Greetings From the New Director
(by Robert E. Brazzil)

I am assuming my position as District Director during a time when the IRS is undergoing some significant changes. The IRS, like many businesses and government agencies, is reorganizing. We are merging the Milwaukee District of IRS — that currently serves taxpayers in Wisconsin — with the Des Moines and Omaha Districts. We will have a new identity and a new name: the Midwest District of IRS. The timetable for this merger is still unclear, but it could happen as early as January 1996. The new Midwest District, headquartered in Milwaukee, will serve taxpayers throughout Wisconsin, Iowa, and Nebraska.

I have the honor of being the first director to head the new Midwest District. I will work hard to bring three really fantastic district offices into an organization that shares each other's "best practices." I look forward to the completion of the consolidation so that taxpayers can reap the benefits of an organization that works better and costs less.

With all these changes, I can promise you that some things won't change. Our business vision remains firmly linked to our three objectives:

- Increase voluntary compliance,
- Maximize customer satisfaction and reduce burden, and
- Achieve quality-driven productivity through systems improvement and employee development.

I believe that this filing season will bring a continuation from last year of our successful revenue protection strategy. The purpose of that strategy is to:

- Detect and prevent attempts to undermine the tax system by those unwilling to comply with the tax laws; and
- Maintain balanced enforcement that ensures compliance among all groups of taxpayers while safeguarding taxpayers' rights and benefits.

In addition, we will continue to move away from paper tax returns. Through electronic filing, 1040PC, computer filing on-line, and TeleFile (filing by telephone), we are expanding the ways in which taxpayers can move from paper returns to electronic information. Wisconsin has shown tremendous support for electronic filing. Each year our numbers indicate that Wisconsin taxpayers are in favor of paperless methods of filing their taxes. They know that electronic information is faster, more accurate, and more efficient.

An added benefit that Wisconsin taxpayers enjoy is being able to file both their federal and state tax returns electronically — in one transmission. Working together, the IRS and the Wisconsin Department of Revenue (WDOR) made this a reality.

I am very committed to strengthening and expanding our federal-state partnerships. This can only benefit the taxpayers we both serve. At a time when budgets are tight and resources are limited, we can minimize the impact of those limitations on taxpayers by working together and pooling our resources.

I believe that communication between the IRS and tax practitioners is also beneficial to taxpayers. It is vital to the IRS achieving its business vision. You see firsthand the affect that the tax laws have on taxpayers. We need your honest and candid feedback in order to make necessary improvements in the tax system. I will continue to practice the "open door" policy that Wisconsin's IRS has always maintained. I welcome and value your comments and suggestions.

I hope to meet many of you during my tenure as District Director. I promise you that I will continue the tradition of excellence established by my predecessor. I assure you that IRS in Wisconsin will work very hard to improve the quality of the services we provide to our customers. In spite of budget constraints and limited resources, we will continue to develop better and more efficient ways of doing business. □

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, 1996, or at the stage in which action occurred during the period from October 2, 1995 to January 1, 1996.

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 for Publication of Notice

2.09 Reproduction of income tax forms-R&R

2.105 Notice by taxpayer of federal audit adjustments and amended returns-R&R

2.12 Amended income and franchise tax returns-R&R

2.31 Compensation received by nonresident members of professional athletic teams-NR

3.94	Claims for refund-R
9.01	Definitions-A
9.06	Affixing of state revenue stamps-A
9.08	Cigarette tax refunds to Indian tribes-A
9.09	Cigarette sales to and by Indians on reservations of tribes that have not entered into a refund agreement with the department-A
9.11	Refunds-A
9.12	Refunds — military-R
9.16	Meter machines-R
9.17	Meter machine settings-R
9.19	Fuson machines and stamps-A
9.21	Shipments to retailers-A
9.22	Drop shipments-A
9.26	Trade or transfer of unstamped cigarettes-A
9.31	Sales out of Wisconsin-A
9.36	Displaying of cigarettes-A
9.41	Vending machines-A
9.46	Purchases by the retailer-A
9.47	Invoicing of sales, including exchanges of cigarettes-A
9.51	Samples-A
9.61	Warehousing of cigarettes-A
9.68	Ownership and name changes-A

Rules Adopted and in Effect (Adoption date January 1, 1996)

2.89	Estimated tax requirements for short taxable years-NR
2.96	Extensions of time to file corporation franchise or income tax returns-R&R
3.03	Dividends received deduction — corporations-R&R

Rule on Hold Pending Court Decision

11.04	Constructing buildings for exempt entities-A ☐

Recently Adopted Rules Summarized

Summarized below is information regarding administrative rules adopted or revised effective January 1, 1996.

Information is provided regarding newly created sec. Tax 2.89, relating to estimated tax requirements for short taxable years, as well as repealed and recreated secs. Tax 2.96, relating to corporation tax return extensions, and 3.03, relating to the dividends received deduction. In addition to the summaries, the text of the three rules is reproduced, excluding notes and examples. See the order blank on page 57 of this Bulletin for information about obtaining the Revenue section of the Wisconsin Administrative Code.

Tax 2.89 Estimated tax requirements for short taxable years. This rule prescribes the estimated tax payment requirements for taxable periods of less than twelve months, as required by secs. 71.09(9) and 71.29(5), Wis. Stats. (formerly numbered secs. 71.21(15) and 71.22(5), repealed and recreated by 1987 Wisconsin Act 27). The text of Tax 2.89 is as follows:

Tax 2.89 ESTIMATED TAX REQUIREMENTS FOR SHORT TAXABLE YEARS. (ss. 71.09(9) and 71.29(5), Stats.) (1) GENERAL. Under ss. 71.09 and 71.29, Stats., certain corporations and persons other than corporations shall make estimated tax payments. For short taxable years, estimated tax payments shall be made in accordance with this section.

(2) DEFINITIONS. In this section:

(a) "Corporation" includes corporations, tax-option (S) corporations, insurance companies, publicly traded partnerships treated as corporations in s. 7704 of the internal revenue code, limited liability companies treated as corporations under the internal revenue code, joint stock companies, associations, common law trusts, regulated investment companies, real estate investment trusts, real estate mortgage investment conduits, nuclear decommissioning trust funds and virtually exempt entities as defined in s. 71.29(1)(c), Stats.

(b) "Estimated tax payable" means the amount calculated under s. 71.09(13) or 71.29(9) or (10), Stats.

(c) "Persons other than corporations" includes individuals, estates, trusts other than those treated as corporations in par. (a), partnerships except publicly traded partnerships treated as corporations in s. 7704 of the internal revenue code and limited liability companies treated as partnerships under the internal revenue code.

(d) "Short taxable year" means a period of less than 12 months.

(3) NUMBER OF INSTALMENT PAYMENTS REQUIRED. (a) For short taxable years, the following number of estimated tax instalment payments shall be made:

1. For periods of one month or less, none.

2. For periods of 2 to 3 months, one.

3. For periods of 4 to 6 months, 2.

4. For periods of 7 to 9 months, 3.

5. For periods of 10 to 11 months, 4.

(b) Except as provided in par. (c), for purposes of determining the required number of estimated tax instalment payments under par. (a), a portion of a month shall be treated as a full month.

(c) If a short taxable year terminates before the end of a month and another taxable year begins at that time, for estimated tax instalment purposes the first taxable period shall be treated as ending on the last day of that month and the second taxable period shall be treated as beginning on the first day of the following month.

(4) DUE DATES OF INSTALMENT PAYMENTS FOR CORPORATIONS. For short taxable years, corporations shall make estimated tax instalment payments on or before the 15th day of each of the following months:

(a) For periods of 2 to 3 months, the last month of the taxable year.

(b) For periods of 4 to 6 months, the 3rd and last months of the taxable year.

(c) For periods of 7 to 9 months, the 3rd, 6th and last months of the taxable year.

(d) For periods of 10 to 11 months, the 3rd, 6th, 9th and last months of the taxable year.

(5) DUE DATES OF INSTALMENT PAYMENTS FOR PERSONS OTHER THAN CORPORATIONS. (a) Except as provided in pars. (b) and (c), for short taxable years, persons other than corporations shall make estimated tax instalment payments on or before the 15th day of each of the following months:

1. For periods of 2 to 3 months, the first month following the close of the taxable year.

2. For periods of 4 to 6 months, the 4th month of the taxable year and the first month following the close of the taxable year.

3. For periods of 7 to 9 months, the 4th and 6th months of the taxable year and the first month following the close of the taxable year.

4. For periods of 10 to 11 months, the 4th, 6th and 9th months of the taxable year and the first month following the close of the taxable year.

(b) If a person other than a corporation files an income tax return on or before the last day of the first month following the close of the taxable year and pays the full amount computed on that return as payable, that person need not make the last payment of estimated tax.

(c) Instead of making estimated tax instalment payments, a farmer or fisher as defined in s. 71.09(1)(a), Stats., may either pay the estimated tax in full by the 15th day of the first month after the close of the taxable year or file the tax return on or before the first day of the 3rd month following the close of the taxable year and pay the full amount computed on that return as payable.

(6) COMPUTATION OF ESTIMATED TAX PAYABLE. Corporations and persons other than corporations shall make estimated tax payments equal to the lesser of the following amounts:

(a) Ninety percent of the tax shown on the return for the taxable year or, if no return is filed, 90% of the tax for the taxable year.

(b) For individuals, corporations having less than $250,000 of Wisconsin net income and estates and trusts having less than $20,000 of Wisconsin taxable income for the current taxable year, the tax shown on the return for the preceding taxable year, provided the taxpayer filed a return for the preceding year covering a full 12-month year. When the current year is a short taxable year and the preceding year was a period of 12 months, the tax shown on the return for the preceding taxable year may be prorated based on the number of months in the short taxable year.

(c) Ninety percent of the tax calculated by annualizing the taxable income earned for the months in the taxable year ending before the due date of the instalment. The following special rules apply:

1. Corporations which determine their Wisconsin net incomes under the apportionment method may compute their annualized income using the apportionment percentage from the return filed for the previous taxable year if the previous year's return is filed by the due date of the instalment for which the income is being annualized and the apportionment percentage on that return is greater than zero. A corporation that has at least $250,000 of Wisconsin net income for the current taxable year may also compute annualized income using the apportionment percentage from the return filed for the previous taxable year if the previous year's return is filed by the due date of the 3rd instalment, the apportionment percentage on that return is greater than zero, and the apportionment percentage used in computing the first 2 instalments is not less than the apportionment percentage used on that return.

2. Entities subject to tax on unrelated business taxable income and trusts and estates shall annualize their incomes for the months in the taxable year ending one month before the instalment due date.

(7) PORTION OF ESTIMATED TAX PAYABLE IN EACH INSTALMENT. The portion of the estimated tax payable in each instalment depends on when the taxpayer determines that the taxable year will be a period of less than 12 months and the number of instalment payments required, as follows:

(a) If an event that will terminate the taxable year before the end of the 12th month occurs after the taxpayer has begun making estimated tax payments, the initial estimated tax instalment payments shall be based on 25% of the estimated tax payable, with the last payment adjusted for the difference between the estimated tax liability and the amount previously paid.

(b) If an event that will result in a taxable year of less than 12 months occurs before the taxpayer has begun making estimated tax payments, instalment payments shall be made as follows:

1. If one instalment is due, all of the estimated tax shall be paid at that time.

2. If 2 instalment payments are due, 75% of the estimated tax shall be paid for the first instalment and 25% shall be paid for the remaining instalment.

3. If 3 instalment payments are due, 50% of the estimated tax shall be paid for the first instalment and 25% shall be paid for each of the 2 remaining instalments.

4. If 4 instalment payments are due, 25% of the estimated tax shall be paid for each instalment.

(8) ANNUALIZED INCOME INSTALMENT PAYMENTS. Under ss. 71.09(13)(d) and 71.29(9)(c), Stats., taxpayers may compute estimated tax instalment payments by annualizing income for the months in the taxable year ending before the instalment payment's due date. Corporations that are subject to a tax on unrelated business taxable income and virtually exempt entities may compute estimated tax instalment payments by annualizing income for the months in the taxable year ending before the date one month before the due date for the instalment payment. Annualized income installment payments shall be computed as follows:

(a) *Computation of annualized income.* Taxpayers shall annualize income for the annualization period as follows:

1. Compute the Wisconsin net income for the annualization period, excluding adjustments which remain constant from period to period, such as net business loss carryforwards and the amortization of adjustments for changes in the method of accounting.

2. Calculate the annualization factor for the annualization period by dividing the number of months in the taxable year by the number of months in the annualization period.

3. Multiply the amount computed in subd. 1 by the annualization factor computed in subd. 2.

4. Subtract from the result in subd. 3 any adjustments excluded from the calculation of Wisconsin net income in subd. 1 which remain constant for each period. Individuals shall also subtract the standard deduction.

(b) *Computation of instalment payments.* Taxpayers shall calculate their estimated tax instalment payments based on annualized income for the annualization period as follows:

1. Determine the gross tax on the amount calculated under par. (a).

2. Subtract from the gross tax under subd. 1 any allowable tax credits, excluding estimated tax paid.

3. Multiply the net tax computed in subd. 2 by the applicable percentage from sub. (7).

Tax 2.96 Extensions of time to file corporation franchise or income tax returns. This rule reflects statutory changes in the extension requirements, interest charges, late filing fees, and temporary recycling surcharge provisions made by 1989 Wisconsin Act 31, 1991 Wisconsin Acts 39 and 269, and 1993 Wisconsin Acts 16 and 199. It also adds a reference to insurance companies and reflects current department policy regarding estimated tax extension payments. The text of Tax 2.96 is as follows:

Tax 2.96 EXTENSIONS OF TIME TO FILE CORPORATION FRANCHISE OR INCOME TAX RETURNS. (ss. 71.24(7) and 71.44(3), Stats.) (1) DUE DATES. (a) *General.* Except as provided in par. (b), corporation franchise or income tax returns, forms 4, 4I, 5 and 5S are due on or before the 15th day of the 3rd month following the close of a corporation's taxable year and form 4T is due on or before the 15th day of the 5th month following the close of the corporation's taxable year unless an extension of time for filing has been granted.

(b) *Short-period returns.* Corporation franchise or income tax returns for periods of less than 12 months are due on or before the federal due date.

(2) EXTENSIONS. (a) *The automatic extension to 30 days after the federal due date.* If an automatic six-month extension of time has been allowed for filing the corresponding federal income tax return under the internal revenue code, an automatic extension until 30 days after the federal extended due date shall be allowed for filing the Wisconsin return. A copy of federal extension form 7004 shall be attached to a Wisconsin franchise or income tax return filed under the federal automatic 6-month extension provision for the Wisconsin return to be considered timely filed.

(b) *The 30-day, 3-month or 6-month extension from department.* As an alternative to the extension in par. (a), a corporation may obtain an extension from the department for a period not to exceed 30 days, or not to exceed 3 months in the case of a foreign corporation that does not have an office or place of business in the United States, or not to exceed 6 months in the case of a cooperative filing a return or a domestic international sales corporation, if the extension is requested prior to the original due date of the return. A request for a 30-day, 3-month or 6-month extension, form IC-830, from the department shall be filed by the taxpayer prior to the original due date of the tax return. Requests for extensions shall be mailed to the address specified by the department on form IC-830 or delivered to the department.

(c) *Estimated tax payment.* A taxpayer who desires to minimize interest charges during the extension period may pay the estimated tax liability on or before the original due date of the franchise or income tax return. This shall be done by attaching a remittance to a corporation estimated tax voucher, form 4-ES, and mailing them to the address specified by the department on the form 4-ES. The estimated tax liability includes the temporary recycling surcharge imposed under s. 77.93, Stats.

(d) *Federal termination or refusal to grant extension.* If the internal revenue service terminates or refuses to grant an extension, the corresponding Wisconsin franchise or income tax return shall be filed on or before 30 days after the date of termination fixed by the internal revenue service.

(3) INTEREST CHARGES AND LATE FILING FEES. (a) *Regular interest.* Except as provided in par. (b), additional tax due with the complete return and the temporary recycling surcharge imposed under s. 77.93, Stats., which are not paid by the original due date are subject to interest at 12% per year during the extension period and 1½% per month from the end of the extension period until the date of payment.

(b) *Delinquent interest.* If 90% of the tax shown on the return, form 4, 4I, 5 or 5S, is not paid by the 15th day of the 3rd month or, for form 4T, by the 15th day of the 5th month beginning after the end of the taxable year, the difference between that amount and the estimated taxes paid along with any interest due is subject to interest at 1½% per month until paid regardless of any extension granted for filing the return. The tax shown on the return includes the temporary recycling surcharge imposed under s. 77.93, Stats.

(c) *Late filing fee.* A corporation return filed after the extension period is subject to a $30 late filing fee.

(4) CONSOLIDATED RETURNS. Because Wisconsin does not permit the filing of consolidated returns, a copy of the automatic federal extension, form 7004, shall be attached to the Wisconsin franchise or income tax return of each member of an affiliated group filing a Wisconsin tax return.

Tax 3.03 Dividends received deduction — corporations. This rule reflects amendments to secs. 71.26(3)(j) and 71.45(2)(a)8, by 1993 Wisconsin Act 16. The deduction based on the payer corporation's Wisconsin activity was repealed, the ownership percentage requirement for deducting dividends was reduced from 80% to 70% of the payer corporation's stock, and insurance companies may claim a dividends received deduction even if the payer corporation is not a Wisconsin corporation. The text of Tax 3.03 is as follows:

Tax 3.03 DIVIDENDS RECEIVED DEDUCTION — CORPORATIONS. (ss. 71.22(4), 71.26(2) and (3)(j), 71.42(2) and 71.45(2)(a)8, Stats.) (1) PURPOSE. This section clarifies the deduction from gross income allowed to corporations for dividends received. Dividends may be deductible due to the recipient's ownership of the payer corporation, as provided in sub. (3).

(2) DEFINITION. "Dividends received" means gross dividends minus taxes on those dividends paid to a foreign nation and claimed as a deduction under ch. 71, Stats.

(3) DIVIDENDS DEDUCTIBLE DUE TO OWNERSHIP. A corporation may deduct from gross income 100% of the dividends received from a payer corporation during a taxable year if both of the following occur:

(a) The dividends are paid on common stock of the payer corporation.

(b) The corporation receiving the dividends owns directly or indirectly during the entire taxable year in which the dividends are received at least 70% of the total combined voting stock of the payer corporation.

(4) LIMITATION ON DEDUCTION. The deduction under sub. (3) may not exceed the dividend received and included in gross income for a taxable year.

(5) DIVIDENDS INCLUDABLE IN GROSS INCOME. All dividend income shall be included in full in gross income on the franchise or income tax return of the recipient, whether or not certain dividends are deductible. □

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

Basis of assets — gifts — basis for gain or loss. *Patrick J. and Jo Ann Murphy, Jr., and Patrick and Carrie Murphy, III vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, September 14, 1995). The issue in this case is whether the department erred in assessing the taxpayers for additional income tax and interest on the gain realized as a result of their March 7, 1989 sale of real property held by them, where interests in that property were previously transferred to Jo Ann Murphy and Patrick J. Murphy, III as a gift from Patrick J. Murphy, Jr. at a time when his basis in the property was $26,500, and the fair market value of the property was $167,000.

On January 27, 1989, taxpayer Patrick J. Murphy, Jr. conveyed by quit claim deed partial interests totalling 75% of the ownership of certain real property, which was previously solely owned by him. The grantees included his spouse, taxpayer Jo Ann M. Murphy, and four of his children,