

14. Waste Treatment Facility Exemption for Local Exposition District (1993 Act 263, amend sec. 40.02(28), effective April 26, 1994.)

Section 77.54(26), Wis. Stats., provides a sales and use tax exemption for tangible personal property which becomes a component part of a waste treatment facility of the State of Wisconsin or any agency thereof, or any political subdivision of the State of Wisconsin or agency thereof, as provided in sec. 40.02(28), Wis. Stats.

The amendment to sec. 40.02(28), Wis. Stats., adds a local exposition district under subch. II of ch. 229, Wis. Stats., to those entities included in sec. 40.02(28), Wis. Stats. As a result, tangible personal property becoming a component part of a waste treatment facility of a local exposition district will qualify for exemption from Wisconsin sales or use tax.

D. Farmland Preservation Credit

1. Credit Increased From 95% to 100% for Farmland Covered by Town Exclusive Agricultural Use Zoning (1993 Act 246, amend sec. 71.60(1)(c)6, effective for taxable years beginning on or after January 1, 1994.)

For farmland located in an area zoned for exclusive agricultural use under a certified town ordinance, and in a county that has adopted a certified agricultural preservation plan, the farmland preservation credit is 100% of the credit calculated by using the statutory formula.

Under prior law, the level of credit for such farmland was only 95% of the formula amount.

2. Credit Increased From 70% to 80% for Farmland Subject to an Agreement (1993 Act 420, amend sec. 71.60(1)(c)4 and 5, effective for taxable years beginning on or after January 1, 1994.)

For farmland subject to a farmland preservation agreement or a transition area agreement, which is in an area that is not zoned for exclusive agricultural use under a certified county, city, or village ordinance, or which is in a county that has not adopted a certified agricultural preservation plan, the farmland preservation credit is 80% of the credit calculated by using the statutory formula.

Under prior law, the level of credit for such farmland was only 70% of the formula amount.

E. Excise Taxes

1. Adopt Income Tax Provisions for Claims for Refund of Certain Excise Taxes (1993 Act 205, amend secs. 78.68(10), 139.092, and 139.365, effective for refund claims received on or after April 21, 1994.)

Section 71.75(7) relating to the time within which the Department of Revenue must act on a claim for refund or credit in the income tax law, also applies for purposes of the motor vehicle fuel tax, alternate fuels tax, general aviation fuel tax, beverage taxes, and cigarette taxes.

The Department of Revenue must act on any claim for refund within one year after receipt of the claim. Failure to act within that time shall have the effect of allowing the claim unless the taxpayer, prior to the expiration of the one-year period, has consented in writing to an extension of the one-year time period.

2. Motor Vehicle Fuel Tax — Various Provisions Needed to Correct and/or Implement Changes Included in 1993 Act 16 (1993 Act 437)

a. Interest Imposition Changed (Amend secs. 78.68(1) and (2)(a), effective June 1, 1994.)

Interest on motor vehicle fuel taxes which are not timely paid will be imposed from the date taxes are due. Prior to this change, interest was to be computed from the due date of the motor vehicle fuel tax report, rather than from the due date for payment of the tax.

b. Motor Fuel Exemption Annual Report Eliminated (Repeal sec. 78.12(3m) and amend sec. 78.01(2)(e), effective June 1, 1994.)

Persons who make tax-free purchases of gasoline for nonhighway use in mobile machinery and equipment are no longer required to file annual reports with the department itemizing tax-free gasoline purchases and describing fuel usage. Gasoline can still be purchased tax-free by such persons via an exemption certificate (MF-209) prescribed by the department.

- c. Definition of Motor Fuel Corrected for Retailers' Refund (Amend secs. 78.20(1m), (2), (3), (4) and (5), effective June 1, 1994.)

The obsolete term "motor fuel" which appeared in sec. 78.20 is changed to "gasoline." 1993 Act 16 repealed the definition of motor fuel which applied to gasoline only, and replaced it with "motor vehicle fuel" which includes all gasoline and diesel fuel. Therefore, sec. 78.20 has been revised to allow the retailers' refund for gasoline only.

In addition, the exception relating to motor fuel wholesalers which appeared in sec. 78.20(1m) is deleted because licenses are no longer issued to such wholesalers.

- d. Create Penalty for Misuse of Dyed Diesel Fuel (Create sec. 78.155, effective June 1, 1994.)

A penalty is imposed on (1) any person who sells dyed diesel fuel to a buyer who the person knows (or has reason to know) will use the dyed fuel in a taxable manner, and (2) any person who uses dyed diesel fuel in a taxable manner. The penalty is the greater of \$1,000 or twice the applicable tax on such diesel fuel. A \$1,000 penalty is also imposed on retailers who do not conspicuously label fuel pumps or other delivery facilities that dispense dyed diesel fuel.

- e. Penalty Added for Late Filing of Reports by Transporters (Create sec. 78.78(3), effective June 1, 1994.)

A \$10 late-filing fee is imposed upon transporters who do not timely file the required monthly report. A report is considered timely filed when it is mailed in a properly addressed envelope with first class postage and is officially postmarked on or before the due date, and received by the department within five days after the due date.

- f. Include Alternate Fuel in Formula for Computing the Annual Fuel Tax Rate Adjustment (Amend sec. 78.015(3), effective June 1, 1994.)

1993 Act 16, which changed the terms of "motor fuel" and "special fuel" to "motor

vehicle fuel" and "alternate fuel," inadvertently omitted alternate fuel gallons from the annual recomputation formula. This change corrects the omission.

- g. Refund Assignment Reference Corrected (Amend sec. 78.75(2), effective June 1, 1994.)

Section 78.75(2) states in part that "the right of any person to a refund under this chapter shall not be assignable..." This provision conflicts with sec. 78.01(2r) which permits a refund claim to be assigned. Therefore, the word "chapter" in sec. 78.75(2) is changed to "section."

- h. Refund Allowed to Wholesale Distributors for Unrecovered Taxes (Amend sec. 78.01(2s), effective June 1, 1994.)

Wholesale distributors may file a refund claim with the Department of Revenue to recover motor vehicle fuel taxes owed them by another wholesale distributor or retail dealer from whom they are unable to collect payment.

3. **Bed and Breakfast Establishments Exempt From Alcohol Beverage Licensing** (1993 Act 226, create sec. 125.06(12), effective April 23, 1994.)

No alcohol beverage license or permit is required for bed and breakfast establishments (as defined under sec. 50.50(1)) which provide complimentary glasses of wine to customers.

4. **Increase Penalties for Sale of Alcohol Beverages to Underage Persons** (1993 Act 472, amend sec. 125.07(1)(b)1 and 2 and create sec. 125.07(1)(b)5, effective May 13, 1994.)

The penalties for persons who commit two or more offenses are increased by providing for fines and/or allowing for imposition of jail sentences. In addition, the penalties increase based on the number of previous violations. Previous violations are redefined to include violations committed within 30 months of the current violation, an expansion from the 12-month period under prior law.

5. **Applicants for Retail Alcohol Beverage Licenses Required to Complete Responsible Beverage Server Training** (1993 Act 259, amend secs. 125.04(5)(c) and (d)3(intro.), 125.045(3), 125.17(6)(a)(intro.), 125.19(2), 125.275(2), 125.28(2), 125.30(3), 125.52(3), 125.54(2), 125.58(2), 125.60(2), 125.61(2), 125.62(2), and 125.63(2), and create sec. 125.04(5)(a)5, effective for applications filed on or after November 1, 1994.)

Applicants for retail alcohol beverage licenses are required to complete a responsible beverage server training course that conforms to curriculum guidelines specified by the Board of Vocational, Technical, and Adult Education or a comparable training course approved by the Department of Revenue or the Educational Approval Board. This requirement does not apply if the applicant held, within the past two years, a retail alcohol beverage license/permit or a manager's or operator's license.

6. **Prohibit Wholesale and Retail Fermented Malt Beverage Ownership Interests** (1993 Act 378, renumber sec. 125.25(2) to 125.25(2)(a) and sec. 125.275(2) to 125.275(2)(a), renumber sec. 125.26(2) to 125.26(2)(a) and amend as renumbered, repeal and recreate sec. 125.28(2), and create secs. 125.25(2)(b), 125.26(2)(b)2, 125.275(2)(b) and 125.29(4), effective May 5, 1994.)

No person may simultaneously hold or have an ownership interest in both a wholesaler's license and any of the following licenses or permits: (1) a Class "A" license; (2) a Class "B" license; (3) a Class "B" permit; or (4) an industrial permit. (*Exception:* A brewer may hold a Class "B" license and a wholesaler's license at the same time.) Persons who, as of May 5, 1994, hold or have ownership interests in both wholesale and Class "A", Class "B" or industrial licenses or permits are not subject to this restriction.

7. **Prohibit Sale of Individual Cigarettes** (1993 Act 312, amend sec. 134.66(4)(a)1 and create sec. 134.66(1)(hm) and (2)(e), effective April 29, 1994.)

Cigarette retailers are prohibited from selling cigarettes in a form other than a package or container on which a stamp is affixed under sec.

139.32(1). Violators may be subject to penalties of up to \$500, and suspension of cigarette and tobacco product licenses or permits.

8. **Amusement Device Permit Eliminated** (1993 Act 308, repeal sec. 125.20, effective April 29, 1994.)

The requirement that certain persons obtain a permit from the Department of Revenue before setting up coin-operated cigarette machines, jukeboxes or amusement devices on premises licensed for alcohol beverages is repealed.

F. Local Exposition District Taxes

1. **Creation of Local Exposition District** (1993 Act 263, create subch. II of ch. 229, effective April 26, 1994).

Creation and Dissolution

Creation One or more sponsoring municipalities may create a local exposition district for various purposes, including acquiring, constructing, equipping, maintaining, improving, operating, and managing an exposition center and exposition center facilities.

Dissolution Subject to providing for the payment of its bonds, including interest on the bonds, and the performance of its other contractual obligations, a district may be dissolved by the joint action of the district's board of directors and sponsoring municipality.

Jurisdiction

A local exposition district's jurisdiction is the sponsoring municipality's geographical area, except that, if the sponsoring municipality is a 1st class city, the district's jurisdiction is that city and each city and village that is wholly or partly contained within the most populous county in which that city is located. No territory may be included within the jurisdiction of more than one district.

Authority to Impose Taxes

A local exposition district has authority to impose a room tax under sec. 66.75(1m)(a), Wis. Stats., a food and beverage tax under sec. 77.98, Wis. Stats., and a rental car tax under sec.

77.99, Wis. Stats. These taxes are called local exposition district taxes.

To impose these taxes, the district must adopt a resolution. A certified copy of the resolution to impose the local exposition district taxes must be delivered to the Secretary of Revenue at least 120 days before its effective date.

Note: As of May 13, 1994 (the date this Bulletin was sent to the printer), no district had adopted a resolution to impose the local exposition district taxes. If a district adopts such a resolution, the Department of Revenue will attempt to notify retailers through various means, including the *Wisconsin Tax Bulletin* and *Sales and Use Tax Report*.

See Parts F.3. through F.9. on pages 20 to 24 for more information regarding the local exposition district taxes.

2. **Authorize Department of Revenue to Administer and Distribute Local Exposition District Taxes** (1993 Act 263, create secs. 20.566(1)(gg), 20.835(4)(gg), 66.75(1m)(c)1 and 3, 77.982(1) and (3) and 77.991(1) and (3), effective April 26, 1994).

The Department of Revenue is responsible for administering the local exposition district taxes. The Department of Revenue has authority to conduct audits, make assessments, issue refunds, impose interest and penalties, etc. See Part F.9. on page 24 for more information.

Ninety-seven percent of the taxes collected by the Department of Revenue from the three local exposition district taxes will be distributed to the local exposition district no later than the end of the month following the end of the calendar quarter in which the amounts were collected. The taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments, and all other adjustments.

The remaining 3% will be retained by the Department of Revenue to cover the cost of administering the taxes.

A district that receives a report from the Department of Revenue detailing the distribution of taxes collected is subject to the duties of confi-

dentiality to which the Department of Revenue is subject to under sec. 77.61(5), Wis. Stats.

3. **Room Tax** (1993 Wisconsin Act 263, create sec. 66.75(1e) and (1m)(b); renumber sec. 66.75(1) to sec. 66.75(1m)(a) and amend sec. 66.75(1m)(a) as renumbered; and amend sec. 66.75(2) and (3)).

Effective Date of Room Tax

The effective date of the room tax is determined by the local exposition district in an enabling resolution. A certified copy of the resolution must be delivered to the Secretary of Revenue at least 120 days prior to the effective date of the room tax.

Imposition of Basic Room Tax

The basic room tax may be imposed on the privilege of furnishing, at retail, rooms or lodging to transients by hotelkeepers, motel operators, and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations.

"Transient" means any person residing for a continuous period of less than one month in a hotel, motel, or other furnished accommodations available to the public. Hotel and motel are defined in sec. 77.52(2)(a)1, Wis. Stats.

The basic room tax may not exceed 3%. However, a majority of the authorized members of the local exposition district board may vote that, if the balance in a special debt service reserve fund of the district is less than the requirement under sec. 229.50(5), Wis. Stats., the basic room tax imposed by the district is 3% of the total room charges beginning on the next January 1, April 1, July 1, or October 1 after the payment.

Imposition of Additional Room Tax

If the district's only sponsoring municipality is a 1st class city, the district may adopt a resolution to impose an additional room tax. The additional tax is equal to the percentage of room tax imposed by the sponsoring municipality on the date on which the sponsoring municipality agreed to stop imposing and collecting its own room tax as a means of creating the local exposition district.

The additional room tax imposed applies only within the borders of the sponsoring municipality and may be used for any lawful purpose of the district.

If a district stops imposing and collecting a room tax, the district's sponsoring municipality may impose and collect a room tax on the date on which the district stops imposing and collecting its room tax.

Exemptions From Room Tax

The following are exempt from both the basic room tax and the additional room tax:

- a. Sales for resale
- b. Sales to the federal government
- c. Sales to persons listed in sec. 77.54(9a), Wis. Stats. This includes:
 - (1) Wisconsin or any agency thereof
 - (2) Any county, city, village, town, or school district in Wisconsin
 - (3) A county-city hospital established under sec. 66.47, Wis. Stats.
 - (4) A sewerage commission organized under sec. 144.07(4), Wis. Stats., or a metropolitan sewerage district organized under secs. 66.20 to 66.26 or 66.88 to 66.918, Wis. Stats.
 - (5) Any other unit of Wisconsin government or any agency or instrumentality of one or more units of Wisconsin government
 - (6) Any corporation, community chest fund, foundation, or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under sec. 613.80(2), Wis. Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member, or corporation
 - (7) A local exposition district under subch. II of ch. 229, Wis. Stats.

Exchange of Information

As a means of enforcing the collection of any room tax imposed by a district, the district may exchange audit and other information with the Department of Revenue. The district shall provide by resolution for the confidentiality of information obtained from the Department of Revenue, but shall provide exceptions for persons using the information in the discharge of duties imposed by law or of the duties of their office or by order of a court.

The district may provide for the publishing of statistics classified so as not to disclose the identity of particular returns.

The district shall provide that persons violating the resolution for confidentiality may be required to forfeit not less than \$100 nor more than \$500.

Enforcement of Room Tax by Local Exposition District

A local exposition district may do any of the following with respect to its room tax:

- a. Whenever the district has probable cause to believe that the correct amount of room tax has not been assessed or that the tax return is not correct, inspect and audit the financial records of any person subject to the room tax to determine whether or not the correct amount of room tax is assessed and whether or not any room tax return is correct.
- b. Enact a schedule of forfeitures, not to exceed 5% of the room tax, to be imposed on any person subject to the room tax who fails to comply with a request to inspect and audit the person's financial records.
- c. Determine the room tax according to its best judgement if any person required to make a return fails, neglects, or refuses to do so for the amount, in the manner and form and within the time prescribed by the district.
- d. Require each person who is subject to the room tax to pay an amount of taxes that the district determines to be due under c. above, plus interest at the rate of 1% per month on the unpaid balance. No refund or modification of the payment determined may be granted until the person files a correct room

tax return and permits the district to inspect and audit his or her financial records pertaining to the furnishing of accommodations.

- e. Enact a schedule of forfeitures, not to exceed 25% of the room tax due for the previous year or \$5,000, whichever is less, to be imposed for failure to pay the room tax.

Also see Parts F.6. through F.9. on pages 24 to 26 for other provisions, including sales and use tax provisions of ch. 77, Wis. Stats., that apply to the local exposition district taxes.

4. Food and Beverage Tax (1993 Act 263, create secs. 77.98, 77.981, and 77.982(2)).

Effective Date of Food and Beverage Tax

The effective date of the food and beverage tax is determined by the local exposition district in an enabling resolution. A certified copy of the resolution must be delivered to the Secretary of Revenue at least 120 days prior to the effective date of the food and beverage tax.

Imposition

A local exposition district tax of 0.25% may be imposed upon gross receipts from the retail sale of products that are subject to tax under sec. 77.54(20)(c)1 to 3, Wis. Stats. The tax applies to sales made in the district's jurisdiction, which is discussed in Part F.1 on page 19.

Sales subject to the food and beverage tax include:

- a. Sales of meals, food, food products, and beverages sold by any person, organization, or establishment for direct consumption on the premises.
- b. Sales by any person, organization, or establishment of the following items for off-premises consumption:
 - (1) Meals and sandwiches, whether heated or not
 - (2) Heated food and heated beverages
 - (3) Soda fountain items such as sundaes, milk shakes, malts, ice cream cones, and sodas

- (4) Candy, chewing gum, lozenges, popcorn, and confections

Gross receipts subject to the food and beverage tax include cover, minimum, entertainment, service or other charges made to patrons or customers.

Note: According to sec. 77.981, Wis. Stats., the district, by a vote of a majority of the authorized members of its board of directors, may impose the tax at the rate of 0.5% of the gross receipts. A majority of the authorized members of the district's board of directors may vote that, if the balance in a special debt service reserve fund of the district is less than the requirement under sec. 229.50(5), Wis. Stats., the tax rate is 0.5%. The 0.5% rate shall be effective on the next January 1, April 1, July 1, or October 1, and this tax is irrevocable if any bonds issued by the district and secured by the special debt service reserve fund are outstanding.

Exemptions From Food and Beverage Tax

The following sales of food products and beverages are exempt from the food and beverage tax:

- a. Sales for resale
- b. Meals, food, food products, or beverages furnished in accordance with any contract or agreement by a public or private institution of higher education (sec. 77.54(20)(c)5, Wis. Stats.)
- c. Meals, food, food products and beverages sold by hospitals, sanatoriums, nursing homes, retirement homes, or day care centers registered under ch. 48, Wis. Stats., and served at a hospital, sanatorium, nursing home, retirement home, or day care center (sec. 77.54(20)(c)4, Wis. Stats.)
- d. Meals, food, food products, or beverages sold to the elderly or handicapped by persons providing "mobile meals on wheels" (sec. 77.54(20)(c)4, Wis. Stats.)
- e. Sales that Wisconsin is prohibited from taxing under the constitution or laws of the United States or the constitution of Wisconsin (sec. 77.54(1), Wis. Stats.)