

Form 1 and 1NPR income tax returns ordinarily include a copy of the federal tax return, which will be provided when a Form 1 or 1NPR copy is requested.

Copies of Forms 1A and WI-Z generally do not include copies of the federal tax return because federal copies are not required when filing those forms. Wage statement copies are not always available with Forms 1A and WI-Z.

Partnership tax returns and closed files of fiduciary returns filed by trusts are available for at least the 4 prior tax years. Gift tax reports and withholding statements are available for at least the 5 prior tax years. Corporation or insurance franchise or income tax returns are available for at least the 6 prior tax years. Micro-filmed copies of sales, use, and withholding tax returns are available for at least the 10 prior tax years.

For most years prior to the retention periods indicated, limited information is available from department tax rolls, even though copies of complete tax returns are not available.

Copies of tax returns are generally not available until several months after they are filed. For example, an individual income tax return or home-
stead credit claim filed by April 15 of any year is normally not available for copying until November of that year.

Who May Request Copies

Taxpayers or corporation officers may request copies of their own tax returns.

Persons other than the taxpayer or corporation officer may also request copies of tax returns. However, a power of attorney form or other written authorization, signed by the taxpayer or corporation officer, is required as part of the request.

Requests for copies of a deceased taxpayer's tax returns must include a certified domiciliary letter and be signed by the personal representative of the estate. If there is no estate, a certified copy of the death certificate and a statement of the reason for the request is required.

Fees

The fee for obtaining copies of tax returns is \$4.50 for each return requested. There is an additional fee of 50¢ per return for a certified copy. Requests received without payment will be processed, and a bill will be included with the copy mailed to the requester.

How to Request

Written requests for copies must include the following:

1. Name(s) on the requested tax return.
2. Social security number or other identification number of the taxpayer, including spouse's name and social security number, if applicable.
3. Type of return and year(s) or period(s) of the tax return being requested.
4. Name and address to which the copies are to be mailed.
5. Signature of the taxpayer, partner, or corporation officer.

Where to Direct Requests

Written Requests: Mail your request to Wisconsin Department of Revenue, Central Files Section, P.O. Box 8903, Madison, WI 53708.

In-Person Requests: Make your request at the Department of Revenue, Audit Bureau, 4638 University Ave-

nue, Room 132, Madison, Wisconsin. Office hours are 7:45 a.m. to 4:30 p.m. Proper identification (for example, a driver's license) is required.

Questions

If you have questions about obtaining copies of tax returns, you may call the Department of Revenue in Madison, at (608) 267-1266. □

Forms 1099-G and 1099-INT Mailed to Taxpayers

Federal law requires that the Department of Revenue provide 1993 information returns (Forms 1099-G) to persons who received a Wisconsin income tax refund in 1993 and claimed state income tax payments as an itemized deduction on the federal tax return for the year to which the refund applies. Federal law also requires that information returns (Forms 1099-INT) be provided to persons who received \$600 or more of interest on refunds issued by the Department of Revenue.

The department will mail approximately 250 Forms 1099-INT and 570,000 Forms 1099-G during January 1994.

Regardless of whether a taxpayer is sent a Form 1099-INT, the taxpayer must report all interest received in 1993 as income on his or her 1993 federal and Wisconsin tax returns.

All or a portion of a state income tax refund from Form 1099-G may also be includable in federal taxable income. However, the state income tax refund should not be included in Wisconsin taxable income.

The Form 1099-G has an explanation area on the right side showing how the refund reported to the IRS was determined. The first line shows the

amount of the refund, and subsequent lines show plus or minus adjustments for amounts applied to next year's estimated taxes; endangered resources donations; late filing penalties and interest; homestead, farmland preservation, farmland tax relief, and earned income credits; retirement plan penalties; and any other adjustments. The last line shows the refund amount reported to the IRS. □

Withholding Update Sent to Businesses

The annual Withholding Tax Update was sent in December, along with Forms WT-7, (Employer's Annual Reconciliation of Wisconsin Income Tax Withheld from Wages), to employers registered to withhold Wisconsin taxes.

A copy of the Withholding Tax Update can be found on pages 49 and 50 of this Bulletin. □

Administrative Rules in Process

Listed below are proposed new administrative rules and changes to existing rules that are currently in the rule adoption process. The rules are shown at their stage in the process as of January 1, 1994, or at the stage in which action occurred during the period from October 2, 1993, to January 1, 1994.

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 Sent to Revisor of Statutes for Publication of Notice

11.04 Constructing buildings for exempt entities-A

11.05 Governmental units-A
 11.19 Printed material exemptions-A
 11.34 Occasional sales exemption for sale of a business or business assets-A
 11.56 Printing industry-A
 11.61 Veterinarians and their suppliers-A
 11.68 Construction contractors-A

Rules Sent to Legislative Committees

9.67 Cigarette tax credit-R&R

Rules Adopted But Not Yet Effective

3.095 Income tax status of interest and dividends received from government and other securities by individuals and fiduciaries-R&R
 11.27 Warranties-R&R
 11.82 Mailing lists and mailing services-A

Rules Adopted And in Effect (including date of adoption)

2.07 Earned income tax credit-NR (12/1/93)
 11.67 Service enterprises-A (12/1/93)

Rules Repealed (effective 12/1/93)

2.13 Moving expenses
 2.14 Aggregate personal exemptions
 2.15 Methods of accounting for corporations
 2.16 Change in method of accounting for corporations
 2.165 Change in taxable year
 2.19 Installment methods of accounting for corporations
 2.20 Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies

2.21 Accounting for incorporated contractors
 2.22 Accounting for incorporated dealers in securities
 2.24 Accounting for incorporated retail merchants
 2.25 Corporation accounting generally
 2.26 "Last in, first out" method of computing inventory for corporations
 2.51 Rent received by corporations from Wisconsin real estate
 2.53 Stock dividends and stock rights received by corporations
 2.56 Insurance proceeds received by corporations
 2.57 Annuity payments received by corporations
 2.60 Dividends on stock sold "short" by corporations
 2.63 Dividends accrued on stock
 2.65 Interest received by corporations
 2.70 Gain or loss on capital assets of corporations; basis of determining
 2.72 Exchanges of property by corporations generally
 2.721 Exchanges of property held for productive use or investment by corporations
 2.73 Involuntary conversion by corporations
 2.75 Recoveries by corporations
 2.76 Refunds of taxes to corporations
 2.80 Improvements on leased real estate, income to corporate lessor
 2.81 Damages received by corporations
 2.83 Requirements for written elections as to recognition of gain in certain corporation liquidations
 2.86 Income to corporations from cancellation of government contracts
 3.01 Rents paid by corporations
 3.05 Profit-sharing distributions by corporations

- 3.07 Bonuses and retroactive wage adjustments paid by corporations
- 3.08 Retirement and profit-sharing payments by corporations
- 3.09 Exempt compensation of military personnel
- 3.12 Losses on account of wash sales by corporations
- 3.14 Losses from bad debts by corporations
- 3.17 Corporation losses, miscellaneous
- 3.35 Depletion, basis for allowance to corporations
- 3.36 Depletion of timber by corporations
- 3.37 Depletion of mineral deposits by corporations
- 3.38 Depletion allowance to incorporated mines and mills producing or finishing ores of lead, zinc, copper or other metals except iron
- 3.43 Amortization of trademark or trade name expenditures — corporations
- 3.45 Bond premium, discount and expense — corporations
- 3.48 Deductions for research or experimental expenditures — corporations
- 3.52 Automobile expenses — corporations
- 3.54 Miscellaneous expenses — corporations
- 3.81 Occupational taxes paid by corporations
- 3.82 Evasion of tax through affiliated interests
- 5.01 Filing reports
- 17.01 Administrative provisions
- 17.02 Eligibility
- 17.03 Application and review
- 17.04 Repayment of loan

**Emergency Rules in Effect
(including date of adoption)**

- 9.67 Cigarette tax credit-R&R
(9/1/93)

**Recently Adopted Rules
Summarized**

Listed below is a summary of recent revisions to administrative rules. In addition to the summary, substantive changes and new text are reproduced. In the amendments, material lined through (~~lined through~~) represents deleted text, and underscored (underscored) material represents new text.

This issue includes information about sec. Tax 2.07, created effective December 1, 1993, and sec. Tax 11.67, amended effective December 1, 1993. In addition, 53 rules in chapters Tax 2, 3, 5, and 17 have been repealed effective December 1, 1993, because they are obsolete. (Chapter Tax 17 is obsolete because the property tax deferral loan program is no longer administered by the Department of Revenue.) The repealed rules are listed in the "Rules Repealed" section of the preceding article titled "Administrative Rules in Process."

Tax 2.07 Earned income tax credit. Tax 2.07 is created, to describe criteria the Department of Revenue has established and the methods it uses to provide information about the availability of the federal and Wisconsin earned income tax credits. The text of Tax 2.07 is as follows; examples and notes appearing in the rule are not reproduced here:

Tax 2.07 Earned Income Tax Credit. (ss. 71.07(9e) and 73.03(48), Stats.) (1) CRITERIA FOR PROVIDING INFORMATION. The department has established the following criteria regarding the dissemination of information to the public concerning the federal and Wisconsin earned income tax credits:

(a) Disseminate information to potential claimants in the most cost-effective manner possible.

(b) Disseminate information to the public through multiple channels to increase the probability that potential claimants will become aware of the earned income tax credits.

(c) Utilize volunteer tax preparers and community-based organizations that have personal contact with potential claimants, to provide earned income tax credit information and assistance.

(d) Clarify the relationship between federal and Wisconsin earned income tax credits and coordinate outreach efforts with the internal revenue service, or "IRS."

(e) Provide sufficient information to allow potential claimants to self-evaluate their eligibility for the earned income tax credits.

(f) Provide convenient ways for potential claimants to obtain additional information, assistance and forms.

(2) METHODS OF PROVIDING INFORMATION. Methods the department uses to disseminate information to the public concerning the federal and Wisconsin earned income tax credits include the following:

(a) Produce an informational flyer, distribute copies through appropriate organizations having regular contact with potential earned income tax credit claimants throughout the state, and have additional copies available for distribution upon request.

(b) In conjunction with the IRS, when training volunteers who provide free tax-filing assistance throughout Wisconsin, include training to identify potential earned income tax credit claimants and to assist them in claiming both the federal and Wisconsin credits.

(c) Highlight the Wisconsin earned income tax credit in the Wisconsin individual income tax and homestead credit booklets.

(d) Mail camera-ready copies of earned income tax credit informa-

tional flyers to large Wisconsin employers, and request them to make and distribute copies of the flyer to their employees as appropriate.

(e) Work with the IRS in providing joint efforts to publicize both the federal and Wisconsin earned income tax credits.

(f) Annually produce a report summarizing the level of participation in and level of benefits provided by the earned income tax credit program.

(g) Work with other state agencies, public utilities, and other organizations to distribute information about the federal and Wisconsin earned income tax credit programs.

Tax 11.67 Service Enterprises. Tax 11.67(title) is amended, to add previously omitted statutory references; (1), (2)(b), (3)(d)1 and 2, (3)(e)1, and (3)(L) are amended, to update language and style; (2)(c) is amended, to reflect that other methods may be used to determine taxability if they accurately reflect the tax liability; (3)(a) is amended, to clarify that hospitals or clinics may be required to obtain a seller's permit, and to update language and style; (3)(e)2 is amended, to clarify that prototype materials may be tax-exempt, and to update language; (3)(g) is amended, to reflect sec. 77.52(2)(a)20, Wis. Stats.; (3)(m) is amended, to clarify taxable and exempt items related to car washes, and to update language; and (3)(n) is amended, to reflect the December 1, 1981, Wisconsin Supreme Court Horne Directory Company, decision. The text of the amended material is as follows; examples appearing in the rule are not reproduced here:

Tax 11.67 Service Enterprises. (ss. 77.51(4), (11), (12), (13), (14)(intro.), (h) and (L), (15), (20) and (22)(a) and (b) and 77.52(1), (2)(a) and (2m)(a) and (b), Stats.)

(1) GENERAL. When a transaction involves the transfer of tangible personal property along with the performance of a service, the true objective of the purchaser ~~must be considered to shall~~ determine whether ~~such the~~ transaction is a sale of tangible personal property or the performance of a service with the transfer of property being merely incidental to the performance of the service. If the objective of the purchaser is to obtain the personal property, a taxable sale of that property is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved even though, as an incidence to the service, some tangible personal property may be transferred. ~~Thus, a person performing business advisory, record keeping, payroll and tax services for small businesses is providing a service. Such person is the consumer, not the seller, of property such as forms and binders which are furnished without separate charge as an incidence to the service.~~

(2)(b) A person who performs a nontaxable service in conjunction with the sale of tangible personal property is a retailer with respect to ~~such sales the sale~~, and the tax applies to the total gross receipts ~~therefrom from the sale~~ without any deduction for the work, labor, skill, time spent or other expense of producing the property.

(2)(c) If there is a single charge for providing both taxable and nontaxable services, the entire charge is subject to the tax, unless it is determined by the department that another method, such as allocation or primary purpose of the transaction, more accurately reflects the tax. ~~However, if~~ If the charges for taxable and nontaxable services are separately stated on an invoice, the tax applies only to the charge properly attributable to the taxable services, unless it is determined by

the department that the primary purpose of the transaction method for computing the tax more accurately reflects the tax.

(3)(a) *Hospitals and clinics.* Hospitals and medical clinics generally provide nontaxable professional services. They are, therefore, the consumers of tangible personal property used in rendering ~~such the~~ services. Hospitals and clinics which, in addition to rendering professional services, also sell tangible personal property or taxable services are retailers which shall obtain a seller's permit and report the tax on ~~such these~~ sales. ~~For example, sales of non-prescription medicine by a hospital or clinic pharmacy are taxable.~~

(3)(d)1. An interior decorator's fee is taxable when the decorator's services are part of a sale of tangible personal property. ~~For example, a decorator's fee is taxable when it is added to the bill for tangible personal property on a cost plus arrangement. Also, if~~ If a decorator bills a client only for the full list price of property sold and then receives the equivalent of a fee through the decorator's supplier in the form of a trade discount, the decorator shall pay a tax on the full amount billed the client without any deduction for services performed.

2. A decorator's fee is not taxable if the fee is solely for services rendered ~~(such as designing a decorative scheme, advising clients or recommending colors, paints, wall paper, fabrics, brands, or sources of supply)~~ and there is no sale of tangible personal property involved with the transaction.

(3)(e)1. The development of information pursuant to a research and development contract is a sale of a service which is not subject to the sales tax. Although the person performing the research and development may be under contract to provide ~~such things as~~ plans, de-

signs and specifications, or to test and evaluate a proposed product, the primary objective of the customer is to obtain the results of the technical skill and the experimental and research work of the engineers and other technicians of the researcher.

2. In certain instances under a research and development contract, the information cannot be developed without the production of a prototype. In this situation, the researcher owes tax on the materials used to construct the prototype since it is used to compile the data, designs, drawings and whatever else is provided to the customer. The measure of the tax is the cost of the materials going into the production of the prototype as well as all other materials consumed in performing the contract. The transfer of the prototype is incidental to the transfer of information, and for sales tax purposes, is deemed not a sale of

tangible personal property. However, if the prototype is transferred to a customer for use in its business or for the purpose of reselling it, the researcher may purchase the materials used to construct the prototype without tax as property for resale.

(3)(g) *Architects.* Fees paid to architects, except fees paid to architects for landscaping planning, to design buildings or structures are for services performed, and are not subject to the tax. If, however, an architect has blueprints made from original drawings, the sale of the blueprints is subject to the tax.

(3)(L) *Taxidermists.* ~~Taxidermists~~ Gross receipts from services taxidermists perform ~~service~~ on tangible personal property. ~~Gross receipts from such service~~ are subject to the tax.

(3)(m) *Car washes.* The gross receipts of persons providing car wash service, including those providing coin-operated self-service car

washes consisting of a pressurized spray of soap and water, are taxable. ~~Such~~ These persons are the consumers of the tangible personal property, such as soap, brushes, and towels, they purchase, except for the wax, air freshener and protectants physically transferred to a customer's vehicle. Thus, suppliers may accept a resale certificate for wax, air freshener and protectants sold to car wash operators, but suppliers are liable for the tax on all other sales of supplies to ~~such~~ these operators.

(3)(n) *Soliciting advertising for telephone directories.* Persons who solicit advertising for telephone books and who, as an incident of ~~such~~ the service, provide telephone books to telephone companies or their subscribers, are the consumers of and shall pay tax on all the telephone books they distribute in Wisconsin ~~or have shipped into Wisconsin by an out of state supplier.~~ □



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

Interset — deduction limitation
Robert and Margaret Yunker
(p. 16)

Nonresidents — allocation of income
Thomas J. Flynn (p. 17)

Corporation Franchise and Income Taxes

Accounting — 1986 and prior — change in accounting period
Interest income — 1986 and prior — U.S. obligations
M.B. Investment Corp. (p. 18)

Sales and Use Taxes

Occasional sales — business assets
Carrion Corporation (p. 18)

Gift Taxes

Interest — foregone interest
Home Juice Co., Inc.; Kenosha Home Juice Sales Corp. and Milton Hess (p. 19)

INDIVIDUAL INCOME TAXES

Interest — deduction limitation. *Robert and Margaret Yunker vs. Wisconsin Department of Revenue* (Circuit Court for Milwaukee County, May 3, 1993). The issue in this case is whether interest paid by the taxpayer was 1) a fully deductible business expense incurred in the taxpayer's real estate business or 2) incurred by the taxpayer to acquire rental or investment property, deductible only on federal Schedule A (Itemized Deductions) as non-business interest and, therefore, subject to the \$1200 interest deduction limitation contained in sec. 71.07(5)(a)7, Wis. Stats.