim is based.

A claimant may be an individual or a corporation. However, a tax-option (S) corporation may not be a claimant. For farmland owned by a tax-option (S) corporation, the credit must be claimed by each individual shareholder on his or her individual income tax return.

If farmland is owned by a partnership, the individual partners must file for the farmland credit as individuals on their income tax returns.

The personal representative of an estate and the trustee of a trust are considered owners of the farmland and may claim this credit on the estate or trust return.

Section 71.59(2)(intro.) and (a), Wis. Stats. (1987-88), provides that a farmland claim must be filed within 12 months after the end of the taxable year for which the claim is filed.

Facts and Question 1: Company ABC, a tax-option (S) corporation, is the owner of Wisconsin farmland. ABC incorrectly claimed a 1984 farmland preservation credit on a claim filed December 30, 1985. ABC and its shareholders are all calendar-year filers for income tax purposes.

After December 31, 1985 (the deadline for filing a 1984 calendar-year farmland preservation credit claim), may the claim be amended and treated as timely claims of the individual shareholders?

Answer 1: Yes. If amended returns are received from the shareholders of the tax-option (S) corporation, the amended returns will be accepted as timely claims if they are received within the 4-year statutory time period for amending returns under sec. 71.59 (3), Wis. Stats. (1987-88).

In general, if a farmland preservation claim is timely filed by an improper claimant, and is filed within the 12-month period after

the end of the correct claimant's tax year, an amended return by the correct claimant will be accepted as timely filed and the correct amount of farmland preservation credit will be allowed.

Example 1: A father and his son each own 50% of the farmland. The son files for the farmland preservation credit, basing his claim on 100% of the taxes, prior to the deadline for filing the claim. The actual claimants are both the father and his son who may each claim 50% of the taxes of the farmland for the year. The father, assuming he meets the qualifications for filing for farmland credit, may amend the claim for 50% of the taxes and it will be considered timely-filed. The son must amend his claim to allow for only 50% of the taxes, rather than 100%.

Example 2: A beneficiary of an estate files for farmland preservation credit by the deadline for filing a farmland preservation credit claim. The actual claimant should be the estate. The estate may amend the claim for farmland preservation credit within the 4-year statutory period provided under sec. 71.59(3), Wis. Stats. (1987-88), and the claim would be considered timely filed.

Example 3: A beneficiary of a trust files for farmland credit by the deadline for filing a farmland preservation credit claim. The actual claimant should be the trustee of the trust. The trustee may amend the claim for farmland preservation credit within the 4-year statutory period provided under sec. 71.59(3), Wis. Stats. (1987-88), and the claim would be considered timely filed.

Example 4: An individual shareholder files for farmland credit by the deadline for filing a farmland preservation credit claim. The actual claimant should be the owner corporation (not a tax-option (S) corporation). The corporation may amend the claim for farmland preservation credit within the 4-year statutory period provided under sec. 71.59(3), Wis. Stats. (1987-88), and the claim would be considered timely filed.

Facts and Question 2: XYZ, Inc., a tax-option (S) corporation, is the owner of Wisconsin farmland. XYZ incorrectly claimed a 1984 farmland preservation credit on a claim filed March 31, 1986. XYZ is a fiscal-year filer, with a tax year ending April 30. XYZ shareholders are all calendar year filers.

May the claim filed by XYZ be amended and treated as a timely claim of the individual shareholders?

Answer 2: No. The farmland claim was not received within the twelve month period after the end of the correct claimants' calendar years (December 31, 1985). The correct claimants are the individual shareholders of the tax-option (S) corporation.

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HOMESTEAD CREDIT

1. Homestead Credit: Methods for Determining Property Taxes on Property Used for Business Purposes

Statutes: Section 71.52(7), Wis. Stats. (1987-88)

Background: Section 71.52(7), Wis. Stats. (1987-88), provides that the property taxes accrued on multipurpose buildings shall be prorated to reflect only that part of the multipurpose building occupied by the household as a principal residence plus a similar percentage of the land surrounding it. When a portion of a property is used exclusively for business purposes, property taxes used in computing homestead credit may not include the portion of the property taxes that reflects business use. Therefore, if the property is used exclusively for business purposes for which a deduction is allowed or allowable for income tax purposes, the relating property taxes may not be used for homestead credit purposes. See Tax Release titled "Property Taxes on Property Used for Business Purposes" in WTB 54, page 15 for more information regarding this issue.

Question: A person's 1987 property taxes on his or her principal residence are \$1,200. A portion of this residence is used for business purposes. What methods may be used to determine the allowable taxes for homestead credit purposes.

Answer: The following three methods may be used to determine allowable taxes for homestead credit purposes.

Method 1: Number of Rooms (All rooms must be approximately the same size or the room used for business purposes must approximate the average size room in the principal residence). Example: One room of a seven room residence is used for business purposes and 6 rooms are used for personal residence purposes. Therefore, 6/7 of the \$1,200 of taxes or \$1,028.57 is the allowable amount of taxes for homestead credit purposes.

Method 2: Square Footage Example: The total area of the residence is 1,400 square feet. The area of the room used exclusively for business purposes is 500 square feet. Thus, the personal portion is 900 square feet. The allowable taxes for homestead credit purposes are \$771.43 ($900/1,400 \times \$1,200$).

Method 3: Assessed Value (Used in special situations such as when a separate structure, on the same parcel of land as the residence, is used for business purposes). Example: The total parcel (under 1 acre) has an assessed value of \$60,000. A separate building on the parcel is used for business purposes and has an assessed value of \$5,000. The assessed value of the personal portion is \$55,000. The allowable taxes for homestead credit purposes are \$1,100 ($55,000/60,000 \times \$1,200$).

NOTE: Any other method which properly allocates the business use of the property may also be used to determine the allowable taxes for homestead credit purposes.

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SALES/USE TAXES

I. Occasional Sales by Nonprofit Organizations

Statutes: Sections 77.52(7) and 77.54(7m), Wis. Stats. (1987-88)

Wis. Adm. Code: Tax 11.10, December 1987 Register

I. STANDARDS PRIOR TO JANUARY 1, 1989

The standards for determining the occasional sale exemption for nonprofit organizations for calendar years ending prior to January 1, 1989, are found in rule Tax 11.10. (Register, December 1987, No. 384, effective January 1, 1988.)

II. STANDARDS EFFECTIVE JANUARY 1, 1989

A. **New Law Effective January 1, 1989** - Beginning January 1, 1989, the standards change for determining whether sales by a nonprofit organization qualify for the occasional sales exemption. The change results from the enactment of 1987 Act 399, which repealed s. 77.51(9)(c), amended s. 77.52(7), and created s. 77.54(7m), effective January 1, 1989.

Section 77.52(7), reads in part: (effective January 1, 1989)

"A nonprofit organization that has gross receipts taxable under s. 77.54(7m) shall obtain a seller's permit and pay taxes under this subchapter on all taxable gross receipts received after it is required to obtain that permit. If that organization becomes eligible later for the exemption under s. 77.54(7m) except for its possession of a seller's permit, it may surrender that permit."

Section 77.54(7m) reads as follows: (effective January 1, 1989)

"Occasional sales of tangible personal property or services, including but not limited to admissions or tickets to an event; by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization; not involving professional entertainment, conducted by the organization if the organization is not engaged in a trade or business and is not required to have a seller's permit. For purposes of this subsection, an organization is engaged in a trade or business if its sales of tangible personal property or services, not including sales of tickets to events, or if its events occur on more than 20 days during the year, unless its receipts do not exceed \$15,000 during the year."

B. **What standards apply to nonprofit organizations, effective January 1, 1989?** - The following three standards must be met by a nonprofit organization for its sales to qualify as exempt occasional sales.

1. Professional entertainment is not involved at an event for which charges constitute admissions.
 - a. For this purpose, "professional entertainment" means entertainment provided at an "admission" event by all persons or groups (e.g., band or singers) who are paid in the aggregate \$300 or more per event by all persons for performing, as prize money or for reimbursement of expenses (see "b." below for definition of "admissions").

Example 1

Four different bands are paid \$100 each to perform at various times during a 3-day event. There is an admission charge for access to the event. Since the total payment (\$400) for entertainment exceeds \$300, professional entertainment is deemed to be involved. As a result, receipts from the event do not qualify as exempt occasional sales.

Example 2

Two nonprofit organizations co-sponsor an admission event at which a band is hired to perform. Each organization pays the band \$200. Since the total payment (\$400) for entertainment exceeds \$300, professional entertainment is deemed to be involved. As a result, receipts from the event do not qualify as exempt occasional sales.

- b. "Admissions" for purposes of 1 above are involved if access to the event involving professional entertainment is generally restricted to only those who pay a required fee, make a required "donation" or who must make a purchase of some kind (e.g., meal, raffle ticket).

Example 1

A nonprofit organization sponsors a dinner and dance in the high school gymnasium. The dance band is paid in excess of \$300. There is no separate admission charge, however, access to the dance is restricted to those who have purchased the meal. The "meal" charge constitutes an admission charge to an event involving professional entertainment, thus sales by the nonprofit organization at this event will not qualify as exempt occasional sales.

Example 2

A nonprofit organization holds a pig roast at the city park and hires a band to play at the park gazebo, so that patrons, if they so wish, can be

entertained while they eat. There is no admission charge and access to the band is open to anyone, whether they purchase the meal or not. The sales by the nonprofit organization may still qualify as exempt occasional sales.

- c. A nonprofit organization that would otherwise qualify for exempt occasional sales, except for the involvement of professional entertainment, may obtain a temporary seller's permit for the day or days involving professional entertainment, pay the sales tax on that event, and still have exempt occasional sales on days not covered by the temporary permit.

Note: Days and receipts from events involving admissions to professional entertainment are included in determining the 20-day test and the \$15,000 taxable receipts test in II.B.2.a. below.

Example

A nonprofit organization plans 5 events covering 3 days each (total of 15 days) for 1989. Professional entertainment will be involved at one event only. The sales by the nonprofit organization would qualify as exempt occasional sales except for the involvement of professional entertainment at the one event. The nonprofit organization may obtain a temporary seller's permit for the one event involving professional entertainment; thus, allowing the other 4 events to qualify as exempt occasional sales.

2. The organization is not engaged in a "trade or business."
- a. Two standards are used to determine whether a nonprofit organization is considered to be engaged in a trade or business: a 20-day standard and a \$15,000 receipts standard. Both of the standards must be exceeded before an organization is considered to be engaged in a trade or business.
- (1) A nonprofit organization is not considered to be engaged in a "trade or business" if its sales of otherwise taxable tangible property or services or its events occur on 20 days or less during the calendar year, regardless of the dollar amount of sales. For events involving the sales of tickets, only the actual days of the events are counted, not the days of ticket sales.
- (2) A nonprofit organization is not considered engaged in a trade or business if its "receipts"

for the calendar year are \$15,000 or less, regardless of the number of days on which its sales or events occur.

- b. "Receipts" for purposes of a.(2), means the gross receipts from all sales in Wisconsin of otherwise taxable tangible personal property and services after subtracting allowable exemptions.

Example 1

A church sells cookies and cakes at a bake sale. Since the sale of cookies and cakes for off-premises consumption are exempt from sales tax, the receipts from the sale of these items are not counted as receipts for purposes of the \$15,000 receipts test.

Example 2

A nonprofit organization, which sells hundreds of Christmas trees, sells five Christmas trees for \$100 to a public school. Although Christmas trees are taxable tangible personal property, a public school can purchase tangible personal property exempt from sales tax. As a result, this \$100 exempt sale to the school is not counted as receipts for purposes of the \$15,000 receipts test.

3. The organization is not otherwise required to have a seller's permit.

Note: An organization required to hold a seller's permit solely for the purpose of conducting bingo games may still qualify for exempt occasional sales (on nonbingo sales) if it otherwise qualifies under standards 1 and 2.

C. Surrendering the Seller's Permit

1. The "good faith" test.

If a nonprofit organization intends and believes "in good faith" that its activities in 1989 would qualify as exempt occasional sales, except for its holding of a seller's permit, it may surrender that seller's permit and have its 1989 sales qualify as exempt occasional sales.

The facts in the situation will determine if the permit can be or was surrendered "in good faith." The answers to two questions will help in the examination of good faith: (1) what did the organization do in the preceding calendar year and (2) what does it expect to be different this year and why?

Example

A nonprofit organization has held seven 3-day events for a total of 21 days, each year for the past 5 years. Receipts were always over \$20,000, and there were no admissions to professional entertainment. One event has lost money for the past 2 years. The organization intends to discontinue that event for 1989; thus, it may anticipate coming under the 20-day standard and its permit may be surrendered in good faith.

2. If a nonprofit organization surrenders its seller's permit in good faith but later, due to unforeseen circumstances exceeds the standards, only the sales occurring after the standards are exceeded are subject to sales tax.

Example

A church held 18 days of events or sales in 1988 (receipts equalled \$30,000 and no professional entertainment was involved) and expects to hold the same 18 days of events in 1989. It surrendered its seller's permit; however, in mid-1989 the church garage is destroyed by fire. An additional 4-day event is held to raise funds to help replace the garage. Only the receipts from days 21 and 22, the days exceeding the standard, are subject to sales and use tax.

3. If a nonprofit organization fails to surrender its seller's permit before making any 1989 sales, the 1989 sales do not qualify as exempt occasional sales, even if all of the other standards for occasional sales are met.

Example

A nonprofit organization holds 15 days of sales or events in 1989. The organization holds a seller's permit, files and pays sales tax on all 1989 receipts. At the end of the year the organization realizes that its sales would have qualified as exempt occasional sales except for its holding of a seller's permit. The organization may not claim a refund of taxes paid while it held a seller's permit.

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ALL TAXES**1. Time for Filing or Payment When the Statutory Due Date Falls on a Saturday, Sunday, or Legal Holiday**

Statutes: Chapters 71, 72, 77, 78, and 139, ss. 895.20 and 990.001(4)(b), (c) and (e), Wis. Stats. (1987-88)

Facts: Chapters 71, 72, 77, 78, and 139, Wis. Stats. (1987-88), relating to individual income taxes and credit claims, corporation income/franchise taxes and credit claims, inheritance taxes, gift taxes, sales and use taxes, motor vehicle and general aviation fuel taxes, alcoholic beverage taxes, and tobacco taxes contain various due dates for filing returns, reports, statements, and other documents and for making payments.

Returns, reports, statements, and other documents and payments are considered timely filed if they are postmarked before midnight of the due date, mailed in a properly addressed envelope with postage prepaid, and actually received by the department within 5 days of the due date.

Question 1: What is the due date for filing returns, reports, statements, or other documents or for making payments when the statutory due date falls on a Saturday, Sunday, or legal holiday?

Answer 1: The filing of returns, reports, statements, or other documents and the making of payments under Chapters 71, 72, 77, 78, and 139, Wis. Stats. (1987-88), are considered timely if the return, report, statement, or other document is filed or the payment made on the next succeeding day which is not a Saturday, Sunday, or "legal holiday" (sec. 990.001(4)(b) and (c), Wis. Stats. (1987-88)).

Section 990.001(4)(c), Wis. Stats. (1987-88), provides that a due date falling on a Saturday is automatically extended to the next succeeding day that is not a Sunday or a legal holiday, if the agency with which the action must be taken does not have regularly scheduled Saturday office hours. The Wisconsin Department of Revenue does not have regularly scheduled Saturday office hours.

The term "legal holiday" is defined in sec. 990.001(4)(e), Wis. Stats. (1987-88), which reads as follows: "Legal holiday as used in this section means any statewide legal holiday provided in sec. 895.20. When an act is permitted to be done by the use of the postal service, and the last day within the time prescribed by law for performing such act falls on a legal public holiday under federal law, or other holiday designated by the president such that the postal service does not receive registered mail or make regular deliveries on that day, the day shall be considered a legal holiday for purposes of this section."

Section 895.20, Wis. Stats. (1987-88), reads as follows: "Legal holidays. January 1, January 15, the 3rd Monday in February (which shall be the day of celebration for February 12 and 22), the

last Monday in May (which shall be the day of celebration for May 30), July 4, the 1st Monday in September which shall be known as Labor day, the 2nd Monday in October, November 11, the 4th Thursday in November (which shall be the day of celebration for Thanksgiving), December 25, the day of holding the September primary election, and the day of holding the general election in November are legal holidays. On Good Friday the period from 11 a.m. to 3 p.m. shall uniformly be observed for the purpose of worship. In every 1st class city the day of holding any municipal election is a legal holiday, and in every such city the afternoon of each day upon which a primary election is held for the nomination of candidates for city offices is a half holiday and in counties having a population of 500,000 or more the county board may by ordinance provide that all county employes shall have a half holiday on the day of such primary election and a holiday on the day of such municipal election, and that employes whose duties require that they work on such days be given equivalent time off on other days. Whenever any of said days falls on Sunday, the succeeding Monday shall be the legal holiday."

Legal holidays, for purposes of filing returns, reports, statements, and other documents and for making payments, are the following:

- New Year's Day - January 1
- Martin Luther King, Jr.'s Birthday - January 15
- Martin Luther King, Jr.'s Birthday (observed) - the third Monday in January
- Washington's Birthday (observed) - the third Monday in February
- Memorial Day - the last Monday in May
- Independence Day - July 4
- Labor Day - the first Monday in September
- September Primary Election Day
- Columbus Day - the second Monday in October
- November General Election Day
- Veteran's Day - November 11
- Thanksgiving Day - the fourth Thursday in November
- Christmas Day - December 25

Examples: A Wisconsin individual income tax return is due on April 15. However, in a particular year April 15 falls on a

Saturday. The due date is extended to the next day which is not a Saturday, Sunday, or legal holiday. Therefore, the actual due date is Monday, April 17 (assuming April 17 is not a legal holiday).

A sales tax return is due on Monday, February 20, which is the third Monday in February in a particular year and is therefore a legal holiday in that year. The due date is extended to the next day which is not a Saturday, Sunday, or legal holiday. Therefore, the actual due date is Tuesday, February 21.

A claim for refund of a paid office audit assessment may be filed within two years after the assessment of the tax (pursuant to sec. 71.75(5), Wis. Stats. (1987-88)). The last day of the two-year period falls on a Sunday. The due date is extended to the next day which is not a Saturday, Sunday, or legal holiday. Therefore, the last day of the two-year period is the following day, Monday (assuming Monday is not a legal holiday).

Question 2: Does an extension of the due date under sec. 990.001(4)(b) and (c), Wis. Stats. (1987-88), to the next succeeding day which is not a Saturday, Sunday, or legal holiday also apply for purposes of determining if a return, report, statement, document, or payment is received by the department within five days of the due date?

Answer 2: Yes, the provisions in sec. 990.001(4)(b) and (c), Wis. Stats. (1987-88), also apply for purposes of determining if a return, report, statement, document or payment is received within five days of the due date.

Example: If a return is due on a Saturday, the due date becomes the next business day, which is the following Monday (assuming Monday is not a legal holiday). As Monday is now the due date, the return must be postmarked before midnight on Monday and received within five days. However, since the fifth day is a Saturday, the time for receipt is extended to the next business day, which is the following Monday (assuming Monday is not a legal holiday).

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