

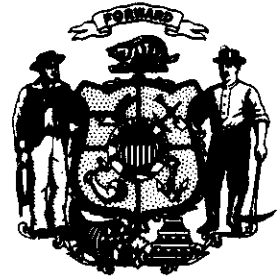
WISCONSIN TAX BULLETIN

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APRIL 17 IS INCOME TAX FILING DEADLINE

April 17 is the deadline for filing a 1977 calendar year Wisconsin individual income tax return. Taxpayers waiting until the deadline to file should be sure that their returns bear an April 17 postmark. Returns postmarked after April 17 are considered filed late and, as such, are subject to late filing fees.

The Wisconsin Homestead Credit Claim (Schedule H) for 1977 is not due until December 31, 1978. However, if an individual is filing an income tax return and also claims homestead credit, the department prefers that the Schedule H accompany the income tax return. If an individual has already filed a 1977 income tax return but later wishes to claim homestead credit, a Schedule H must be filed no later than December 31, 1978.

December 31, 1978 is also the filing deadline for a 1977 Wisconsin Farmland Preservation Credit Claim (Schedule FC), although claimants are encouraged to attach Schedule FC to their Wisconsin income tax returns. Individuals who have filed a Homestead Credit Claim for 1977 are not eligible to receive 1977 Farmland Preservation Credit benefits. Similarly, individuals who have claimed a Farmland Preservation Credit do not qualify for Homestead Credit.

Taxpayers should carefully check returns for completeness before filing. To help speed up the department's processing of returns, taxpayers should be sure to enter all the information requested on their returns, sign their returns, attach their proper wage statements and include a complete copy of their federal return if they are filing Wisconsin Form 1 (a copy of the federal re-

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turn should not be included with Wisconsin short Form 1A). Part-year residents and nonresidents should include a schedule showing their computation of the itemized deductions, low-income allowance or personal exemptions which require proration on the Wisconsin return.

If an error is discovered on a return after it is filed, an amended return should be filed. Wisconsin Form IX may be used, which has been designed to make amended returns easier to file and process. This form may be obtained at any department office.

1978 Estimated Tax Payment is Due April 17

Reminder of Estimated Tax Filing Requirements

Every individual, whether or not a resident of Wisconsin, is required to file a declaration of Wisconsin estimated tax (Form 1-ES) if:

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

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

Individuals required to file a 1978 declaration during the first quarter of 1978 must do so on or before April 17. Installment payments are also due on June 15, 1978, September 15, 1978, and January 15, 1979.

Change in 1978 Declaration of Estimated Tax Vouchers

About June 1, 1978, the Department will mail three-part voucher forms (Form 1-EP) to taxpayers who filed 1978 declarations of estimated tax. Unlike the 1977 vouchers, the 1978 voucher forms will show the amount due for each installment. Therefore, if there are no changes to the estimated tax as originally filed, the taxpayer may simply remit the amount shown due for each of the installments (June 15, September 15, and January 15).

If it is necessary to amend an estimated declaration, a taxpayer should use Schedule B on the Form 1-ES worksheet to compute the corrected installment amounts due. The corrected amounts should also be entered on line 2 of the vouchers.

Since the three-part voucher forms include a special processing identification number, it is important that substitute forms are not used. If a taxpayer misplaces or destroys the preprinted voucher (Form 1-EP), the taxpayer may instead submit an installment payment with a note attached, clearly marked "DECLARATION PAYMENT". That note should include the following:

1. Full name (husband & wife if a combined declaration).
2. Social security number (s).
3. Address.

4. If there is a combined payment for both husband and wife, indicate the amount for each spouse.

The address and telephone number for matters relating to declaration vouchers (Forms 1-EP) is:

WISCONSIN DEPARTMENT
OF REVENUE
P.O. BOX 34
MADISON, WI 53786
Telephone (608) 266-9940

New Minimum Payment Levels Required

Chapter 29, Laws of 1977 increased the minimum declaration requirements for 1978 from 70% to 80% of total tax liability. This 80% standard applies to estimated taxes paid by both individuals and corporations.

To avoid the 9% penalty which is imposed on underpayments of estimated tax, individuals and corporations are generally required to make installment payments of 1978 estimated taxes which equal at least 80% of their total tax liability.

EXTENSIONS OF TIME TO FILE TAX RETURNS FOR INDIVIDUALS

Many individuals cannot file their Wisconsin income tax returns by filing deadlines. The statutes provide that extensions of time to file may be granted for many of these returns. This article describes the extensions available and the procedures for requesting them.

A. Forms 1 and 1A

The 1977 individual income tax Forms 1 and 1A are due on April 17, 1978 for persons who are calendar year taxpayers (s. 71.10 (2) (b)). If an individual's fiscal year is other than a calendar year, these returns are due on the 15th day of the 4th month following the close of the fiscal year.

Any extension of time granted by the Internal Revenue Service for filing corresponding federal returns shall extend the time for filing the Wisconsin returns, provided that a copy of the federal extension (Form 4868 for a 60-day extension, or Form 2688 for an additional ex-

tension) is filed with the Wisconsin return (s. 71.10 (5) (b)). 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.

Upon written request and for a satisfactory cause, the department may grant a 30-day extension to file Forms 1 and 1A (s. 71.10 (5) (b)). A form entitled "Application for Extension of Time to File Wisconsin Individual Income Tax Returns" is available from all department offices for these requests. This form should be filed in duplicate and must be received by the department on or before the original due date of the income tax return. One copy of the application will be returned to the filer, indicating whether the request for extension has been granted or denied.

U.S. citizens who are not in the United States or Puerto Rico on April 17, 1978 are allowed an automatic extension until June 15 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 17.

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 9% per year for the extension period (s. 71.10 (5) (b)). To avoid the payment of interest, individuals may pay the tax due on or before the original due date of the return.

Applications for extensions and related correspondence should be sent to:

WISCONSIN DEPARTMENT
OF REVENUE
P.O. BOX 8903
MADISON, WI 53708

B. Schedule H and Schedule FC

A Wisconsin Homestead Credit Claim (Schedule H) or Farmland Preservation Credit Claim (Schedule FC) should be filed with the individual income tax return if possible. If it must be filed later, the latest date for filing Schedule H is December 31 of the year following the

year for which the claim is filed (s. 71.09 (7) (dm)).

Schedule FC must be filed no later than 12 months after the end of the taxable year to which the claim relates (s. 71.09 (11) (d)). For calendar year taxpayers, the 1977 Schedule FC must be filed by December 31, 1978.

No extensions are provided by statute for filing either Schedule H or Schedule FC claims. Late claims are not permitted.

REPORT ON LITIGATION

(This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. In cases which decisions adverse to the Department's position are rendered, it will be noted whether or not the Department acquiesces or will appeal.)

Alan Marcuvitz et al vs. Department of Revenue (Wisconsin Tax Appeals Commission, November 30, 1977.) Chapter 39, Laws of 1975, increased the interest rates for income, franchise, withholding and sales and use taxes. The regular rate of interest was increased from 6% to 9% per year and the delinquent rate from 1% to 1½% per month. The law became effective November 1, 1975.

The Department's application of the 9% annual interest rate on assessments was contested in this case. The Department had issued assessments in August 1976 covering the taxable years 1971 and 1972. Interest was applied at the rate of 9% annually from the due date of the 1971 and 1972 Wisconsin income tax returns to the due date for payment of the assessment.

The Commission concluded that interest at 6% per year should be applied from the due dates of the 1971 and 1972 returns to October 31, 1975 and interest at 9% per year should be applied beginning November 1, 1975.

The Department did not appeal this decision.

NOTE: The Department's interpretation of this decision is explained in TIM I-2.3, entitled "Interest Computation - Income, Franchise, Withholding and Sales and Use Taxes" (January 3, 1978) and

TIM 1-5.2, entitled "Addition to the Tax Penalty" (January 3, 1978).

Department of Revenue vs. Bailey-Bohrman Steel Corporation (Circuit Court of Dane County, Case No. 157-072, December 16, 1977). The court held that the slitting of raw coiled steel does not constitute "manufacturing" as that term is defined in Wisconsin's sales and use tax law (s. 77.51(27)). The taxpayer's entire operation consisted of taking raw steel coiled stock with a width of up to 48 inches and weighing about 15 tons and decoiling the coiled steel, slitting it into narrower widths and recoiling it for shipment to customers.

The taxpayer claimed that the machinery and equipment used in its steel slitting operation was used in "manufacturing" and was, therefore, exempt for Wisconsin's sales and use tax. The court rejected the taxpayer's exemption claim on the grounds that the taxpayer was not engaged in manufacturing since its operation was simple and did not produce a new article with a different form from the old article.

The taxpayer has appealed this decision to the Wisconsin Supreme Court.

In the Matter of the Estate of Oscar R. Haase a/k/a Oscar Rudolph Haase, Deceased: State of Wisconsin vs. Marine National Exchange Bank of Milwaukee (Wis. 2d , Wisconsin Supreme Court, Case No. 75-815, January 3, 1978.) Certain brokerage commissions in the sale of real estate and stock were deducted as offsets on the fiduciary income tax returns of the Haase estate to reduce the amount of capital gains realized on the sale. The issue was whether these same commissions may be claimed for the second time as administrative expense deductions for inheritance tax purposes. The court held, pursuant to s. 72.015(3), 1969 Wis. Stats. (now s. 72.14(1)(c)), that expenses claimed for income tax purposes could not be deducted a second time for inheritance tax purposes.

Hall Chevrolet Co., Inc. vs. Department of Revenue (Wis. 2d , Wisconsin Supreme Court, January 3, 1978.) The taxpayer was in the business of selling and servicing new and used automobiles. Due to the economic deterioration of the neighborhood in which its facilities were located, the taxpayer sold the property and moved to a more advantageous location.

Taxpayer sustained a loss on the sale of its land and buildings at its old site because of its diminution in value as a result of the deterioration of the neighborhood. Although the taxpayer was permitted to offset a portion of the loss against other income in the year in which the sale took place (under s. 71.05, Wis. Stats.), its total losses for the year exceeded the gain. The taxpayer then attempted to carry forward to subsequent years the losses which could not be applied against income in the year of sale as a net business loss under s. 71.06, Wis. Stats.

The department disallowed the carry forward of the net business loss because it was not "attributable to the operation of a business *regularly* carried on by the taxpayer" (emphasis added) within the language of s. 71.06, Wis. Stats. The Tax Appeals Commission and the Circuit Court for Dane County upheld the department's action. However, the Wisconsin Supreme Court ruled in favor of the taxpayer.

The Wisconsin Supreme Court, in holding for the taxpayer, stated that the question is not whether the transaction was of a kind "regularly" carried on by the taxpayer, but whether the transaction was "attributable" to the operation of a business which was regularly carried on. The Court recognized that there was no total or partial liquidation of the business so that the business after the sale was neither terminated nor permanently reduced in scope. Under these facts, the Court concluded that this loss was attributable to a transaction in the regular course of the taxpayer's regular business which could be carried forward.

NOTE: Because s. 71.06 was amended by Chapter 224, Laws of 1975, beginning with the taxable year 1976, all Wisconsin net business losses incurred by corporations can be carried forward for up to 5 years and used to offset a subsequent year's net business income.

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answers may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. Unless otherwise indicated, Tax Releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.)

NOTE: Many of these were formerly distributed to Department personnel as sales tax memos or reports. It is thought that these positions would be of help to taxpayers and tax practitioners.)

INCOME TAX

New Jobs Tax Credit

Beginning with the 1977 taxable year, a new *federal* credit is available to qualified employers who hire additional employees. This "new jobs tax credit" was created by the Tax Reduction and Simplification Act of 1977, which added Sec. 44B to the Internal Revenue Code.

Generally, the amount of the jobs credit is based on Federal Unemployment Tax Act (FUTA) wages paid by an employer during the calendar year. Employers who are not subject to FUTA tax, or do not employ agricultural or railroad employees cannot qualify for the jobs credit. If an employer claims this credit, the employer's deduction for wages paid or incurred for the tax year must be reduced by the dollar amount of the credit allowable.

It is not mandatory that an employer claim the jobs credit under the Internal Revenue Code. Therefore, an employer who claims the credit for federal purposes is not required to follow the Internal Revenue Code provisions for Wisconsin. In such situations, the employer's deduction for wages should

not be reduced by the jobs tax credit for the computation of Wisconsin taxable income.

If an employer who reports business income on Form 1040 Schedules C, E, or F, claims the jobs credit for federal purposes, the employer must reduce the deduction for wages by the amount of the credit. The employer must add the amount of the credit back to the deduction for wages in order to arrive at the federal adjusted gross income that is allowed for Wisconsin purposes. For the convenience of the employer, line 5 of Wisconsin Schedule I may be used for this adjustment.

A corporate employer who files Wisconsin Form 5 and who claims the jobs credit for federal purposes, must add the amount of the credit to the additional Wisconsin deductions in order to arrive at the total business deductions allowable for Wisconsin purposes. This adjustment should be made on line 6 of Schedule V. A corporate employer who files Wisconsin Form 4 does not need to make any adjustment, since the total wages paid should have already been deducted on the form.

SALES TAX

I. Purchases by Governmental Units

Rule Tax 11.05 entitled "Governmental Units" went into effect on January 1, 1978. Portions of the rule which may be of most interest to representatives of governmental units are reproduced below. If you want a copy of this rule, write the department's Technical Services Staff, 201 East Washington Avenue, Madison 53702.

Section 77.54 (9a), Wis. Stats., exempts sales to and the storage, use or other consumption of tangible personal property and services by this state or by any agency thereof, or any Wisconsin county, city, village, town, school district, county-city hospital established under section 66.47, Wis. Stats., sewerage commission organized under section 144.07 (4), Wis. Stats., metropolitan sewerage district organized under sections 66.20 to 66.26, Wis. Stats., or any other unit of government, or any agency or instrumentality of 2 or more

units of government within this state. However, the exemption does not apply to governmental units of other states.

A Wisconsin governmental unit need not give a retailer an exemption certificate to purchase taxable property or services without tax. A purchase order identifying the Wisconsin governmental unit shall be acceptable evidence of the exempt nature of the purchase.

A Wisconsin governmental unit's payments to sellers for welfare recipients' purchases are generally subject to the tax, except when the purchase is made directly by the governmental unit and:

1. The governmental unit gives its purchase order to the seller before the sale is completed or the taxable service is performed;
2. The seller bills the governmental unit directly; and
3. The seller retains a copy of each purchase order received from the governmental unit to substantiate the exempt sale.

II. Sales by Governmental Units

Sales by the state of Wisconsin, any agency thereof and governmental units within this state are generally subject to the Wisconsin sales tax. However, sales by the United States Government or any agency thereof are not taxable.

Taxable receipts of governmental units located in Wisconsin include gross receipts from the following:

- (a) Admissions to recreational facilities (e.g., green fees, campground fees, swimming fees, ice skating fees and park shelter house fees).
- (b) Food and gift stand sales.
- (c) Sales or rental of recreational equipment and supplies.
- (d) Charges for access to or use of athletic facilities such as baseball and softball diamonds, stadiums and gymnasiums.
- (e) Sales of electricity, gas and steam by municipal utilities. However, water sold through mains is exempt.

(f) Sales of maps, plat books, photocopies or other printed material.

(g) Sales or rental of equipment and office furniture, including the rental of motor vehicles to employees. Governmental units should not collect tax on their sales of motor vehicles. Instead, the purchaser should pay the tax to the Wisconsin Department of Transportation when the motor vehicle is registered.

(h) Sales of buildings or timber when the purchaser acquires such property for removal.

(i) Rental of lodging facilities to any person residing for a continuous period of less than one month.

(j) Receipts from vending machines and amusement devices, if the governmental unit owns the machine or has control over the gross receipts from the machine and its contents.

(k) Sales of soda water beverages and beer.

(l) Charges for meals to "Huber" law prisoners.

(m) Sales of books and supplies. Such sales by vocational, technical and adult education schools are taxable, except for the period from July 1, 1972 through October 3, 1973. Sales of books and supplies by elementary and secondary schools are exempt.

(n) Sales of craft supplies for playground craft programs.

(o) Auction sales of tangible personal property, but excluding motor vehicles (see par. (g) above).

(p) Sales and delivery of trees, shrubs or gravel to private purchasers.

(q) Sales of impounded animals, even though the amount received may be designated as a placement fee.

III. Trade-ins

Section 77.51 (11) (b) 3, Wis. Stats., provides that the gross receipts from a transaction which are subject to the sales tax is the difference between the full purchase price of the article of greater value and the amount allowed for the article traded in. This statutory

provision applies only to single transactions in which certain specific tangible personal property is traded toward the purchase of an article of greater value. For example, if a used car valued at \$1,000 is traded in on a new car having a retail selling price of \$5,000, the tax applies to the net purchase price of \$4,000.

If an auto dealer exchanges its entire business (e.g., real estate, goodwill, inventories and other personal property) —not just "one article"—for another entire business, the trade-in provision in s. 77.51 (11) (b) 3 is not applicable.

IV. Trade-ins Converted to Use

If a mobile home dealer removes a traded-in mobile home from inventory, and converts it to his or her own use by utilizing it as an office for the business, a use tax is due based on the trade-in allowance reflected on the dealer's books.