

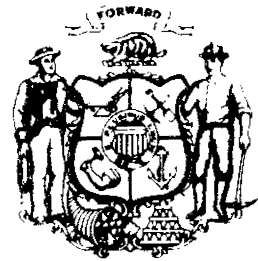
WISCONSIN TAX BULLETIN

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Income, Sales, Inheritance and
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DO YOU HAVE SUGGESTIONS FOR 1978 TAX FORMS?

Each year the Department receives some helpful suggestions from the public regarding changes or improvements which can be made on the various Wisconsin income tax reporting forms. Because many of the suggestions submitted have been useful in evaluating and updating these forms, the Department is seeking additional comments this year.

You may wish to communicate your suggestions as to how the Department might improve Forms 1 (individual long form) or 1A (individual short form) or Schedules H (Homestead) or FC (Farmland Preservation Credit) or their instructions. You may send them to the Wisconsin Department of Revenue, Division of Income, Sales, Inheritance and Excise Taxes, Director of Technical Services, 201 E. Washington Avenue, Madison, Wisconsin 53702. Because of production and printing deadlines which must be met, to receive consideration for the 1978 forms, your suggestions must be received by August 1, 1978.

THE DEPARTMENT'S INTELLIGENCE SECTION

Although it is 17 years old, the Department's Intelligence Section may not be well known to many taxpayers and practitioners. The Intelligence Section was established in 1961 after it was determined that investigators were needed to enforce the criminal statutes of the income and sales tax laws.

The Section is composed of a staff of 6 special agents under a section chief. Agents are located in Madison, Milwaukee, Appleton and Eau Claire. These special agents are specially trained in auditing, tax fraud, criminal law and criminal court procedures.

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The principal statutes which the Intelligence Section enforces are ss. 71.11(41) (failure to file individual income or corporation franchise tax returns or failure to pay over withholding tax; a misdemeanor), 77.60(7) (fraudulent filing or failure to file sales tax returns; a misdemeanor), 71.11(42) (individuals' false or fraudulent filing of an individual income tax return; a felony), and 71.11(43) (corporate officers' false or fraudulent filing of a corporate franchise or income tax return; a felony).

An investigation may result from a referral by a Department of Revenue auditor, from a tip (anonymous or otherwise) or from information the Special Agent has obtained. An investigation by a Special Agent usually involved the gathering and reporting of all facts having a bearing on the innocence or guilt of the suspected person. When the facts evidence a violation of the law, the case is turned over to the Department of Justice or to the appropriate county district attorney for prosecution.

After a taxpayer has been convicted of a criminal violation, the appropriate civil penalty will be added to the person's tax liability for the years involved. A civil penalty of 50% of the tax may be imposed for income and sales tax fraud and a 100% penalty may be imposed on a withholding tax violation.

During 1977, 10 prosecutions resulted in convictions. The convictions produced \$18,600 in fines, 2 years and 7 months of imprisonment and 7 years of probation.

COMMON ERRORS TO AVOID ON SALES TAX RETURNS

Each year the processing of many sales tax returns is delayed because the returns are either incomplete or incorrectly prepared.

To help speed up the handling of sales tax returns (the monthly or quarterly Form ST-12 and the annual information return, Form ST-12A) and avoid unnecessary correspondence, the Department offers the following suggestions:

1. Do not use a sales and use tax return previously issued to another person. Obtain your own return by writing to the Department at P.O. Box 8902, Madison, Wisconsin 53708.

2. Do not change the period covered or the due date on your return. If you are reporting for more than one period, use a facsimile return for other periods.

3. Taxable receipts (line 3) should be completed by subtracting deductions (line 2) from gross receipts (line 1), rather than by determining the amount from the sales tax remitted.

4. Be sure to itemize the deductions on the back side of each return and to correctly carry the total deductions amount to line 2 on the front of the return.

5. Do not enter sales tax amounts on the use tax line (line 7).

6. Do not take a credit for a previous overpayment on a current return. An amended return must be filed to claim a prior overpayment.

7. If there has been an ownership, name or address change, enter the information on the back of the return.

8. Be sure to sign and date your return.

9. When mailing your return, allow sufficient time for it to be postmarked on or before the due date.

10. Be sure that the period covered by the annual information return (Form ST-12A) is the same period as your income or corporate tax return.

If you wish to contact the Department about preparing your sales tax return, write to the Wisconsin Department of Revenue, P.O. Box 8902, Madison, Wisconsin 53708 or telephone (608) 266-2776.

WHO MUST REGISTER FOR A SALES TAX SELLER'S PERMIT OR OBTAIN A CONSUMER'S USE TAX REGISTRATION CERTIFICATE

Every person engaged in the business of selling tangible personal property or taxable services at retail is required to obtain a sales tax seller's permit and report the sales tax on all taxable receipts. A permit may be obtained by completing an "Application for Permit" and forwarding the application and the \$2 fee to the Department of Revenue.

However, a seller's permit is not required by a person whose sales are isolated and sporadic and when the infrequency of the sales in relation to other circumstances (including the sales price and gross profit) support the inference that the seller is not pursuing a vocation, occupation or business, or a partial vocation or occupation or part-time business. Such transactions are called "occasional sales" and the gross receipts from them generally are not subject to the sales tax.

Persons with a seller's permit, who incur use tax liability, must report and remit the use tax on the sales and use tax return they file. Every person (other than a registered seller) who regularly leases or rents tangible personal property or purchases items without payment of the tax, which results in use tax liability, should apply for a Consumer Use Tax Registration Certificate (Form S-201U). Such persons file quarterly consumer's use tax returns (Form S-050U) and pay the tax due by the last day of the month following the calendar quarter in which the use tax liability accrued.

Any person with an infrequent use tax liability (whether in business or not) who purchases, leases or rents tangible personal property or taxable services for storage, use or other consumption in Wisconsin is subject to a use tax liability. Such person also must file quarterly consumer's use tax returns and pay the tax directly to the Department by the last day of the month following the calendar quarter in which the tax accrued.

For a copy of a booklet entitled "Wisconsin General Sales and Use Tax Instruction Bulletin" or an "Application For Permit" form (used for sales or use tax registration), or any related information regarding registering for sales or use tax purposes, write:

Wisconsin Department of Revenue
Compliance Bureau
Post Office Box 8902
Madison, WI 53708

REPORT ON LITIGATION

(This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. In cases which decisions adverse to the Department's position are rendered, it will be noted whether or not the Department acquiesces or will appeal.)

Family Hospital, Inc. vs. Department of Revenue (Wisconsin Tax Appeals Commission, January 12, 1978.) The sole issue in this case was whether gross receipts from parking received by a non-profit hospital, operated exclusively for charitable, scientific and educational purposes, are subject to the sales tax under s. 77.52 (2) (a) 9, Wis. Stats.. The parking lot adjoined the hospital and was used substantially by patients, employees and guests of the hospital. The Commission held that such gross receipts from parking are not taxable.

The Department has appealed this decision.

State ex rel. Gerald D. Kleczka and John C. Shabaz vs. Dennis J. Conta, Secretary, Department of Revenue and others (Wis. 2d, Wisconsin Supreme Court, April 5, 1978.) Plaintiff

was contesting the validity of the partial vetoes to Assembly Bill 664 (Chapter 107, Laws of 1977, published October 20, 1977).

As originally enacted, Assembly Bill 664 would have allowed taxpayers to add on to their tax liabilities the sum of \$1, with the \$1 going to the Election Campaign Fund created by the bill. Acting Governor Schreiber exercised his partial veto so that beginning with the 1977 income tax return, each individual filing a return would be permitted to designate \$1 of the individual's net tax liability for placement in the fund without increasing an individual's tax or reducing an individual's refund.

The Court upheld the partial vetoes of the bill. Beginning in the 1977 taxable year, amounts properly designated on Wisconsin Forms 1 (long form) and 1A (short form) for the Election Campaign Fund will be tabulated and transferred to the fund.

Kansas City Star Company vs. Department of Revenue (Wisconsin Tax Appeals Commission, April 20, 1978.) The petitioner owned and operated the Flambeau Paper Mill in Park Falls, Wisconsin as a separate division from its only other division which published a daily newspaper in Kansas City, Missouri. The only business carried on in Wisconsin by the petitioner was its paper mill. The newspaper division and the paper mill division were entirely separate with separate operations, management, employees and properties. The books, records and accounts were entirely separate both for financial accounting and for Wisconsin tax purposes.

During the years just prior to 1969, petitioner's management decided to expand its paper mill operations. Petitioner decided that it could provide the necessary financing within the corporation at lower cost than borrowing from outside sources. The Wisconsin division provided about \$2 million and the Missouri division transferred \$7,842,000 of its funds in Missouri to the Wisconsin division's Wisconsin bank. The transferred funds were secured by bona fide notes signed by the Wisconsin division's management which bore interest at 5½ % per year.

During the years 1969 through 1973, the Wisconsin division sent interest checks to the Kansas City Star Company in Missouri. In reporting its income from its Wisconsin division on a separate accounting basis, petitioner claimed the interest payments as deductions from gross income under s. 71.04 (2), Wis. Stats.. The Department disallowed the interest payments as deductions.

The Commission concluded that the petitioner's intra-company payment of interest constitutes interest paid which is deductible under s. 71.04 (2), Wis. Stats.. The Commission stated that the interest expenses were properly allocable as expenses relating to Wisconsin operations under the separate accounting method used by petitioner in reporting for Wisconsin franchise tax purposes.

The Department has appealed this decision.

Fort Howard Paper Company vs. Department of Revenue (Wisconsin Tax Appeals Commission, April 20, 1978.) The taxpayer is a large manufacturer of paper and paper products. Four sales tax issues were involved as follows:

1. The taxpayer purchased an average of 270,000 tons of coal in each year involved in an audit and used it to produce all of its steam and virtually all of its own electrical power. Taxpayer claimed that its coal purchases were exempt from the sales tax under the language of s. 77.54 (6) (c) which exempts "Coal . . . converted to electric energy, gas or steam by utilities . . ." The Commission concluded that the purchases were not exempt because the taxpayer was not a "utility".

2. Taxpayer maintained railroad-type equipment and used it to switch and transport loads on its premises, maintaining crews to work the railroad-type equipment. Taxpayer contended that its purchases of a switch engine and trackmobile were exempt from sales tax under s. 77.54 (12) which exempts "locomotives or other rolling stock used in railroad operations . . ." The Commission concluded that the railroad-type segment of taxpayer's business constitutes "rail-

road operations" and that its purchases of a switch engine and trackmobile come within the definitions of "locomotives or other rolling stock" and are exempt from the sales and use tax.

3. Taxpayer maintained an art department consisting of 23 artists. The art department assisted in the manufacturing of specialty products such as napkins, placemats, tray covers, coasters, doilies, paper towels, and company reports, manuals and brochures. The art department had its own composing operation which prepared initial drawings or paintings to finished art work which was reduced to photographic plates for imprinting on the taxpayer's paper products. Taxpayer also maintained a staff of photo technicians and printers involved in manufacturing specialty paper products.

The Commission concluded that the following types of art supplies purchased are covered by the sales and use tax exemption language of s. 77.54 (2) as property which is "consumed or destroyed or loses its identity in the manufacture of tangible personal property [i.e., paper specialty products] in any form destined for sale": pencils, poster white, ink, cement, water color sets, colored pencils, erasers, klee kote, tracing paper, and masking tape.

The Commission concluded that the following types of art supplies purchased by the taxpayer are not covered by the exemption language of s. 77.54 (2) nor by s. 77.54 (6) (a) as "machines or specific processing equipment . . . exclusively and directly used by a manufacturer in manufacturing tangible personal property": razor blades, artist's triangles, artist's brushes, pen points, Bourges stylus, lettering points, head holders, push pins, pen holders, handi-spencer, and pens.

4. The taxpayer was ordered by the Wisconsin Department of Natural Resources to reduce its pollution discharge. To comply with the order, taxpayer installed on its equipment various items of effluent treatment equipment, principally aerators and clarifiers. The Commission found that this equipment improved taxpayer's operation and reduced the amount of waste discharged. The Commission concluded that the effluent treat-

ment equipment was covered by s. 77.54 (6) (a) and exempt from the sales and use tax.

This decision has been appealed.

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answers may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. Unless otherwise indicated, Tax Releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.)

NOTE: Many of these were formerly distributed to Department personnel as sales tax memos or reports. It is thought that these positions would be of help to taxpayers and tax practitioners.)

INCOME TAX

Taxability of Interest from Loans Guaranteed by the U.S. Government

Under s. 71.05 (1) (b) 1, Wis. Stats., an individual or fiduciary may exclude from Wisconsin taxable income any interest or dividend income, less related expenses, which by federal law is exempt from taxation by this state. The Department has received inquiries regarding the Wisconsin income tax status of interest derived from Farmers Home Administration guaranteed loans, Small Business Administration guaranteed loans and Government National Mortgage Association "fully-modified pass-through" certificates.

It has been stated by the Attorney General of the United States that "a guarantee by a Government agency contracted pursuant to a congressional grant of authority for constitutional purposes is an obligation fully binding on the United States . . ." (42 Opinions of the Attorney General of the United States, No. 1, at pp. 3-4, April 14, 1961).

Federal law authorizes the Secretary of Agriculture to guarantee loans made by banks and other lending agencies through the Farmers Home Administration (FmHA) of the U.S. Department of Agriculture. Therefore, loans guaranteed as to principal and interest by the FmHA constitute obligations of the United States, and any interest derived from such loans is exempt from Wisconsin income tax for individuals and fiduciaries.

Government National Mortgage Association "fully-modified pass-through" certificates also constitute obligations of the United States, and interest derived from these certificates is not taxable for Wisconsin individual and fiduciary income tax purposes.

The Small Business Administration (SBA) has no express authorization from the United States Congress to guarantee loans made by banks and lending institutions. Consequently, loans guaranteed by the SBA do not constitute obligations of the U. S. Government, and interest received from these loans is taxable for Wisconsin individual and fiduciary income tax purposes.

SALES TAX

I. Campground Receipts

The sale or furnishing of camping privileges is subject to the sales tax if the campground operator furnishes a place

with facilities, such as clubhouse, swimming pool or other swimming facilities, electrical service, fireplace, grill, laundry room, water system, toilets, playground, or other improvements designed to attract campers.

Some campground operators lease space on a seasonal or annual basis. The purchaser of this privilege parks a trailer, mobile home or similar unit in a particular place during the summer season. The purchaser may also leave the unit there during the entire year, but only use it on weekends or during the summer season. The fees received from these leases are subject to the sales tax, regardless of the period covered by the lease. However, the lease of space to a mobile home owner who uses the mobile home as a permanent residence is not subject to the tax.

II. Antiques and Works of Art

The sales tax applies to the sales of an-

tiques and works of art, such as paintings and sculptures. Persons engaged in the sale of such items should be registered with the Department as retailers and report the sales tax on these receipts, even though a retailer makes these sales infrequently, such as on weekends.

III. Sales Tax Liability of Successors

Are you planning to acquire an existing business? As a successor, you can be held liable for the sales or use tax liability of the prior owner, unless a clearance certificate is obtained from the Department stating that no taxes are due from the predecessor. The request for the certificate must be in writing.

At the time of purchase, you should withhold from the purchase price a sufficient amount to cover any possible sales and use tax liability of the seller until you have received the clearance certificate from the Department.