



# Wisconsin TAX BULLETIN



## FOCUS ON . . .

**Wisconsin's Wrigley  
assessment sticks**  
See page 8.

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## New Delinquent Tax Fee

A new delinquent tax collection fee (DTC fee) became effective on July 1, 1992. This fee, which was enacted into law by the Wisconsin Legislature, places the cost of delinquent tax collection on the delinquent taxpayer rather than on all citizens of the state.

The DTC fee is the greater of \$25 or 4½% of the tax, fees, interest, and penalty owed on each separate delinquency included in the total delinquent balance as of July 1, 1992.

The fee is also imposed at the time each assessment or notice of amount due is referred for delinquent tax collection on or after July 1, 1992. The fee is the greater of \$25 or 4½% of the unpaid balance of tax, interest, fees, and penalty that become subject to delinquent tax collection action. □

## Avoid Penalty—Pay Sales and Use Taxes on Time

Failure to timely pay sales and use taxes can result in a criminal conviction. You are guilty of theft if you collect state and county sales and use tax moneys from a consumer, user, or purchaser and you

- intentionally fail or refuse to pay these tax moneys to the Department of Revenue by the due date for payment, or
- fraudulently withhold, appropriate, or use these tax moneys.

If the amount involved is more than \$1,000, the theft is a felony under sec. 943.201, Wis. Stats.

Payment to creditors in preference to the payment of the tax moneys to the Department of Revenue is prima facie evidence of an intent to fraudulently use these tax moneys.

Avoid the problem and pay your taxes by the due date. □

## Index to Prior Issues Included

Once each year the *Wisconsin Tax Bulletin* includes an index of articles, tax releases, court cases, private letter rulings, and other materials that have appeared in past Bulletins. The index for issues 1 to 75 can be found on pages 27 to 50 of this Bulletin. □

## Don't Forget Use Tax

Failure to report use tax is the most common error on sales and use tax returns. Make sure use tax is correctly reported on your sales and use tax return.

The 5% use tax is imposed on the purchase price of tangible personal property or taxable services that are to be used, stored, or consumed within Wisconsin, upon which a sales tax is not imposed or paid. Common examples include:

- Property used in Wisconsin is purchased outside Wisconsin without tax.

**Example:** A Wisconsin company purchases an office machine from an Illinois seller without tax. The machine is used in Wisconsin. The Wisconsin company owes Wisconsin use tax on the purchase price of this machine.

- Property is purchased without tax for resale or for a nontaxable use and then is used by the purchaser in a taxable manner.

**Example:** A furniture store buys desks to resell to customers without tax by giving the seller a "resale certificate." A desk is then taken from the furniture store's inventory and used by the store bookkeeper. The store owes use tax on the desk.

- Property is purchased outside Wisconsin without tax and is then brought into Wisconsin and given away free.

Failure to report use tax may result in penalties being assessed in addition to interest. Penalties may be as much as 50% of the use tax not reported. □

## New Laws

*Wisconsin Tax Bulletin 77*, May 1992, reported a number of changes to Wisconsin tax laws enacted by the Wisconsin Legislature. In addition, 1991 Wisconsin Act 309 renumbered sec. 71.59(1)(b)1 to 5, amended sec. 71.59(1)(b)(intro.), and created sec. 71.59(1)(b)4, to establish a new reporting requirement for farmland preservation credit claimants. This requirement is first effective for claims filed in 1993, based on 1992 property taxes.

Under Act 309, a farmland preservation credit claimant is required to certify to the Department of Revenue on Schedule FC that the appropriate county conservation committees have been notified of the claimant's intent to file a farmland preservation credit claim. This notification must be made to the land conservation committee of each county that has jurisdiction over farmland on which the claimant's farmland preservation credit claim is based. (Note: Act 309 does not specify the manner in which claimants are to notify county land conservation committees. The certification to the department will be made on the claimant's Schedule FC.) □

## Recycling Surcharge Rates Unchanged

The temporary recycling surcharge rates remain unchanged for taxable years ending after April 1, 1992, and before April 1, 1993.

Section 77.945, Wis. Stats., as created by 1991 Wisconsin Act 60, requires the Department of Revenue annually, in December, to establish annual recycling surcharge rates for taxable years that end after April 1, 1992, and before April 1, 1999, that are necessary to generate a sufficient level of revenue to fund the appropriations from the recycling fund for the following fiscal year. The annual sur-

charge rates must be approved by the Legislature's Joint Committee on Finance.

As a result of this process, the following surcharge rates will continue to apply for taxable years that end before April 1, 1993:

- Corporations (except tax-option (S) corporations), insurance companies, and exempt organizations taxable as corporations: The greater of \$25 or 5.5% of gross tax liability, but not more than \$9,800.
- Tax-option (S) corporations: The greater of \$25 or 0.4345% of Wisconsin net income, but not more than \$9,800.
- Partnerships, except partnerships engaged only in farming: The greater of \$25 or 0.4345% of net business income as allocated or apportioned to Wisconsin, but not more than \$9,800.
- Individuals, estates, trusts, and exempt trusts, except those entities engaged only in farming: The greater of \$25 or 0.4345% of net business income as allocated or apportioned to Wisconsin, but not more than \$9,800.
- Partnerships, individuals, estates, trusts, and exempt trusts engaged in farming: \$25, provided the entity has a net farm profit of \$1,000 or more.

If the recycling surcharge rates change for taxable years ending after April 1, 1993, the new rates will be published in a future issue of the *Wisconsin Tax Bulletin*. □

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## New Sales and Use Tax Laws Explained

The Wisconsin Legislature enacted many changes to Wisconsin tax laws in 1992, as described in *Wisconsin Tax Bulletin 77*, dated May 1992. The June Tax Report gives explanations of the major changes to the sales and use tax laws. See pages 25 and 26 of this Bulletin for a copy of the June Tax Report, which was sent in June to all active sales and use tax registrants. □

### Information or Inquiries?

**Madison - Main Office**  
Area Code (608)

Beverage, Cigarette,	
Tobacco Products . . . .	266-6701
Corporation Franchise and	
Income . . . . .	266-1143
Estimated Taxes . . . . .	266-9940
Fiduciary, Inheritance,	
Gift, Estate . . . . .	266-2772
Homestead Credit . . . . .	266-8641
Individual Income . . . . .	266-2486
Motor Fuel . . . . .	266-3223
Sales, Use, Withholding . .	266-2776
Audit of Returns: Corporation,	
Individual, Homestead . . .	266-2772
Appeals . . . . .	266-0185
Refunds . . . . .	266-8100
Delinquent Taxes . . . . .	266-7879
Copies of Returns:	
Homestead, Individual . . .	266-2890
All Others . . . . .	266-0678
Forms Request:	
Taxpayers . . . . .	266-1961
Practitioners . . . . .	267-2025

### District Offices

Appleton . . . . .	(414) 832-2727
Eau Claire . . . . .	(715) 836-2811
Milwaukee . . . . .	(414) 227-4000

## Topical/Court Case Index Available

The Wisconsin Department of Revenue's Topical and Court Case Index is designed to help you find reference material for use in researching your Wisconsin tax questions. This index references Wisconsin statutes, administrative rules, Wisconsin Tax Bulletin articles, tax releases, publications, Attorney General opinions, and court decisions.

The first part of the index, the "Topical Index," gives references to alphabetized subjects for the various taxes, including individual income, corporation franchise and income, withholding, sales and use, gift, inheritance and estate, cigarette, tobacco products, beer, intoxicating liquor and wine, and motor fuel, special fuel, and general aviation fuel.

The second part, the "Court Case Index," lists Wisconsin Tax Appeals Commission, Circuit Court, Court of Appeals, and Wisconsin Supreme Court decisions by alphabetized subjects for the various taxes.

If you need an easy way to research Wisconsin tax questions, you should consider subscribing to the Topical/Court Case Index. The annual cost is \$14, plus sales tax. The \$14 fee includes a volume published in December, and an addendum published in May.

To order your copy, complete the order blank that appears on page 51 of this Bulletin. The order blank may also be used for subscribing to the *Wisconsin Tax Bulletin* and for ordering the Wisconsin Administrative Code. □

## Speakers Bureau

The department's Speakers Bureau provides speakers to business, community, and other organizations throughout Wisconsin. If you would like a speaker to address your group, please call the Speakers Bureau at (608) 266-8640.

Subjects that may be discussed include updates on income, corporate, sales, and withholding tax laws, audit procedures, common taxpayer errors, homestead credit issues, how tax laws apply to exempt organizations, and sales tax problems of contractors or manufacturers. □

## Eau Claire Man Jailed

An Eau Claire man has been ordered to serve jail time and pay a \$5,000 fine and court costs, for criminal violations of Wisconsin state income tax laws. In addition, a Prairie du Chien man has been charged with criminal violations of Wisconsin state income tax laws.

Lyle E. Myher of 661 Carol Court, Eau Claire, was sentenced in Eau Claire County Circuit Court, Branch 1, by Judge Thomas Barland, on two counts of filing false state income tax returns for the years 1985 and 1986. Judge Barland placed Myher on probation for two years on each count, to run concurrently. As conditions of probation, Myher was fined \$5,000 and was ordered to spend 50 days in Eau Claire County Jail and pay all taxes, penalties, and interest due to the State of Wisconsin. Myher was charged with four counts of filing false and fraudulent income tax returns for the years 1985, 1986, 1987, and 1988, and three counts of filing false and fraudulent amended 1985, 1986, and 1987 state income tax returns, for failing to report more than \$18,000 of taxable income and evading state income tax in excess of

\$1,400. Five of the seven criminal counts were dismissed.

Roy O. Dobbs, Route 2, Box 275, Prairie du Chien, has been charged with three counts of failing to file Wisconsin income tax returns for the years 1988, 1989, and 1990. The complaint alleges that Dobbs had gross earnings of \$28,700 in 1988, \$43,996 in 1989, and \$22,262 in 1990.

Filing a false or fraudulent Wisconsin state income tax return is a crime punishable by a fine of not more than \$10,000 or imprisonment not to exceed five years, or both. Failing to file a Wisconsin state income tax return at the time required by law is a crime punishable by a fine of up to \$10,000, imprisonment for up to 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 taxes, penalties, and interest due follows convictions for criminal violations. □

## Administrative Rules in Process

Listed below 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 July 1, 1992, or at the stage in which action occurred during the period from April 2, 1992, to July 1, 1992.

Each affected rule lists the rule number and name, and whether it is amended (A), repealed (R), repealed and recreated (R&R), or a new rule (NR).

### Rules at or Reviewed by Legislative Council Rules Clearinghouse

- 11.08 Medical appliances, prosthetic devices and aids-A
- 11.17 Hospitals, clinics and medical professions-A
- 11.18 Dentists and their suppliers-A
- 11.26 Other taxes in taxable gross receipts and sales price-A
- 11.32 "Gross receipts" and "sales price"-A
- 11.45 Sales by pharmacies and drug stores-A
- 11.51 Grocers' guidelist-A
- 11.68 Construction contractors-A
- 11.86 Utility transmission and distribution lines-A
- 11.87 Meals, food, food products and beverages-A
- 11.925 Sales and use tax security deposits-A

### Rules at Legislative Standing Committee

- 2.475 Apportionment of net business incomes of interstate railroads, sleeping car companies and car line companies-NR

### Emergency Rules (including effective date)

- 2.475 Apportionment of net business incomes of interstate railroads, sleeping car companies and car line companies-NR (2/17/92)

## Recently Adopted Rules Summarized

The *Wisconsin Tax Bulletin* regularly includes a listing of administrative rules in the various stages within the process of being "adopted," or put into effect as part of the "Tax" section of the Wisconsin Administrative Code. The rules are printed and

distributed to Administrative Code subscribers and certain Department of Revenue employees and tax services, shortly after the effective date of adoption.

For each rule that is adopted, the *Wisconsin Tax Bulletin* will include a brief description of the new rule or the substantive changes to the existing rule, and the effective date or anticipated effective date of the change or creation. In addition, the parts of any rule being amended will be published, showing any deletions from or additions to the previous rule.

Included in this issue is information regarding sections Tax 11.01 and 11.47. The effective date for each of these sections is February 1, 1992.

In Tax 11.01 (Sales and use tax return forms), Tax 11.01(1)(e) is repealed in order to delete a reference to the obsolete Form S-174, and pars. (f), (g), (h) and (i) are renumbered (e), (f), (g) and (h).

In Tax 11.47 (Commercial photographers and photographic services), Tax 11.47(title), (1)(intro.), (a) and (e), (2)(a) and (3)(a)(intro.) and 2, (b)(intro.) and 3 and (c) are amended to correct punctuation, update language per Clearinghouse standards, and reflect that video taping is a photographic service subject to Wisconsin sales tax. Tax 11.47(3)(b)8 is created to reflect that persons providing photographic services are required to pay Wisconsin sales tax when purchasing video tape other than that specifically exempted. The amended and created parts are shown below.

Tax 11.47(title) COMMERCIAL PHOTOGRAPHERS AND PHOTOGRAPHIC SERVICES. (ss. 77.51(13)(e) and (f) and (14)(L), 77.52(2)(a)7, (2m)(b) and (13), 77.53(10) and 77.54(2), Stats.)

(1)(intro.) TAXABLE GROSS RECEIPTS. Taxable services and sales of tangible personal property of commercial photographers and others providing photographic services, including video taping, include gross receipts from:

(1)(a) Taking, reproducing and selling photographs and video tapes.

(1)(e) Reproducing copies of documents, drawings, photographs, video tapes or prints by mechanical and chemical reproduction machines, blue printing and process camera equipment.

(2)(a) Gross receipts subject to the tax include charges for photographic and video materials, time and talent.

(3)(a)(intro.) Commercial photographers and others providing photographic services, including video taping, may purchase, without paying sales or use tax, any item which will be resold or which becomes a component part of an article destined for sale if a properly completed resale exemption certificate is given the seller. ~~Such~~ These items include:

(3)(a)2. ~~Film~~ Video tapes and film, including colored transparencies and movie film, in which the negative and the positive are the same, and are permanently transferred to a customer as part of the taxable photographic service.

(3)(b)(intro.) Photographers and others providing photographic services, including video taping, are

required to pay tax when purchasing tangible personal property which is used, consumed or destroyed in providing photographic services. ~~Such~~ These items include:

(3)(b)3. Film, other than exempted in ~~sub. (3) par. (a)2~~.

(3)(b)8. Video tape, other than exempted in par. (a)2.

(3)(c) If a photographer or other person providing photographic services, including video taping, gives a resale certificate for property to a seller and then uses the property for a taxable purpose, the photographer or other person providing photographic services shall be liable for use tax at the time the property is first used in a taxable manner. □



## Report on Litigation

Summarized below are recent significant Wisconsin Tax Appeals Commission (WTAC) and Wisconsin Court

decisions. The last paragraph of each decision indicates whether the case has been appealed to a higher Court.

The following decisions are included:

### Individual Income Taxes

Nonresidents — entertainers and professional athletes  
*James L. Kern, et al.* (p. 6)

### Corporation Franchise and Income Taxes

Allocation of income — business income  
Statute of limitations  
*Port Affiliates, Inc.* (p. 6)

Apportionment — factors  
Dividends — deductible dividends  
Foreign source income  
*NCR Corporation* (p. 7)

Extension of time — additional assessments and refunds

*Paramount Farms Incorporated*  
(p. 8)

Nexus

*William Wrigley, Jr., Co.* (p. 8)

### Sales and Use Taxes

Computer software — tangible vs. intangible  
Nexus

*B.I. Moyle Associates, Inc.*  
(p. 10)

Occasional sales — business assets

*DVL, Inc.* (p. 10)

Personal liability

*William Gould and Lois Gould*  
(p. 11)

Successor's liability

*Robert Kastengren* (p. 11)

### Drug Tax

Drug tax — double jeopardy  
*Quinn J. Riley* (p. 12)