



# Wisconsin TAX BULLETIN

## Do Mail Order Buyers Owe Use Tax?

If you shop through the mail, you have probably noticed that many sellers do not charge Wisconsin sales tax. You are not getting a "sales tax bargain." Most likely, you owe use tax.

If you buy items which would otherwise be subject to sales tax, but the seller doesn't collect the tax, you owe Wisconsin use tax. If you are registered for Wisconsin sales or use tax (hold a seller's permit or consumer use tax registration certificate) you should report use tax owed on your sales and use tax returns.

Persons who are not registered for Wisconsin sales or use tax, including corporations, partnerships, and individuals, should report use tax owed on a consumer use tax return, Form UT-5. However, individuals, instead of using Form UT-5, may report use tax on their Wisconsin income tax return. □

## Package WI-X Available for 1992

Package WI-X contains actual size copies of most 1992 Wisconsin individual and fiduciary income tax, corporation franchise and income tax, partnership, inheritance and estate tax, motor fuel tax, sales and use tax, and withholding tax forms.

If you have not yet ordered your 1992 Package WI-X, send your request and \$7 per copy to Shipping and Mailing Section, Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708-8903. □

## Certain Federal Tax Laws Don't Apply for Wisconsin for 1992

Wisconsin's income tax law for individuals is based on federal income tax law, with some exceptions. However, changes which Congress makes to federal income tax law do not automatically apply for Wisconsin purposes. The Wisconsin Legislature must adopt new federal tax provisions before they may be used for Wisconsin purposes.

For taxable years beginning in 1992, only federal income tax provisions enacted by December 31, 1991, apply for Wisconsin purposes. This means that the tax provisions contained in the federal Unemployment Compensation Amendments of 1992 (Public Law 102-318, enacted July 3, 1992) and Energy Policy Act of 1992 (Public Law 102-486, enacted October 24, 1992) may not be used for Wisconsin purposes for 1992.

In addition to prohibiting the use of federal tax provisions enacted after December 31, 1991, Wisconsin law also prohibits the use of three other federal provisions for taxable years beginning in 1992, even though they were enacted prior to 1992. These

three Internal Revenue Code (IRC) provisions, which may not be used for Wisconsin purposes for taxable years beginning in 1992, are as follows:

- Self-employed health insurance deduction — IRC sec. 162(L), relating to the deduction for 25% of payments for health insurance costs by self-employed individuals.
- Educational assistance benefit exclusion — IRC sec. 127, relating to the exclusion from gross income for up to \$5,250 of educational assistance benefits furnished by an employer under an educational assistance program. (Note: Refer to the article titled "Educational Assistance Payments May Be Taxable Wages" on page 4 of this Bulletin for more information about this difference.)
- Group legal services exclusion — IRC sec. 120, relating to the exclusion from gross income for employer contributions to or the value of legal services provided under a qualified group legal services plan.

Individuals should use Wisconsin Schedule I to report differences between Wisconsin and federal income and deduction items which result from federal tax laws not applying for Wisconsin. See the article titled "Focus on Forms: Using Schedule I" on page 4 of this Bulletin, for an illustration of the applicable portions of the 1992 Schedule I, and see pages 41

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to 44 for a complete copy of Schedule I and the related instructions for more information. ☐

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## Changes in Temporary Recycling Surcharge for Partnerships

The Department's interpretation of which partnerships are subject to the temporary recycling surcharge has changed as follows:

1. The temporary recycling surcharge applies only to partnerships that are engaged in a "trade or business," as defined in section 162 of the Internal Revenue Code (IRC). Partnerships that are organized for investment purposes only and are not engaged in a trade or business are not subject to the temporary recycling surcharge.

2. Syndicates, pools, joint ventures, or similar organizations that have elected not to be treated as partnerships under IRC section 761(a) are not subject to the surcharge.

The treatment described in (1) and (2) above applies for taxable years beginning in 1992 and retroactively for taxable years ending after April 1, 1991. Partnerships which paid a temporary recycling surcharge for prior years but which meet one of the above exceptions in those years may file an amended 1990 Form S or 1991 Form 3S, as appropriate.

For information about how the temporary recycling surcharge applies to partnerships and other taxpayers, see the 1992 Publication 400, *Wisconsin's*

*Temporary Recycling Surcharge*, which may be obtained from any Department of Revenue office. □

## Flow-Through of Tax-Exempt Interest — Retirement Plans

### Background

A July 21, 1988 decision by the Wisconsin Court of Appeals, District IV, in *Capital Preservation Fund Inc. vs. Wisconsin Department of Revenue*, held that interest from direct obligations of the United States Government retains its tax-exempt character when it passes through a mutual fund. As a result, a mutual fund distribution received by a shareholder is exempt from Wisconsin income tax to the extent it is attributable to U.S. government interest that the mutual fund received.

Subsequently, the department determined that this flow-through of tax-exempt interest principle also applies to individual retirement accounts (IRAs), Keogh retirement plans, and deferred compensation plans. Therefore, a distribution from an IRA, Keogh, or deferred compensation plan which is the direct owner of U.S. government securities, or invests in a mutual fund which holds U.S. government securities, is exempt from Wisconsin income tax to the extent the distribution is attributable to interest from those U.S. government securities.

Tax releases explaining the department's position with respect to these plans were previously published in *Wisconsin Tax Bulletin* issues number 61 (July 1989), 65 (January 1990), and 78 (July 1992). Those three tax releases are now being superseded and clarified by a single tax release which appears beginning on page 21 of this Bulletin.

Questions have been asked as to whether the flow-through of tax-exempt interest principle also applies to distributions from qualified employer-provided retirement plans.

### Department of Revenue Position

It is the department's position that tax-exempt interest does not retain its character when it passes through qualified retirement plans. See Question and Answer 9 in the tax release which begins on page 21.

Application of the flow-through principle to qualified employer-provided retirement plans is currently being litigated in Minnesota. Resolution of that case, or litigation in Wisconsin courts, may provide further guidance on this issue.

Information regarding the outcome of the Minnesota litigation will be provided in a future issue of the *Wisconsin Tax Bulletin*. □

## Counties Adopt or Extend County Tax

Effective January 1, 1993, the ½% county sales and use tax was adopted by Price County, and extended by Douglas and La Crosse Counties.

Price County is the first county to take advantage of a law change, enacted as part of 1991 Wisconsin Act 39, which allows counties to adopt the county tax on January 1, April 1, July 1, or October 1, rather than just April 1 as was previously allowed. See *Wisconsin Tax Bulletin* 73 (August 1991), page 23, for a description of this law change.

La Crosse and Douglas Counties previously adopted the county tax, but provisions in the ordinances stated that the county tax would expire December 31, 1992. However, in 1992, La Crosse County and Douglas

County both enacted ordinances so the county tax would not expire on December 31, 1992.

The December 1992 *Sales and Use Tax Report*, a copy of which can be found on pages 45 to 48 of this Bulletin, explains how the county tax applies to retailers and other persons. It includes a listing of the counties that currently have the county tax. □

## 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

## Focus on Forms: Using Schedule I

Individuals should use Schedule I to report certain differences between Wisconsin and federal tax law. Items affecting the computation of federal adjusted gross income should be reported in Part I. For example, the differences in Wisconsin and federal law discussed in the article titled "Certain Federal Tax Laws Don't Apply for Wisconsin for 1992" on page 1 of this Bulletin, should be reported in Part I, on

line 5 of Schedule I (see line 5 insert below). Items affecting the computation of federal itemized deductions and the Wisconsin itemized deduction credit should be reported in Part II, on line 7 (see Part II insert below).

A complete copy of Schedule I and the related instructions can be found on pages 41 to 44 of this Bulletin.

<b>SCHEDULE I</b>  Wisconsin Department of Revenue	<b>ADJUSTMENTS TO CONVERT 1992 FEDERAL ADJUSTED GROSS INCOME AND ITEMIZED DEDUCTIONS TO THE AMOUNTS ALLOWABLE UNDER THE DECEMBER 31, 1991 INTERNAL REVENUE CODE</b>  Attach to Wisconsin Form 1 or Form 1NPR	<b>1992</b>
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### PART I — FEDERAL ADJUSTED GROSS INCOME

(Read instructions before completing Schedule I)

5. Other adjustments:

Description	COL. I Amount per 1992 federal return	COL. II Amount deter- mined under 12/31/91 IRC	COL. III Difference (Col. II — Col. I)
a.			
b.			
c.			
d.			
e.			
f.			
g.			
h.			
i. Total Difference (combine amounts in Col. III) .....			

### PART II — ITEMIZED DEDUCTIONS

(Complete this part only for those federal itemized deductions which may be used in computing the Wisconsin itemized deduction credit.)

7. Adjustments:

Description	COL. I Amount per 1992 federal return	COL. II Amount deter- mined under 12/31/91 IRC
a. Medical expense		
b. Contributions		
c. Job expenses and miscellaneous deductions subject to the 2% of federal adjusted gross income limitation		
d. Other (specify)		
e.		
f.		
g.		
h.		

The amounts in Col. II should be used to compute the Wisconsin itemized deduction credit (Schedule 3 of Form 1 or Schedule 1 of Form 1NPR).

## Annual Bulletin Index

Once each year the *Wisconsin Tax Bulletin* includes an index of materials that have appeared in past Bulletins. The latest index available appears in *Wisconsin Tax Bulletin* 78 (July 1992) and includes information for issues 1 to 75 (January 1992). □

## Educational Assistance Payments May Be Taxable Wages

### Wisconsin Doesn't Follow IRC Section 127

For the tax year 1992, Wisconsin's individual income tax law prohibits the use of Internal Revenue Code (IRC) section 127. This IRC section provides an exclusion from 1992 federal taxable income for up to \$5,250 of benefits an employee receives under an employer's educational assistance program during January 1 through June 30, 1992.

### Effect of Not Following Federal Law

For Wisconsin, educational assistance payments do not qualify for the \$5,250 exclusion under IRC sec. 127. As a result, for Wisconsin purposes employers must treat educational assistance payments made in the tax year 1992 as additional wages to the employee, unless the payment qualifies as a "working condition fringe benefit," as explained below.

Employees who receive educational assistance benefits treated as wages must include the amount of the benefit in taxable income on their 1992 Wisconsin income tax returns. Because IRC sec. 127 expired for the 1992 tax year as of June 30, 1992, Wisconsin and federal treatment of educational assistance benefits only differ for the first six months of

1992. Payments an employer makes for educational assistance benefits after June 30, 1992, are treated the same for Wisconsin and federal purposes for the tax year 1992.

### **Working Condition Fringe Benefit Not Treated as Wages**

IRC sec. 132(d) defines a "working condition fringe benefit" as property or services provided to an employee which, if paid for by the employee, would be deductible by the employee as a trade or business expense. Educational expenses of employees are generally deductible as trade or business expenses if they (1) maintain or improve skills required in the employee's current employment, or (2) are required by the employer or by law as a condition of retaining the employee's job, status, or salary. However, educational expenses are not deductible if they are for education that (1) is needed to meet the minimum requirements for the job, or (2) are part of a program of study which leads to a new trade or business.

For example, payments for review courses to prepare for the bar examination or the certified public accountant (CPA) examination, and courses required as part of an apprenticeship program, do not qualify as a "working condition fringe benefit." Expenses for these courses are not deductible as a trade or business expense because the courses qualify the person for a new profession (in the case of the bar and CPA examination courses), or are needed to meet the minimum requirements for the job (in the case of the apprenticeship program).

Employer-provided educational assistance benefits which qualify as a "working condition fringe benefit" are *not* treated as wages to employees. This applies regardless of whether the employer pays the expenses directly

to the educational organization or reimburses the expenses to the employee.

### **Notify Employee On W-2 Wage Statements**

Employer educational assistance payments made during January 1, 1992, through June 30, 1992, which represent additional wages to an employee for Wisconsin purposes, can be reported to employees by either: (1) including the amount which is taxable for Wisconsin purposes (but not taxable for federal purposes) in Box 25 of Form W-2, or (2) providing employees with a supplemental "Wisconsin only" W-2 with the taxable educational assistance benefits shown in Box 25.

The employee is required to include taxable educational assistance payments in taxable income on his or her 1992 Wisconsin income tax return. If the employee receives such payments and the taxable amount is different for Wisconsin and federal, the employee should use Wisconsin Schedule I (titled "Adjustments To Convert 1992 Federal Adjusted Gross Income And Itemized Deductions To The Amounts Allowable Under The December 31, 1991 Internal Revenue Code").

Employees may have questions as to why educational assistance benefits are taxable for Wisconsin and not for federal. It may be helpful to provide additional information (e.g., flyer) with the W-2 to explain the difference between the Wisconsin and federal treatment of educational assistance benefits during January 1, 1992 to June 30, 1992.

(Note: The information in this article was sent to various accounting and tax practitioner associations in November 1992. They were encouraged to distribute the information to their membership.) ☐

## **Extension of Time to File Franchise and Income Tax Returns**

Due dates for filing Wisconsin individual, partnership, and fiduciary income tax returns and corporation franchise and income tax returns are determined by Wisconsin Statutes and administrative rules. The Wisconsin Statutes also authorize extensions of time for filing these tax returns.

The Wisconsin Statutes relating to extensions of time to file individual, partnership, and fiduciary (estate and trust) income tax returns were revised for 1992 returns. To be allowed an extension of time to file, individuals and fiduciaries are generally required to make a reasonable estimate of the tax that will be due with their return and pay such amount by the unextended due date of the return.

For further information on extensions of time available for filing individual, partnership, and fiduciary income tax returns and corporation franchise and income tax returns, see the tax release titled "Extension of Time to File Franchise and Income Tax Returns" on page 28 of this Bulletin. ☐

### **Reminder: Use Your Label**

Computers do a great job of preparing Wisconsin tax returns. However, a computer cannot apply the preprinted address label to the completed return. Preparers and taxpayers should remember to use these address labels, even if they are preparing or filing computerized returns.

Taxpayers who use the preprinted label receive their Wisconsin refund checks faster than those who do not use the label. Corrections to information on the label may be made directly on the label. ☐