

liability not required to be prepaid as estimated tax. Interest of 18% per year applies to the remainder of the unpaid tax from the unextended due date until the date paid.

B. Late Filing Fee

Returns filed after the due date, including any extension of time to file, are subject to a late filing fee (sec. 71.83(3), Wis. Stats. (1991-92)). The late filing fee for corporations is \$30. The late filing fee for individuals and fiduciaries is:

- \$2 when the tax is less than \$10,
- \$3 when the tax is \$10 or more but less than \$20,
- \$5 when the tax is \$20 or more, but
- \$30 if the return is 60 or more days late, regardless of the amount of tax.

C. Consequences of Not Providing Copy of Federal Extension Granted by IRS

If a taxpayer files a Wisconsin franchise or income tax return under a federal extension but fails to attach a copy of the federal extension request or approval to the Wisconsin return, the department does not have knowledge that a federal extension was obtained. The department will impose a late filing fee and 18% delinquent interest. Assuming that any required payment of Wisconsin tax was made by the original due date of the return, if the taxpayer subsequently provides information to the department showing that the taxpayer had an extension of time to file for federal purposes (for example, by providing the department with a copy of federal Form 4868 or Form 7004), the late filing fee and delinquent interest (see "Exception" in Part A) will be cancelled. (Note: This cancellation of the late filing fee under these circumstances first applies to 1992 returns.)

EXTENSION REQUIREMENTS

Federal Extension	Attach to Wisconsin Return When Filed	Must Wisconsin Tax Be Paid by Due Date?
Individuals		
Automatic 4 months	Form 4868	No
Additional 2 months	Form 2688	No
Automatic 2 months when living outside U.S. or Puerto Rico on April 15	Statement indicating how qualifications are met	No
Until 30 days after meeting bona fide resident or physical presence test	Form 2350	No
Combat zone	Statement indicating how qualifications are met	No
Partnerships and REMICs		
Automatic 3 months	Form 8736	No
Additional 3 months	Form 8800	No
Automatic 2 months for certain partnerships (see Part B.3 under "Federal Law")	Statement indicating how qualifications are met	No
Estates filing Wisconsin Form 2		
Up to 6 months	Form 2758	Yes
Trusts filing Wisconsin Form 2		
Automatic 3 months	Form 8736	Yes
Additional 3 months	Form 8800	Yes
Trusts subject to tax on unrelated business income filing Wisconsin Form 4T		
Up to 6 months	Form 2758	Yes
Corporations (not including REMICs)		
Automatic 6 months	Form 7004	No
Automatic 3 months for certain corporations (see Part D.2 under "Federal Law")	Statement indicating how qualifications are met	No

□

3 Renter's School Property Tax Credit — Tax-Exempt Housing

Statutes: Section 71.07(9)(a)4, Wis. Stats. (1991-92)

Background: The renter's school property tax credit is available to individuals who pay rent during the year for living quarters used as a principal residence.

The credit is equal to 10% of the first \$2,000 (\$1,000 if married filing a separate return) of rent constituting property taxes paid during the year. "Rent constituting property taxes" means 25% of rent if heat is not included or 20% of rent if heat is included.

Section 71.07(9)(a)4, Wis. Stats. (1991-92), provides that "rent" does not include rent paid for the use of housing which was exempt from property tax, except housing for which payments in lieu of taxes were made under sec. 66.40(22), Wis. Stats. (1991-92). Section 66.40(22) relates to housing authorities.

Facts and Question: The University of Wisconsin - Madison owns housing that is exempt from property taxes. The housing is rented to faculty, staff, and employees at rates set to reflect fair market rentals for similar housing in the private sector. The University makes payments to the municipality for services. Does the rent paid by an individual for the University faculty housing qualify for the renter's school property tax credit?

Answer: Yes, rent paid for the University faculty housing can be used in computing the renter's school property tax credit. In this case, payments are made by the University to the municipality in lieu of taxes, and the property is rented at a fair rental value. The property is not

subsidized by government funds and thus qualifies for the school property tax credit. □

SALES AND USE TAXES

Note: The following tax releases interpret the Wisconsin sales and use tax law as it applies to the 5% state sales and use tax. The ½% county sales and use tax may also apply. For information on sales or purchases that are subject to the county sales and use tax, refer to the December 1993 issue of the *Sales and Use Tax Report*. A copy can be found on pages 37 to 40 of this Bulletin.

4 Architect's Charge for Blueprints

Statutes: Sections 77.51(13) and (14) and 77.52(1), Wis. Stats. (1991-92)

Wis. Adm. Code: Section Tax 11.67(1) and (3)(g), November 1993 Register

Background: Section 77.52(1), Wis. Stats. (1991-92), imposes a 5% tax on a retailer's gross receipts from the sale of tangible personal property.

Section 77.51(13)(f), Wis. Stats. (1991-92), provides that a retailer includes a service provider who transfers tangible personal property in conjunction with, but not incidental to a service.

Section 77.51(14)(L), Wis. Stats. (1991-92), provides that a sale includes transfers by service providers of tangible personal property in conjunction with, but not incidental to a service.

Section Tax 11.67(1), Wis. Adm. Code, provides that the true objective of the purchaser must be considered to determine whether tangible personal property transferred along with the

performance of services is merely incidental to the service or is in conjunction with 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.

Section Tax 11.67(3)(g), Wis. Adm. Code, provides that fees paid to architects to design buildings or structures are for services performed and are not subject to Wisconsin sales or use tax. It further provides that an architect's sale of blueprints made from original drawings is subject to the tax.

Facts and Question 1: An architect enters into a contract with a client to provide all of the following:

- Schematic design
- Design development
- Construction document preparation
- Bidding and negotiations services
- Administrative assistance with the construction contract.

Pursuant to Farmers Home Administration requirements, the architect provides 40 photocopies of the original blueprints of the design and specifications which are to be given to prospective bidders. A deposit is placed by the bidder on the blueprints. The architect refunds the deposit when the blueprints are returned.

The architect's billing to the client includes a charge for the blueprints available to prospective bidders in a section titled Reimbursable Expenses. The charge for the blueprints is based on the actual cost of the labor and material and does not include a markup. If the blueprints are produced by an outside firm, a 10% markup is

added to cover the cost of preparing the blueprints for the outside printer.

The architect does not sell copies of the blueprints to the general public.

Is the charge by the architect to the client for the blueprints subject to Wisconsin sales or use tax?

Answer 1: No. The primary objective of the client is to obtain the architect's services. The transfer of the blueprints is incidental to the designing and bidding services provided and is not a sale of tangible personal property, even though the charge for the blueprints is separately stated on the invoice to the client.

Facts and Question 2: An architect enters into a contract with a client to provide only schematic design and design development services. The client intends to prepare its own construction documents, let bids, and administer the construction contract. After receiving the original blueprints, the client requests the architect to make 40 copies of the original for use by the client in its bidding process.

Is the charge by the architect to its client for the blueprints subject to Wisconsin sales or use tax?

Answer 2: Yes. The sale of tangible personal property (i.e., blueprints) is subject to tax under sec. 77.52(1), Wis. Stats. (1991-92). The primary objective of the client is to obtain the blueprints. The transfer of the tangible personal property did not occur with the provision of any architectural services and, therefore, the transfer of the blueprints is not incidental to the services provided.

Facts and Question 3: An architect designs plans for buildings and structures without specifications from any particular client. If a client finds one

of these plans to be acceptable, the architect sells the client the blueprint.

Is the charge by the architect for the blueprint subject to Wisconsin sales or use tax?

Answer 3: Yes. The transfer of the blueprints for a charge is a retail sale subject to Wisconsin sales or use tax. The architect is not providing any services to the customer in conjunction with the transfer of the blueprints. □

5 Assembling and Packaging Previously Manufactured Products

Statutes: Section 77.54(2), (6)(a) and (b), and (6m), Wis. Stats. (1991-92)

Wis. Adm. Code: Sections Tax 11.39, July 1987 Register, and Tax 11.40 and 11.41, March 1991 Register

Facts: Company A is in the retail mail-ordering business, specializing in customized toys. These toys include a base unit with a series of related accessories. A customer, when ordering a base unit, may decide not to order any accessories, or may want to customize the base unit by ordering any number of available accessories. A customer can order the accessories without ordering the base unit.

Research and Development

Company A researches, develops, and designs all of their products. They produce a prototype and samples which are sent to potential manufacturers for bids. Company A does not manufacture the base unit or the accessories.

Assembly

When Company A receives the base units from the manufacturers, the units are placed in "raw material" storage. From storage, the base units are transported, by conveyer, to various work stations, where they are inspected and individually packaged.

The accessories, when received from the manufacturer, are also placed in "raw material" storage. They also are transported, by forklift or a conveyer system, to various work stations, where the manufacturer's protective material is removed. The accessories are then placed into individual boxes with tissue paper. Minor alterations or changes are made on some accessories, using hand tools.

Packaging

The individually packaged base units and accessories are moved, by forklift, from the various work stations to "finished goods" storage. From there they are moved, by conveyor, to a product assembly area in the shipping department. Individual orders are boxed, labelled, and invoiced before being mailed.

Question 1: Do the assembly operations performed by Company A qualify as manufacturing under sec. 77.54(6m), Wis. Stats. (1991-92)?

Answer 1: No. The assembly operations performed by Company A do not qualify as manufacturing. The assembly operations involve the bringing together of items that have already been manufactured. The form of the base unit and accessories has not been modified or changed. The items have been combined pursuant to a customer's order. The use of the items remains the same from the time the manufactured items are delivered to Company A to the time they are shipped to the customer.

Question 2: Does the packaging operation performed by Company A qualify as manufacturing?

Answer 2: No. Since the assembly operation is not considered manufacturing, the packaging of the assembled products is also not considered manufacturing.

Question 3: Are the materials used to make the prototypes and samples, which are provided to manufacturers who will bid for production of the base units and accessories, exempt from Wisconsin sales and use tax under sec. 77.54(2), Wis. Stats. (1991-92), as tangible personal property consumed or destroyed in manufacturing tangible personal property destined for sale?

Answer 3: No. The materials which are used in making the prototypes and samples are not exempt from Wisconsin sales and use tax under sec. 77.54(2), Wis. Stats. (1991-92). The prototype and samples that are produced are not sold. They are provided to persons who will bid on Company A's manufacturing jobs. Therefore, the destined for sale requirement is not met. □

6 Calf and Cattle Crates

Statutes: Sections 77.52(2)(a)10 and 77.54(3) and (3m), Wis. Stats. (1991-92)

Wis. Adm. Code: Sections Tax 11.12(4), April 1993 Register, and Tax 11.68(4) and (6)(a)6, June 1991 Register

Background: Section Tax 11.68(4)(b), Wis. Adm. Code, provides that certain types of property have a variety of functions and may be personal property in some instances and additions to real property in others. When property is installed primarily to provide service to a

building or structure and is essential to the use of the building or structure, it is a real property improvement. However, when similar property is installed to perform a processing function, it may retain its status as personal property.

Section Tax 11.12(4), Wis. Adm. Code, provides an exemption for farm machinery. "Machine" means an assemblage of parts that transmit force, motion, and energy from one part to another in a predetermined manner.

Facts: Calf and cattle crates are usually purchased by farmers, unassembled. The crates are made of wood, each weighing about 300 pounds, and are designed to provide a home for a single animal for a period of 2 to 4 months.

Crates are usually constructed on site, and the setup of each can be different. Variations in the construction may include:

- a. Crates fastened together with other crates.
- b. Crates designed so that one forms a unit with another crate.
- c. Crates bolted to the foundation or held in place by their weight.
- d. Crates set up in rows.

Crates usually have slits in the bottom so that manure may flow towards a gutter or manure pit. The crates are usually not removed from the barn and are cleaned using high pressure water. Cleaning of portions of the barn, at no additional charge, may be necessary as a result of cleaning the crates. The crates are often moved around the barn to facilitate cleaning or to isolate diseased cattle.

Question 1: Is the installation of calf and cattle crates a real property improvement or the installation of tangible personal property?

Answer 1: The crates, when installed, are tangible personal property. The crates do not provide service to the building or structure, but rather serve a processing function (i.e., farming).

Question 2: Is the sale and installation of the calf and cattle crates subject to Wisconsin sales or use tax?

Answer 2: Yes. The sale of tangible personal property is subject to Wisconsin sales or use tax unless an exemption applies. Section 77.54(3)(a), Wis. Stats. (1991-92), provides an exemption for farm machinery. However, a calf or cattle crate is not an assemblage of parts that transmit force, motion, and energy from one part to another in a predetermined manner as required under sec. 77.54(3)(b)2, Wis. Stats. (1991-92), for this exemption to apply.

Question 3: Is the washing of these crates and the incidental cleaning of portions of the barn a taxable service?

Answer 3: Yes. The washing of the calf and cattle crates is subject to Wisconsin sales or use tax. Section 77.52(2)(a)10, Wis. Stats. (1991-92), provides that the cleaning of tangible personal property is a service subject to tax. The entire charge for providing this service is subject to tax even though a portion of the barn (real property) may be cleaned as a result of cleaning the crates. The primary purpose of the service is to clean the crates.

Because the crates, when purchased, do not qualify as farm machinery exempt from taxation under sec. 77.54(3) and (3m), Wis. Stats. (1991-92), the washing of the crates is not

exempt from Wisconsin sales or use tax.

7 Effect of Motor Fuel Tax Refund on Computation of Gross Receipts and Sales Price

Note: This tax release supersedes the tax release by the same title which appeared in *Wisconsin Tax Bulletin 84* (October 1993). The previous tax release in *Wisconsin Tax Bulletin 84* has been revised to remove references to the Wisconsin motor fuel tax. Specifically, in the previous tax release, Facts and Question 3 has been deleted and Facts and Question 4, 5, and 6 have been renumbered and revised to remove any discussion of the Wisconsin motor fuel tax. The facts given regarding the Wisconsin motor fuel tax should not occur because sec. 77.54(11), Wis. Stats. (1991-92), provides an exemption from Wisconsin sales or use tax for sales of motor fuel subject to the Wisconsin motor fuel tax.

Statutes: Section 77.51(4)(a) and (b) and (15)(a) and (b), Wis. Stats. (1991-92)

Background: Section 77.51(4)(a), Wis. Stats. (1991-92), provides that gross receipts, for purposes of imposing Wisconsin sales tax, means the total amount of the sale of tangible personal property whether received in money or otherwise. Gross receipts includes the federal and Wisconsin motor fuel taxes.

Section 77.51(4)(b), Wis. Stats. (1991-92), provides that gross receipts does not include such part of the sale price as is refunded in cash or credit as a result of adjustments in the sales price after the sale has been completed.

Section 77.51(15), Wis. Stats. (1991-92), provides that sales price, for purposes of imposing Wisconsin

use tax, means the total amount for which tangible personal property is sold, without any deduction for the federal and Wisconsin motor fuel taxes.

There is no provision in the definition of "sales price," the measure used in computing use tax, that allows the purchaser to reduce the sales price subject to use tax by a partial refund.

Facts and Question 1: Company A sells motor fuel to Company B. The amount of the sale of the motor fuel includes the federal motor fuel tax. Company A charges Company B Wisconsin sales tax on the total amount of the sale of the motor fuel, including the federal motor fuel tax.

Company B, subsequent to the sale of the motor fuel, files a claim for refund with the Internal Revenue Service (IRS) for the federal motor fuel tax it paid to Company A. The claim for refund is made using federal Form 843. Company A becomes aware of the motor fuel tax refund made by the IRS to Company B.

May Company A file a claim for refund of the sales tax it paid to the department on that part of its gross receipts that represents the federal excise tax refunded by the IRS to Company B?

Answer 1: No. The refund of federal motor fuel tax to Company B does not reduce the gross receipts subject to Wisconsin sales tax from the sale of the motor fuel by Company A to Company B.

The definition of gross receipts in sec. 77.51(4)(a) and (b), Wis. Stats. (1991-92), does not provide a reduction in the computation of a retailer's gross receipts for a refund to the purchaser by a third party. The amount received by Company A from the sale of motor fuel to Company B has not changed as a result of the

refund by the IRS and, therefore, the gross receipts subject to Wisconsin sales or use tax remain the same.

Facts and Question 2: Assume the same facts as in Facts and Question 1, except that Company B claims a credit on its federal corporate income tax return using federal Form 4136 for the federal motor fuel tax it paid to Company A on the purchase of motor fuel.

May Company A file a claim for refund of the sales tax it paid to the department on that part of its gross receipts that represents the federal motor fuel tax allowed as a credit to Company B?

Answer 2: No. The same answer as given to Facts and Question 1 applies.

Facts and Question 3: Company C sells motor fuel to Company D. The amount of the sale of the motor fuel includes the federal motor fuel tax. Company C does not charge Company D Wisconsin sales tax on the sale of the motor fuel. Company D reports Wisconsin use tax on its Wisconsin sales and use tax return for the purchase of the motor fuel. Company D includes the federal motor fuel tax in the amount on which use tax is computed.

Company D, subsequent to reporting Wisconsin use tax on the motor fuel purchased, files a claim for refund with the IRS for the federal motor fuel tax it paid to Company C. The claim for refund is made using federal Form 843.

May Company D file a claim for refund of the use tax it paid to the department on that part of the purchase price for the motor fuel that represents the federal motor fuel tax refunded by the IRS to Company D?

Answer 3: No. The refund of federal motor fuel tax to Company D does