

(b) *Imported fuel.* Gasoline and clear diesel fuel imported into Wisconsin is subject to the motor vehicle fuel tax and is payable by the out-of-state shipper/supplier when either of the following conditions applies:

1. The product is placed into a transport truck whose destination is a Wisconsin location other than a pipeline terminal or refinery. The bill of lading prepared by the out-of-state terminal operator shall clearly indicate Wisconsin as the destination state. The tax shall be paid by the position holder at the out-of-state terminal. The position holder is the supplier who owns the product when it is metered at the terminal rack.

2. The product is transported across the state line by a restricted supplier from an out-of-state bulk plant in a transporting vehicle not capable of carrying more than 4,200 gallons and the delivery location is no more than 25 miles inside the Wisconsin border. The sales invoice shall clearly indicate Wisconsin as the destination state and that the tax is to be paid by the restricted supplier.

(c) *Blending components.* Any product that is not a motor vehicle fuel and is blended as a component part of motor vehicle fuel other than at a refinery, marine terminal, pipeline terminal or place of manufacture is subject to tax at the time and place of blending. The tax on the component part is payable by the person who owns the motor vehicle fuel when blending is completed.

**Tax 4.11 Tax exemption for dyed or marked diesel fuel.** (s. 78.01(2p), Stats.) (1) **PURPOSE.** This section clarifies the tax exemption provided to suppliers when a dye or a marker has been added to diesel fuel.

(2) **STATUTES.** If indelible dye, a marker or both has been added to

diesel fuel before or upon withdrawal at a terminal or refinery rack, that fuel shall be used only for an exempt purpose.

(3) **GENERAL.** (a) All fuel dyed, marked or both, and labeled in accordance with the federal internal revenue service regulations is treated as destined for nontaxable use and is exempt from the motor vehicle fuel tax.

(b) Dyed diesel fuel shall only be used for nontaxable purposes.

**Tax 4.12 Uncollected motor vehicle fuel taxes and repossessions.** (s. 78.01(1) and (2s), Stats.)

(1) **PURPOSE.** This section clarifies when and how a licensed supplier is able to recover the motor vehicle fuel tax from the department when a purchaser is unable to pay the tax to the supplier.

(2) **STATUTES.** Under s. 78.01(2s), Stats., a licensed supplier is not liable for the tax on motor vehicle fuel when the licensed supplier is unable to recover the tax from a purchaser. With proper documentation, the supplier may claim a tax credit on a later remittance of taxes.

(3) **PROCEDURE.** (a) *Tax imposed.* A licensed supplier shall pay the motor vehicle fuel tax to the department within 15 days after the close of the month irrespective of whether the sale is for cash or credit.

(b) *Bad debts.* 1. 'Deduction from measure of tax.' A licensed supplier is relieved from the liability for motor vehicle fuel tax on accounts found worthless and charged off for income tax purposes or, if the licensed supplier is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. The tax deduction shall be reported and claimed on the licensed supplier's monthly tax report. However, if a licensed supplier is out of business when the

account becomes worthless, a bad debt deduction may be claimed on the last return filed by that business or through a refund claim filed within the statutory time allowed.

2. 'Recovery of bad debts charged off.' If any accounts found worthless and charged off are thereafter in whole or in part collected by the supplier, the amount so collected shall be reported in the first tax report, form MF-002, filed after the collection, and the tax on the amount collected shall be paid with the report.

3. 'Amount deductible.' a. A deduction may only be claimed for the unpaid amount of tax on an account found worthless and charged off. The total amount charged off may include the cost of the fuel, interest, financing or insurance costs in addition to the tax amount. To determine the unpaid amount of tax to be deducted, all payments and credits to the account shall be prorated to the various components of the total amount that the purchaser contracted to pay.

b. No deduction is allowable for expenses incurred by a supplier in attempting to collect any account receivable, or for that portion of a debt recovered that is reclaimed by or paid to a third party as compensation for services rendered in collecting the account.

4. 'Special situations.' a. A purchaser of receivables is not entitled to a deduction of the motor vehicle fuel tax which subsequently becomes worthless.

b. A licensed supplier who sells its receivables and agrees to bear any bad debt loss on them is not entitled to a bad debt deduction for the amount of the tax paid.

5. 'Repossessions.' When motor vehicle fuel is repossessed a tax credit is allowable only to the extent that the supplier sustains a net loss upon which tax was paid.

(c) *Tax rate change.* If a deduction for uncollectible tax is being

claimed in a period when the tax rate is different from the tax rate in effect when the tax was reported on the tax report, an adjustment to the gallons claimed shall be made to compensate for the tax rate differential. The number of gallons to claim is computed by dividing the old tax rate by the new tax rate and multiplying that percentage by the gallons sold.

4.50(1) ASSIGNMENT. The assignment of a "Wisconsin" state tax document number<sup>2</sup> shall in each case originate with the shipper and be assigned by him or her the refiner, terminal operator or place of manufacture where the fuel is loaded. All subsequent transactions, invoices and reports regarding each respective shipment shall use and make reference to this number.

4.54(1) GENERAL. Under ss. 78.11, 78.48(9) and 78.57(9), Stats., the department may require motor vehicle fuel, special alternate fuel and general aviation fuel taxpayers to deposit security with the department. This security may be required before or after the fuel tax license is issued. The amount of security determination will shall be made by the department. ~~The amount of the security may not exceed \$100,000 for motor fuel and \$25,000 for special fuel and general aviation fuel.~~ If any person fails or refuses to place the security, the department may refuse to issue the license or may revoke the license.

**Tax 4.65 Motor vehicle fuel tax refunds to vendors and tax credits to suppliers.** (s. 78.01(2r), Stats.)

(1) SCOPE. This section applies to suppliers, wholesale distributors and retail dealers who sell motor vehicle fuel to customers for exempt purposes on which the tax was paid. Registered vendors may file refund claims with the department. Licensed suppliers may claim credits on their monthly reports. The claim for refund and the credit claimed

may be investigated by the department and adjusted within 4 years after the date of filing.

(2) STATUTES. Under s. 78.01(2r), Stats., the ultimate consumer who will not consume the fuel in a licensed motor vehicle, motor boat or snowmobile shall assign his or her claim for a refund or credit on the tax paid on clear diesel fuel and on all gasoline to the person from whom the ultimate consumer purchased the fuel.

(3) PROCEDURES. (a) Vendors, other than suppliers licensed with the department, shall register with the department, using form MF-112, to expedite the processing of a tax refund claim.

(b) Persons making exempt sales shall prepare and provide the customer with a sales invoice. A properly prepared legible invoice shall include the following information:

1. Name and address of seller.
2. Date of sale.
3. Name and address of purchaser.
4. Product sold.
5. Number of gallons.
6. Price per gallon.
7. A statement that no Wisconsin motor vehicle fuel tax is included in the price per gallon figure.

(c) The customer shall provide the vendor with an annual exemption certificate when purchasing clear diesel fuel and gasoline which will be consumed by that customer for an exempt purpose as defined in s. 78.01(2) and (2m), Stats. A purchaser of clear diesel fuel and gasoline for an exempt use shall provide the seller with a properly completed exemption certificate, form MF-209, prior to the tax-exempt purchase. The certificate may not cover a period of more than 12 months.

(d) Claims shall be made and filed upon forms prescribed and furnished by the department, form MF-012.

(e) Tax refunds are not available on fewer than 100 gallons and claims may not be filed more than once a month.

(f) The penalties provided in s. 78.73, Stats., for filing a false or fraudulent claim apply to all refund claimants.

(g) Refunds under s. 78.01(2r), Stats., shall be of tax only and may not include interest.

**Tax 4.75 Payment of motor vehicle fuel tax.** (s. 78.12(5), Stats.)

(1) SCOPE. This section applies to wholesaler distributors who have exercised their option to delay tax payment to suppliers licensed by the department.

(2) STATUTES. Under s. 78.12(5), Stats., the wholesaler distributor has the option to pay the motor vehicle fuel tax under normal credit arrangements or to delay paying the tax to the licensed supplier until the date that the tax is due to the department. A wholesaler distributor who makes delayed payments shall make the payment by electronic funds transfer to the supplier. If a wholesaler distributor fails to make timely payments, the licensed supplier may terminate the right of the wholesaler distributor to make delayed payments. Each licensed supplier shall notify the department of each wholesaler distributor who makes delayed payments of the tax.

(3) PROCEDURES. (a) Licensed suppliers are required to notify the department of the following:

1. Name, address, and federal employer identification number, or FEIN, of all wholesaler distributors who elect to delay tax payment.

2. Name of any wholesaler distributor who fails to make timely delayed tax payments. The supplier shall notify the department via facsimile, or FAX, transmittal within 5 days after the due date of the tax to the department.

(b) Wholesaler distributors are required to do the following:

1. Request approval from the supplier to delay the tax payment.
2. Submit the tax payment to the supplier via electronic funds transfer.
3. Submit security to the department if required.

(c) The department is required to do the following:

1. Maintain a listing of the name, address, and FEIN of all wholesaler distributors eligible to delay tax payment based on information received from licensed suppliers.
2. Require security from wholesaler distributors who have defaulted in making delayed tax payments and who wish to continue the delayed tax payment plan.

**Tax 9.67 Cigarette tax credit.**

Tax 9.67 is repealed and recreated, to: 1) reflect the change in the definition of "stamp"; 2) reflect the repeal of the requirement that the secretary prescribe rules describing security requirements; 3) reflect a change in the required payment date for credit extended by the department; and 4) update language and style. The text of Tax 9.67 is as follows:

**Tax 9.67 Cigarette tax credit.**

(s. 139.32(6), Stats.) (1) PAYMENT FOR CIGARETTE TAX STAMPS. Under s. 139.32(6), Stats., manufacturers and distributors having obtained a permit from the secretary of revenue may purchase cigarette tax stamps on credit. The credit extended by the department for any cigarette tax stamp purchase shall become due and payable upon the earlier of:

- (a) Formal demand by the department.
- (b) Fifteen days after the close of the month in which the indicia were received by the manufacturer or distributor.

(2) INVESTIGATION. The department may investigate the financial stability of the applicant and may deny credit to any permittee when there is any question of ability to pay as required in this section.

(3) REVOCATION OF PRIVILEGE. The privilege granted to any manufacturer or distributor of making cigarette tax stamp purchases on credit may be revoked at any time at the discretion of the department.

**Tax 11.27 Insurance and warranties.** Tax 11.27 is repealed and recreated, to define insurance and warranty, to address sales of insurance and repairs under insurance or warranty plans, to reflect that the sale of warranties is subject to tax if the related property sold is subject to tax, to reflect the department's position regarding "goodwill work," and to update language. The text of Tax 11.27 is as follows:

**Tax 11.27 Insurance and warranties.** (ss. 77.51(4)(a) and (14)(intro.), 77.52(2)(a)10 and 77.54(8), Stats.) (1) DEFINITIONS. In this section:

(a) "Insurance" means a contract or agreement which promises indemnity against loss or damage resulting from perils outside of and unrelated to defects in tangible personal property.

(b) "Warranty" means a contract or agreement which promises indemnity against defects in tangible personal property sold.

(2) RECEIPTS FROM INSURANCE. Gross receipts from the sale of insurance are not subject to Wisconsin sales or use tax when separately stated on the invoice.

(3) RECEIPTS FROM WARRANTIES. Gross receipts from the sale of warranties are subject to Wisconsin sales or use tax provided the tangible personal property to which the warranty relates is or was

subject to Wisconsin sales or use tax.

(4) REPAIRS BY RETAILERS UNDER INSURANCE PLANS. (a) Gross receipts from charges by a retailer to a customer or an insurer for taxable repair parts or taxable services performed under an insurance plan are subject to Wisconsin sales or use tax.

(b)1. A retailer who provides parts or performs taxable repair services to tangible personal property under an insurance plan may purchase the tangible personal property transferred to the customer as part of the repair without Wisconsin sales or use tax as property for resale.

2. A person who provides tangible personal property in repairing real property under an insurance plan is the consumer of tangible personal property transferred to a customer as part of the repair to real property and is subject to Wisconsin sales or use tax on the purchase of the tangible personal property transferred.

(5) REPAIRS BY RETAILERS UNDER WARRANTIES. (a) Gross receipts from charges by a retailer to a customer for taxable repair parts or taxable services performed under a warranty are subject to Wisconsin sales or use tax.

(b) Reimbursement to a retailer from a manufacturer or other person, whether in the form of money or replacement of parts used to perform repair services under a warranty is not subject to Wisconsin sales or use tax.

(c)1. A retailer who provides parts or performs taxable repair services to tangible personal property under a warranty may purchase the tangible personal property transferred to the customer as part of the repair without Wisconsin sales or use tax as property for resale.

2. A person who provides tangible personal property in repairing real property under a warranty is

the consumer of tangible personal property transferred to a customer as part of the repair to real property and is subject to Wisconsin sales or use tax on the purchase of the tangible personal property transferred.

(6) **REPAIRS NOT BY RETAILERS.** If a retailer does not repair tangible personal property under a warranty or insurance plan, but instead has another person perform the repairs covered under the warranty or insurance plan, the person's gross receipts from the sale of the repair to the retailer are not subject to Wisconsin sales or use tax provided the retailer gives the person a properly completed resale certificate. The charge for repairs by the other person is exempt as a sale for resale whether or not the original sale of the property to which the warranty or insurance plan relates occurred in Wisconsin.

The sales and use tax treatment of the charge by the retailer to the customer or plan provider is the same as provided in subs. (4) and (5).

(7) **GOODWILL WORK.** A retailer who provides free parts or services or both to a customer under an implied warranty in order to maintain good customer relations, although not required to do so under a sales agreement, maintenance agreement, express warranty, or insurance plan may purchase the parts without Wisconsin sales or use tax as property for resale.

**Tax 11.82 Mailing lists and mailing services.** Tax 11.82(1)(b) is amended, to reflect the Wisconsin Tax Appeals Commission decision in *A-K Corporation and Profile Publishing Co. dba Miles Kimball vs. Wisconsin Department of Revenue*, which held that mailing lists on magnetic tape are not tangible personal property;

and to update language and style. Tax 11.82(1)(c), (2)(a), (2)(b), and (2)(c) are amended, to update language. The text of Tax 11.82(1)(b) is as follows:

11.82(1)(b) A mailing list is tangible personal property, except for written or typed or printed lists of names and addresses and lists stored in machine-readable form, such as microfilm and computer tapes and disks, and the sales and use tax shall apply to the gross receipts from the sale of and the storage, use or other consumption of mailing lists in the form of tangible personal property, including the rental of or the granting of a license to use such those lists. ~~Examples of taxable~~ Taxable mailing lists include, but are not limited to ~~magnetic tapes and~~ mailing lists which are physically attached to the envelopes, such as Cheshire tapes, gummed labels and heat transfers. □



## 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

Domicile

*Frank Gerlitz* (p. 15)

### Corporation Franchise and Income Taxes

Apportionment — contractors

Losses — 1986 and prior — deductibility

*Towne Realty, Inc.* (p. 15)

### Sales and Use Taxes

Aircraft

*Leeson Electric Corporation* (p. 17)

Exemptions — commercial vessels and barges

*Washington Island Ferry Line, Inc.* (p. 18)

Occasional sales — business assets

*Mail N'More, Inc.* (p. 19)

Service enterprises — car washes

*Dale W. Lamine and Knutson & Lamine Partnership* (p. 19)

Service enterprises —

horseshoeing/farrier

*Mark Espersen* (p. 20)

### Temporary Recycling Surcharge

Temporary recycling surcharge — constitutionality

*Love, Voss & Murray* (p. 20)

### Other

Appeals — appeal procedure

*Laurence H. Grange* (p. 21)

Appeals — tax appeals commission

*Northern States Power Company* (p. 21)