

income tax purposes at the same time as for federal purposes. For example, the increase in the section 179 expense deduction for small businesses applies for both federal and Wisconsin purposes for taxable years beginning on or after January 1, 1993.

Section 13150 of Public Law 103-66, relating to the exclusion from gross income of tax-option (S) corporations for income from discharge of qualified real property business indebtedness, does not apply for taxable years beginning after December 31, 1992, and before January 1, 1994.

3. Disallowance of State Tax Deduction Clarified (1993 Act 437, amend secs. 71.26(3)(g), 71.34(1)(ag), and 71.45(2)(a)5, effective May 10, 1994).

This provision clarifies that corporations (except nonprofit organizations, RICs, REITs, and REMICs), tax-option (S) corporations, and insurance companies may not claim a deduction for state value-added taxes, single business taxes, or taxes on or measured by all or a portion of net income, gross income, gross receipts, or capital stock.

4. Corporations Having a Federal Extension Allowed an Extra 30 Days to File Wisconsin Tax Returns (1993 Act 199, amend secs. 71.24(7) and 71.44(3), effective for taxable years beginning on or after January 1, 1993).

If a corporation receives a federal extension of time to file its federal income tax return, this automatically extends the time for filing the corresponding Wisconsin return to 30 days after the federal due date, provided a copy of the federal extension is filed with the Wisconsin return. For example, if a corporation has a federal extension until September 15, its Wisconsin franchise or income tax return is due on October 15.

5. Definition of "Return" Modified for Estimated Tax Purposes (1993 Act 204, repeal and recreate sec. 71.29(1)(a), effective for taxable years beginning on or after January 1, 1994).

For purposes of determining whether the correct amount of estimated tax has been paid, "return" means a return that would show the tax properly due.

Under prior law, "return" was defined several ways, depending on whether the return was filed timely or late, on what percentage of the actual tax due was paid with the return that was filed, and on how much underpayment interest was due on the return filed.

6. Urban Transit Company Tax Extended (1993 Act 246, amend sec. 71.38, effective for taxable years beginning on or after January 1, 1995).

The special tax under sec. 71.39, Wis. Stats., has been extended to urban transit companies operating entirely within towns. Under sec. 71.39, corporations receiving 50% or more of their gross income from the urban mass transportation of passengers, as defined in sec. 71.38, are subject to a 50% income tax in lieu of the regular corporation franchise or income tax.

7. Income of Local Exposition Districts Exempted From Tax (1993 Act 263, create sec. 71.26(1)(bm), effective April 26, 1994).

The income of a local exposition district created under Subchapter II of Chapter 229, Wis. Stats., is exempt from Wisconsin franchise and income taxation. See Part F on page 19 for more information about local exposition districts.

8. Interest Income From Local Exposition District Bonds Exempted From Tax (1993 Act 263, create secs. 71.26(1)(h) and 71.45(1s), effective April 26, 1994).

Interest income received on bonds issued by a local exposition district under Subchapter II of Chapter 229, Wis. Stats., is exempt from Wisconsin franchise and income taxes.

9. Development Opportunity Zones Created (1993 Act 232, renumber and amend sec. 71.28(4)(am) and create sec. 71.28(1di)(i), (1dj)(i), (1dL)(i), (1ds)(i), and (4)(am)2, effective April 23, 1994).

Development opportunity zones are created in the cities of Beloit and West Allis. Corporations (except insurance companies) conducting economic activities in a development opportunity zone may qualify for the development zone investment, jobs, location, research, and sales tax credits.

C. Sales and Use Taxes

1. Buyer May File Claim for Refund of Sales and Use Taxes (1993 Act 437, amend secs. 77.59(2), (5) and (6)(intro.), and 77.60(1)(a) and renumber sec. 77.59(4)(intro.) to 77.59(4)(a) and sec. 77.59(4)(a) to 77.59(4)(b) and amend sec. 77.59(4)(a) as renumbered, effective for claims for refund filed on or after September 1, 1994.)

a. Conditions for Buyer to File Claim for Refund

A buyer may file a claim for refund of sales and use tax paid to a seller under any of the following 4 conditions:

(1) Seller has ceased operating business

If the buyer also paid sales or use tax in error to sellers who have *not* ceased business, only the seller may file a claim for refund with the Department of Revenue for such tax, unless the buyer meets one of the other conditions described in (2), (3), or (4).

(2) Buyer is being field audited

If the buyer being field audited paid sales or use tax to sellers in error pertaining (1) to periods being field audited and (2) to any periods *not* included in the field audit but still open to adjustment, the buyer may file with the Department of Revenue a claim for refund which includes both periods — those periods included and not included in the field audit. However, the claim relating to the period being field audited must be filed by the buyer with the Department of Revenue prior to the Department of Revenue's issuance of a notice of determination regarding the field audit.

(3) Periods covered in the claim for refund are within the statute of limitations for buyer, but are closed to seller

If the buyer also paid sales or use tax to sellers in error which pertains to a period which is within the statute of limitations for both the buyer and seller, only

the seller may file a claim for refund with the Department of Revenue for such tax, unless the buyer meets one of the other conditions described in (1), (2), or (4).

(4) The claim for refund totals \$50 or more of tax

The \$50 or more of tax means that the total tax relating to all transactions contained in the claim for refund filed with the Department of Revenue is \$50 or more.

Note: The requirement in Condition (4) that the total tax must be \$50 or more does not apply to Conditions (1), (2), and (3) above.

b. Other Provisions Relating to Buyer Claims for Refund

(1) Statute of limitations for buyer filing a claim for refund

Four Years: A buyer has 4 years from the unextended due date of the buyer's franchise or income tax return to file a claim for refund (or if exempt, within 4 years of the 15th day of the 4th month of the year following the close of the buyer's calendar or fiscal year). (See exception below.)

Example: Buyer erroneously paid \$100 of sales tax to seller in January, 1994. Buyer files its corporate franchise tax return on a calendar year basis. Since the \$100 of sales tax was paid in the 1994 calendar year, buyer has 4 years from March 15, 1995 (the unextended due date of the 1994 return) to file a claim for refund for the \$100.

Exception: If the time for issuing an audit determination is extended by agreement between the taxpayer (buyer) and the Department of Revenue, the buyer may, during the extended time period, file a claim for refund of sales and use taxes erroneously paid to a seller during the period being audited.

Example: A buyer is field audited for the years 1989-1992. The 1989 year is open to adjustment until March 15, 1994 (4 years from the unextended due date of the 1989 return). The buyer and the department agree in writing to extend to June 1, 1994, the time period in which the department may make a field audit determination. The buyer discovers that it paid sales or use tax in error to a seller in 1989. The buyer has until June 1, 1994 (the extended date for making an audit determination) to file a claim for refund with the Department of Revenue of the tax paid in error in 1989.

- (2) Rate of interest and date for computing interest on buyer claims for refund

Interest on refunds will be computed at 9% per annum, from the last day of the month following the month in which the tax was paid by the buyer to the seller, to the date the refund is paid.

Example: If a buyer paid \$50 tax to the seller in January, 1994, interest at 9% per annum will be computed from February 28, 1994 to the date the refund is paid.

- (3) Buyer and seller may not both obtain refunds of tax

Refunds will not be allowed to both the buyer and seller for the tax on the same transaction. If refund claims for the same transaction are filed by both the seller and buyer, the Department of Revenue may pay either claim.

- (4) Offsetting buyer's refund against any debts subject to attachment

If the refund is to be paid to a buyer, the department may set off amounts in the manner in which it sets off income tax and franchise tax refunds under sec. 71.93, and may set off amounts for child support or maintenance, or both, in the manner in which it sets off income taxes under secs. 46.255 and 71.93(3), (6) and (7).

- (5) Buyer overpayments discovered in audits

If the Department of Revenue audits a buyer and the buyer erroneously overpaid tax to a seller during the audit period, the buyer may file a claim for refund for the tax paid in error. The auditor will include this overpayment in the audit determination.

Example: Sales tax of \$1,000 was incorrectly paid in 1994 by a buyer to a seller on custom software. A field audit of the buyer is being conducted for 1994-1997. The audit adjustments result in additional tax of \$2,500 for each of the 4 years (exclusive of \$1,000 overpayment to seller). The buyer's claim for refund of \$1,000 tax incorrectly paid to the seller in 1994 will reduce the additional tax due from the buyer for 1994 from \$2,500 to \$1,500 (\$2,500 - \$1,000).

- (6) Field audit determination made prior to buyer's claim for refund

If a sales or use tax field audit determination has been issued to the buyer covering the period in which the buyer erroneously paid sales or use tax to a seller, the buyer may not file a claim for refund for such period after the date of the audit determination, for sales or use tax erroneously paid to the seller.

Example: A buyer is field audited for sales and use tax for years 1994-1997 and an audit determination for \$1,000 was received by the buyer on June 10, 1998. Buyer erroneously paid sales tax of \$200 to a seller in 1995, however, this overpayment was not addressed in the audit determination of June 10, 1998. The buyer may not file a claim for refund for the \$200 with the Department of Revenue.

- (7) Office audit determination made prior to buyer's claim for refund

If a sales or use tax office audit determination has been issued to the buyer covering a period in which the buyer

erroneously paid sales or use tax to a seller, the buyer may still file a claim for refund for sales or use tax erroneously paid to the seller for such period, provided the transaction on which the refund of sales or use tax is being claimed was not adjusted in the office audit determination.

Example: An office audit determination covering the January, 1994 monthly sales and use tax return was received by a buyer on July 1, 1994 for failing to report use tax of \$50 on a desk purchased from an Ohio retailer. Buyer erroneously paid sales tax of \$100 to a seller in January 1994 on the purchase of a manufacturing machine. The buyer may file a claim for refund of the \$100 of tax paid to the seller, provided the claim is filed within 4 years of the unextended due date of the buyer's Wisconsin income or franchise tax return, because this item was not adjusted in the office audit determination.

(8) Form to use for filing a claim for refund

A claim for refund by a buyer must be filed on a form prescribed by the Department of Revenue and shall be signed by the buyer.

The Department of Revenue also has authority to require the seller's signature on the prescribed form, unless the Department of Revenue waives this requirement.

2. Seller Required to Return Refunded Tax and Interest to Buyer (1993 Act 437, create sec. 77.59(4)(c), effective for claims for refund filed on or after September 1, 1994.)

If a seller files a claim for refund for sales or use tax and receives a refund of tax that the seller has collected from buyers, the seller shall return the tax and related interest to the buyers from whom the tax was collected.

The seller shall return to the Department of Revenue any part of a refund that the seller does not return to a buyer. Penalties may apply to the

seller if the seller does not return the tax and interest as required by sec. 77.59(4)(c), Wis. Stats.

3. Penalties for Filing Incorrect Claims for Refund of Sales or Use Tax (1993 Act 437, create sec. 77.60(12), effective for claims for refund filed on or after September 1, 1994.)

Negligence Penalty: A person who negligently files an incorrect and excessive claim for a refund of sales or use tax under sec. 77.59, Wis. Stats., is subject to a penalty of 25% of the difference between the amount claimed and the amount that should have been claimed.

Fraud Penalty: A person who fraudulently files an incorrect claim for a refund of sales or use tax under sec. 77.59, Wis. Stats., is subject to a penalty of 100% of the difference between the amount claimed and the amount that should have been claimed.

Note: "Person," as used in sec. 77.60(12), Wis. Stats., includes a buyer or a seller who files an incorrect claim for refund.

4. Direct Pay Allowed for Eligible Businesses (1993 Act 437, create sec. 77.52(17m), effective for taxable years beginning on or after January 1, 1995.)

a. *What Is Direct Pay?*

Under the direct pay method, a purchaser who has a direct pay permit may purchase tangible personal property or taxable services without sales or use tax, even though no exemption applies. The Department of Revenue may promulgate a rule which specifies the types of tangible personal property or services which do not qualify for purchase without tax using a direct pay permit.

Furnishing Seller With Evidence of Direct Pay Purchases

When making a purchase without sales or use tax under the direct pay method, the holder of the direct pay permit must furnish the seller with either:

- (1) a copy of the direct pay permit, or

- (2) a statement that the buyer holds a direct pay permit, the permit number, and the date the permit was issued.

Purchaser's Payment of Use Tax on Taxable Property or Services

The holder of a direct pay permit is liable for use tax when it stores, uses, or consumes the property or service in a taxable manner and must report use tax on the purchase price of the property or service on its sales and use tax return.

b. *Requirements for Obtaining a Direct Pay Permit.*

The Department of Revenue will issue a direct pay permit to an applicant, at the beginning of the applicant's taxable year, if the following seven requirements are fulfilled:

- (1) because of the nature of the applicant's business, issuing the permit will significantly reduce the work of administering the sales and use taxes;
- (2) the applicant's accounting system will clearly indicate the amount of tax the applicant owes;
- (3) the applicant makes enough taxable purchases to justify the expense of regular audits by the Department of Revenue;
- (4) the applicant is not liable under ch. 71, 72, 76, 77, 78, or 139, Wis. Stats., for delinquent taxes (including costs, penalties, surcharges, and interest) of \$400 or more if any part of the tax is delinquent for at least 5 months;
- (5) it is in the state's best interests to issue the permit;
- (6) the applicant purchases enough tangible personal property under circumstances that make it difficult to determine whether the property will be subject to sales or use tax; and
- (7) the applicant holds a seller's permit under sec. 77.52(7), Wis. Stats., or a use tax registration certificate under sec. 77.53(9), Wis. Stats.

c. *How to Apply for a Direct Pay Permit.*

A person may apply for a direct pay permit by submitting to the Department of Revenue a completed form prescribed by the department and \$5.

d. *Direct Pay Permit Revocable and Not Transferable or Assignable.*

A holder of a direct pay permit may not transfer or assign it. The Department of Revenue may revoke a direct pay permit if the holder misuses it or the Department of Revenue determines that revocation is in the state's best interests.

e. *Recordkeeping Requirements for Holder of Direct Pay Permit*

A holder of a direct pay permit is required to keep a record of all retailers from whom it made a purchase for which it used a direct pay permit.

5. *Exemption for Meals, Food, or Beverages Sold by Community-Based Residential Facilities* (1993 Act 332, amend sec. 77.54(20)(c)4, effective June 1, 1994.)

Sales of meals, food, food products, or beverages by a community-based residential facility, which are served at the community-based residential facility, are exempt from Wisconsin sales or use tax.

A "community-based residential facility" is defined in sec. 50.01(1g), Wis. Stats. (1991-92), as a place where 3 or more unrelated adults reside in which care, treatment, or services above the level of room and board, but not including nursing care, are provided to persons residing in the facility as a primary function of the facility, with certain exceptions.

6. Real Property Definition for Property Tax Doesn't Apply for Sales and Use Tax (1993 Act 308, amend sec. 70.03, effective April 29, 1994.)

Section 70.03, Wis. Stats., prior to being amended, defined the terms "real property," "real estate," and "land" when used in chs. 70, 71, 72, 73, 74, 75, 76, 77, 78, and 79 of the Wisconsin Statutes.

The amendment to sec. 70.03, Wis. Stats., deletes the reference to ch. 77. Chapter 77 of the Wisconsin Statutes relates to sales and use taxes.

7. Limit Seller's Liability When Department Is Unable to Collect From Purchaser (1993 Act 308, amend sec. 77.52(15), effective April 29, 1994.)

If a person purchases tangible personal property without Wisconsin sales or use tax by giving the seller a resale certificate, and the purchaser subsequently uses the property in a taxable manner, the seller may be held liable for the tax owed by the purchaser if:

- a. The Department of Revenue is unable to collect the use tax from the purchaser, and
- b. The seller provided incorrect information about the transaction to the department (e.g., seller misinformed the department as to whether it had a resale certificate on file for the purchaser).

Previously, the department was authorized to collect the tax from the seller if just condition a. above was met. Condition b. was added as a result of the amendment to sec. 77.52(15), Wis. Stats.

Example: Seller B sells to Purchaser A tangible personal property, which Purchaser A will resell. Purchaser A gives Seller B a resale certificate, therefore, no Wisconsin sales or use tax is charged to Purchaser A. Seller B accepts the resale certificate in good faith.

Purchaser A is audited by the Department of Revenue. The department determines that some of the tangible personal property purchased by

Purchaser A from Seller B was used by Purchaser A in a taxable manner.

When the department contacts Seller B about the sales to Purchaser A, Seller B informs the department, verbally or in writing, that it does not have a resale certificate on file for Purchaser A. As a result of the information from Seller B, the department concludes the audit without assessing Purchaser A for the tangible personal property used in a taxable manner.

Upon subsequent audit of Seller B, the department learns that 1) Seller B did in fact have a resale certificate on file for Purchaser A and 2) the information given previously by Seller B to the department was incorrect.

The department is prohibited from collecting the use tax due from Purchaser A because of the statute of limitations. However, because both conditions in a. and b. above were met, the department may assess Seller B for sales tax on the sale of the tangible personal property to Purchaser A that was purchased without tax with a resale certificate and used in a taxable manner.

8. \$10 Fee Waived if Late Filing Because of Death (1993 Act 408, amend sec. 77.60(2)(intro.), effective for notices mailed on or after May 6, 1994.)

The \$10 late filing fee will not be imposed on a sales and use tax return that is filed late because of the death of the person required to file the return.

9. Allow Assessments in the Alternative (1993 Act 308, create sec. 77.59(9m), effective April 29, 1994.)

If the department determines that Wisconsin sales or use tax is owing and that the liability may be owed by more than one person, the department may assess the entire amount to each person, specifying that it is assessing in the alternative. Also, if the department determines that a liability exists and it may be sales tax or it may be use tax, the department may make an assessment for both sales and use taxes, specifying that it is assessing in the alternative.

Example 1: The department audits an antique dealer and determines that sales of antiques made

on behalf of the dealer at an antique mall were subject to Wisconsin sales or use tax. Neither the dealer nor the mall charged sales or use tax on these sales. The antique dealer believes that the antique mall was the retailer of the antiques and is liable for sales tax. The department believes the antique dealer was the retailer liable for sales tax.

The department may assess both the antique dealer and antique mall, specifying an assessment in the alternative. Once a final determination is made as to who is the retailer responsible for the tax, one of the assessments will be cancelled.

Example 2: The department audits a contractor. The contractor installed equipment that was affixed to real estate. The department believes the equipment is still tangible personal property after installation. The contractor believes the equipment becomes real property after installation. The contractor did not pay Wisconsin sales or use tax on its purchase of the equipment.

The department may make an assessment in the alternative for 1) sales tax on the sale and installation of the equipment, and 2) use tax on the purchase of the equipment installed. Once a final determination is made as to whether the equipment is tangible personal property or real property after it is installed, one of the assessments will be cancelled.

10. Require Payment of All Tax Delinquencies for Seller's Permit Renewal (1993 Act 308, amend sec. 77.52(10)(c), effective July 1, 1994.)

If a person's seller's permit has not been renewed because of delinquent tax liabilities, the permit will be renewed after payment of the following:

- a. Delinquent amounts due under chs. 72, 76, 77, 78, and 139, Wis. Stats., and
- b. Delinquent amounts due under ch. 71, Wis. Stats., that relate to the trade or business for which the seller's permit was issued.

Previously, only delinquent sales and use taxes, including related costs, penalties, and interest, had to be paid for a seller's permit to be renewed.

11. Include Fees and Surcharges in Amount Used to Determine if Seller's Permit Renewed (1993 Act 308, amend sec. 77.52(10)(b), effective July 1, 1994.)

Seller's permits are automatically renewed on the day the permit expires, unless all the following conditions are met:

- a. The permittee has a delinquent liability in respect to any tax, fee, or surcharge under ch. 71, 72, 76, 77, 78, or 139, Wis. Stats., including costs, penalties, and interest thereon.
- b. The delinquent liability is \$400 or more.
- c. Any part of the liability is delinquent for 5 months or longer.

Previously, under a. above, fees and surcharges (e.g., temporary recycling surcharge) were not included in determining whether a delinquency was \$400 or more.

12. Exempt Sales to Local Exposition Districts (1993 Act 263, create sec. 77.54(9a)(g), effective April 26, 1994.)

A sales and use tax exemption is provided for sales of tangible personal property and taxable services to a local exposition district under subch. II of ch. 229, Wis. Stats.

13. Exempt Charges Imposed by a Local Exposition District for Copies of Records (1993 Act 263, amend sec. 19.32(1), effective April 26, 1994.)

Section 77.54(32), Wis. Stats., provides a sales and use tax exemption for charges, including search charges, imposed by an "authority" defined in sec. 19.32(1), Wis. Stats., for copies of a record under sec. 19.35(1), Wis. Stats.

The definition of "authority" in sec. 19.32(1) is amended to include a local exposition district under subch. II of ch. 229, Wis. Stats.