



Wisconsin TAX BULLETIN



FOCUS ON . . .

Filing Tax Returns

This Is Issue #100

It all began in October 1976, with issue number 1. Actually, this issue is only the 99th *Wisconsin Tax Bulletin*, because the first issue was named "Wisconsin Tax News." The title was changed to "avoid any confusion which may have resulted between this publication and another organization's publication similar in title to our old one" (quote from issue number 2).

The two principal goals of the publication, according to Daniel G. Smith, the department's Deputy Secretary in 1976, were "communicating interpretations of the tax laws and explaining administrative practices to the public." Those same principles apply today.

Issue number 1 consisted of six pages and included the introduction, articles, including one about newly appointed Secretary of Revenue Dennis J. Conta, descriptions of new legislation, a report on litigation, and tax releases. A copy of page one of Wisconsin Tax News Number 1 appears on page 45 of this Bulletin.



Manpower Rejected by Supreme Court

In a notice dated December 17, 1996, the Wisconsin Supreme Court denied the department's petition for review of the Court of Appeals decision in the case of *Wisconsin Department of Revenue vs. Manpower International, Inc.* Therefore, the Court of Appeals decision is final. For more information, see page 24 of this Bulletin.



Do You Need a Speaker?

Are you planning a meeting or training program? The Department of Revenue's Speakers Bureau provides speakers to business, community, and educational organizations.

Department representatives are available to speak on a topic that can be targeted toward your interest, including new laws, how sales tax affects businesses, what to expect in an audit, common errors, homestead or farmland preservation credit, manufacturing property assessment, and voluntary disclosure.

To arrange for a speaker, please write to Wisconsin Department of Revenue, Speakers Bureau, P.O. Box 8933, Madison, WI 53708-8933, or call (608) 266-1911.



Don't Forget Use Tax

Since 1988, Wisconsin individual income tax returns have included a line for persons to report use tax due on their out-of-state purchases. The amount of use tax reported on individual income tax returns has increased each year, topping the \$1 million mark for 1995 returns.

Approximately \$4.5 million of use tax has been reported on individual income tax returns since 1988.

Don't forget to report your use tax! ☐

Motor Vehicle Dealers' Measure of Use Tax Increased

Wisconsin licensed motor vehicle dealers are permitted to report use tax on a certain dollar amount per plate per month for the use of motor vehicles assigned to certain employees.

Effective January 1, 1997, the amount subject to use tax is increased from \$96 to \$99 per plate per month.

The reason for this change is sec. 77.53(1m)(a), Wis. Stats., as created by 1995 Wisconsin Act 27, requires that, effective January 1, 1997, the Department of Revenue annually adjust the amount subject to use tax to reflect the annual percentage

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change in the U.S. Consumer Price Index for All Urban Customers, U.S. City Average, as determined by the U.S. Department of Labor.

Caution: Instructions mailed with sales and use tax returns for reporting periods ending after January 1, 1997, may indicate \$96 as the amount subject to tax on line 18. That amount is incorrect effective January 1, 1997. The correct amount is \$99 per month. ☐

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Most Federal Tax Laws Enacted in 1996 Do Not Apply for Wisconsin

The Small Business and Job Protection Act of 1996 (Public Law 104-188 enacted August 20, 1996), and the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191 enacted August 21, 1996) made a number of changes to the Internal Revenue Code. Some of these changes will result in a difference between certain income and deduction items for Wisconsin and federal purposes for 1996 and prior tax years.

With the exception of depreciation and amortization provisions, federal tax laws enacted during 1996 do not apply for Wisconsin purposes unless subsequently adopted by the Wisconsin Legislature.

Pages 46 to 50 of this Bulletin contain a listing of federal provisions enacted during 1996 which may not be used for Wisconsin purposes.

Accounting for Differences

Individuals — Differences between Wisconsin and federal income and deduction items resulting from federal tax law changes not applying for Wisconsin should be reported on Wisconsin Schedule I for individuals. A copy of Schedule I and its instructions appears on pages 51 to 56 of this Bulletin.

Other taxpayers — For other taxpayers, refer to the 1996 forms and instructions for information on how to account for these differences.

Depreciation and Amortization Changes May Be Used

Wisconsin law (secs. 71.01(7r), 71.26(3)(y), 71.365(1m), and 71.45(2)(a)13, Wis. Stats. (1993-94)) allows depreciation or amortization to be computed under either the Internal Revenue Code in effect for the taxable year for which the return is filed or the Internal Revenue Code as amended to a specified date, at a taxpayer's option. For example, for property placed in service during

taxable years beginning on or after January 1, 1996, depreciation or amortization may be computed under either the Internal Revenue Code in effect for the taxable year 1996, or the Internal Revenue Code as amended to December 31, 1995.

This option is available to individuals, fiduciaries, partnerships, corporations (except nonprofit organizations, RICs, REITs, and REMICs), tax-option (S) corporations, and insurance companies.

NOTE: Depreciation or amortization changes which apply retroactively for federal purposes also apply retroactively for Wisconsin purposes. Taxpayers electing to use new federal depreciation or amortization provisions for Wisconsin purposes for taxable years before 1996 are required to file amended Wisconsin returns. ☐

Pay Correct Tax on Vehicles



A person who buys a vehicle from a non-dealer must report the purchase price when registering the vehicle with the State of Wisconsin and pay the use tax owed. To determine if buyers paid the correct amount of tax on their vehicle purchases, the Department of Revenue implemented a new program in November 1996.

This program uses a vendor to provide vehicle valuations based on the Vehicle Identification Number (VIN), and to contact sellers to confirm the price a buyer paid for a vehicle.

The vendor will send a letter (and a follow-up letter, if necessary) to a seller of a vehicle if the price reported by the buyer at the time of registering the vehicle is less than fair market value. If a seller cannot be located or does not respond, the vendor will contact the buyer. The vendor uses a Milton, WI post office

box as the return address for the responses to these letters.

If information furnished by the seller indicates the price of the vehicle was underreported at the time of registration, the Department of Revenue's Business Tax Services Section will issue an assessment notice to the buyer for the tax on the difference between the selling price indicated by the seller and the price reported at the time of registration. Interest will be assessed at 12% per year from the day the buyer put the vehicle in operation to the due date of the assessment. **In addition, a 50% negligence penalty will be assessed.**

Questions about this program should be directed to Margery Engelhart, (608) 266-1933. ☐

Vernon County Sales and Use Tax in Effect

The county sales and use tax was adopted by Vernon County, effective January 1, 1997. This brings to 49 the number of counties that have adopted the ½ % county tax.

The September 1996 *Sales and Use Tax Report*, a copy of which appears in *Wisconsin Tax Bulletin* 99 (October 1996), pages 37 and 38, explains how the county tax applies to retailers and other persons. It includes a listing of the counties that have adopted the county tax. ☐

Tax Information Is Available

In addition to making available the *Wisconsin Tax Bulletin* and tax forms and instructions that taxpayers use to report and pay their taxes or obtain refunds, the Wisconsin Department of Revenue also has available other information. This information includes the items listed below.

Topical and Court Case Index

This two-part index will help you locate reference material to research your Wisconsin tax questions relating to income, franchise, withholding, sales/use, gift, inheritance/estate, and excise taxes. The *Topical and Court Case Index* is available on a subscription basis for \$18 per year, plus tax. This includes a volume published in January and an addendum published in June (see the order blank on page 59 of this Bulletin).

The first part of the index, the "Topical Index," lists by tax type, alphabetically by subject, references to Wisconsin statutes, administrative rules, Wisconsin tax publications, *Sales and Use Tax Reports*, Attorney General opinions, and *Wisconsin Tax Bulletin* articles, tax releases, and private letter rulings.

The second part, the "Court Case Index," lists by tax type, alphabetically by issue, decisions of the Wisconsin Tax Appeals Commission, Circuit Court, Court of Appeals, and Wisconsin Supreme Court.

Wisconsin Package WI-X

Package WI-X contains copies of most Wisconsin individual and fiduciary income tax, corporation franchise and income tax, sales and use tax, withholding tax, partnership, estate tax, and motor vehicle fuel tax forms. Most of the forms may be reproduced for use in filing the form.

Package WI-X is published annually and is generally available at the end of January. The cost is \$7 per copy, plus tax. Mail your request and payment to Wisconsin Department of Revenue, Forms Request Office, P.O. Box 8903, Madison, WI 53708-8903.

Tax Publications

See the separate article titled "Tax Publications Available," on page 11 of this Bulletin.

Sales and Use Tax Report

The *Sales and Use Tax Report* includes general information about Wisconsin sales and use tax, including explanations of new laws and updated listings of counties that have adopted the county tax.

The *Sales and Use Tax Report* is published quarterly on an as-needed basis. It is mailed without charge to all persons holding a seller's permit or use tax certificate. In addition, the *Sales and Use Tax Report* is generally reproduced in the *Wisconsin Tax Bulletin*.

Wisconsin Administrative Code

The Revenue (Tax) section of the Wisconsin Administrative Code contains administrative rules that interpret Wisconsin tax laws administered by the Department of Revenue.

The initial fee to obtain all current rules in the Tax section of the Wisconsin Administrative Code is \$20, plus tax. Updates to the Tax section as changes occur are available for an additional fee of \$20 per year, plus tax. A binder to hold the Code is available for \$8, plus tax. These can all be ordered by using the order blank on page 59 of this Bulletin. □

Don't Forget Due Dates for Information Returns

Various information returns must be filed with the Wisconsin Department of Revenue by January 31. Others are due March 15 or April 15.

Information returns due January 31 include Wisconsin Form 9b (or federal Form 1099-R, 1099-MISC,

or W-2) to report retirement plan distributions and other nonwage compensation; Form W-2 to report wages, tips, and other compensation; and Form W-2G to report gambling winnings.

Information returns due March 15 (April 15 by payers other than corporations) include Form 9b (or federal Form 1099-MISC) to report rents or royalties; and Form 8 to report capital stock transfers (by corporations only).

Additional information is available in Wisconsin Publication 117, *Guide to Wisconsin Information Returns*. See the article titled "Tax Publications Available" on page 11 of this Bulletin for information about how to obtain a copy of the publication. □

Extensions for Filing Corporation Returns

When must a corporation file an "Application for Extension of Time to File" with the Wisconsin Department of Revenue? The answer depends on whether or not the corporation received an extension of time to file its **federal** corporate income tax return.

• Extension of Time to File Federal Corporate Income Tax Return

If a corporation received an extension of time to file its **federal** return from the Internal Revenue Service (IRS), the corporation is **not** required to file an "Application for Extension of Time to File" with the Wisconsin Department of Revenue. The federal extension **automatically** extends the due date of the corporation's Wisconsin return to 30 days after the "extended" federal due date (no further extensions are available). The corporation must **at-**

tach a copy of the federal extension form (Form 7004) to its Wisconsin franchise or income tax return that is filed with the Wisconsin Department of Revenue.

Example: The IRS grants Corporation A an extension of time to file its federal 1996 calendar year corporate income tax return from March 15, 1997 to September 15, 1997. Since Corporation A received an extension from the IRS until September 15, 1997 to file its federal return, Corporation A **automatically** has until October 15, 1997 to file its 1996 calendar year Wisconsin return. In order to receive the extension to file its 1996 Wisconsin return until October 15, 1997, Corporation A must attach a copy of the federal extension (Form 7004) to its 1996 Wisconsin return that is filed with the Wisconsin Department of Revenue.

Note: If the IRS terminates an extension of time to file the corporation's federal return, the corporation's Wisconsin return is due on or before 30 days after the termination date indicated by the IRS.

• No Extension of Time to File Federal Corporate Income Tax Return Received

If a corporation does **not** obtain an extension of time to file its federal return but needs additional time to file its Wisconsin return, the corporation must complete an "Application for Extension of Time to File" (Application) and file the Application with the Wisconsin Department of Revenue on or before the original due date of its Wisconsin tax return. An extension may be granted until the later of 1) 30 days from the original Wisconsin due date, or 2) the original due date of the corporation's **federal** return. No further extensions may be granted.

Example 1: Corporation B does not request an extension of time to file its federal corporate income tax return for calendar year 1996, which is due March 15, 1997. However, Corporation B needs an extension of time to file its Wisconsin return. Corporation B must file an Application on or before March 15, 1997 (the original due date of Corporation B's Wisconsin return), with the Wisconsin Department of Revenue to request the extension. An extension of 30 days may be granted to Corporation B to file its Wisconsin return. Corporation B must attach a copy of the approved Application to its Wisconsin return that is filed with the Wisconsin Department of Revenue.

Example 2: Corporation C, a foreign corporation with no office or place of business in the United States, does not request an extension of time to file its federal corporate income tax return for calendar year 1996, which is due June 15, 1997. However, Corporation C does need an extension of time to file its Wisconsin return. Corporation C must file an Application on or before March 15, 1997 (the original due date of Corporation C's Wisconsin return), with the Wisconsin Department of Revenue to request the extension. An extension may be granted until June 15, 1997, which is the original due date of Corporation C's federal return, since that is later than 30 days after the original Wisconsin due date (April 15, 1997).

Note: Any extension of time to file a corporation's Wisconsin franchise or income tax return does not extend the due dates of the estimated taxes or the franchise or income taxes due. Interest will continue to accrue on the taxes due during the extension period. □

Information or Inquiries?

Listed below are telephone numbers to call if you wish to contact the Department of Revenue about any of the taxes administered by the Income, Sales, and Excise Tax Division.

Madison — Main Office

Area Code (608)

Appeals	266-0185
Audit of Returns: Corporation, Individual, Homestead	266-2772
Beverage	266-6701
Cigarette, Tobacco Products	266-8970
Copies of Returns	267-1266
Corporation Franchise and Income	266-1143
Delinquent Taxes	266-7879
Electronic Filing	264-9959
Estimated Taxes	266-9940
Fiduciary, Estate	266-2772
Forms Request:	
Taxpayers	266-1961
Practitioners	267-2025
Fax-A-Form	261-6229
Homestead Credit	266-8641
Individual Income	266-2486
Motor Vehicle Fuel	266-3223
Refunds	266-8100
Sales, Use, Withholding	266-2776
TDD	267-1049

District Offices

Appleton	(414) 832-2727
Eau Claire	(715) 836-2811
Milwaukee:	
General	(414) 227-4000
Refunds	(414) 227-4907
TDD	(414) 227-4147

surcharge rates for taxable years beginning on or after the following January 1 to generate sufficient revenue to fund the appropriations from the recycling fund for the following fiscal year. The annual surcharge rates must be approved by the Legislature's Joint Committee on Finance. □

New Publications Discuss Nonresidents, Business Credits, Fax-A-Form

Three new publications have recently been issued by the department. These publications provide information about Wisconsin part-year residents and nonresidents, business tax credits available for 1996, and forms retrieval via the department's Fax-A-Form system. See the article titled "Tax Publications Available" on page 11 of this Bulletin for information about how to obtain copies of these and other publications.

Publication 122, *Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 1996*, provides information about the Wisconsin individual income tax treatment of part-year residents and nonresidents of Wisconsin. It also includes information for aliens.

Publication 123, *Business Tax Credits for 1996*, provides information about Wisconsin business-related tax credits that may be available for 1996 to corporations, tax-option (S) corporations, partnerships, limited liability companies, limited liability partnerships, and sole proprietorships doing business in Wisconsin.

Publication 130, *Fax A Form*, provides information about the department's Fax-A-Form document retrieval system, through which taxpayers and practitioners can obtain tax forms and publications via their fax machines. It includes a 6-

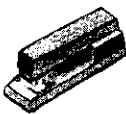
Recycling Surcharge Rates Unchanged

The temporary recycling surcharge rates remain unchanged for taxable years beginning on or after January 1, 1997, and before January 1, 1998.

Wisconsin law requires the Department of Revenue annually, in December, to establish annual recycling

page catalog listing which 1996 forms, instructions, and publications are available, and the retrieval code and number of pages for each document. □

Attaching Copy of Federal Return



Individuals who file their Wisconsin income tax return on Form 1 or 1NPR are required to attach a copy of their federal income tax return to their Wisconsin return. Generally this will be a copy of federal Form 1040, 1040A, or 1040EZ. However, some Wisconsin filers are not required to file a federal return with the Internal Revenue Service (IRS), or they may use a Form 1040PC or TeleFile to report to the IRS.

Federal Form 1040PC or TeleFile Filers

Form 1040PC is the federal return prepared on a personal computer. The computer prints the return in a three-column "answer sheet" format. It prints line numbers and dollar amounts only for lines on which an entry is made. Federal Form 1040PC filers may attach a copy of the Form 1040PC to their Wisconsin Form 1 or 1NPR in lieu of federal Form 1040, 1040A, or 1040EZ.

Some taxpayers file their federal return by phone, using the federal TeleFile system. These taxpayers, who are not required to submit a paper tax return to the IRS, may attach a copy of their TeleFile worksheet to their Wisconsin Form 1 or 1NPR in lieu of federal Form 1040, 1040A, or 1040EZ.

Taxpayers Not Required to File With the IRS

Some taxpayers who are required to file a Wisconsin income tax return are not required to file a federal

income tax return with the IRS. For example, a single person under age 65, with gross income of at least \$5,200 but less than \$6,500 for 1996, must file a 1996 Wisconsin return but is not required to file a 1996 federal return.

In this situation, since the person would not have a copy of a federal return to attach to the Wisconsin return, a statement listing the sources and amounts of income must be attached to the Wisconsin Form 1 or 1NPR in lieu of a federal return.

Note: Because the Wisconsin tax forms refer to various lines on the federal return, a person may find it helpful to complete a federal income tax form to use as a reference when completing the Wisconsin return. This federal form, even though it will not be filed for federal tax purposes, may be attached to the Wisconsin return instead of the required statement of income. □

Electronic Filing and Endangered Resources Team Up

Many thanks to all electronic filers for reminding your clients to donate to the Endangered Resources Fund. Donations made on Wisconsin income tax returns are the major source of income for the Department of Natural Resources' Bureau of Endangered Resources (BER). All donations (up to \$500,000) are matched — so gifts are worth double to BER.

The Wisconsin Department of Revenue (DOR) and BER are again joining forces to encourage taxpayers to come to you for electronic filing services, and to remind filers to donate to the Endangered Resources Fund on their Wisconsin electronic returns. Promotions include radio ads, posters, and a variety of other media.

Participants in the Wisconsin electronic filing program can help in one or both of the following ways.

1. DOR will furnish to electronic filers on request, tapes of radio commercials advertising electronic filing and endangered resources donations. Electronic filers can purchase their own radio air time and may add their "tag" to the commercial — the firm's name, address, telephone number, and/or hours of operation.
2. Electronic filers and software companies may contribute to the purchase of air time for commercials advertising electronic filing and endangered resources donations. The commercials will air primarily in the Madison, Milwaukee, and Fox Valley areas. Every dollar contributed to this advertising fund will be matched by BER. To contribute, send a check or money order payable to "Wisconsin Natural Resources Foundation, Inc." to Wisconsin Natural Resources Foundation, Inc., P.O. Box 129, Madison, WI 53701. Make a notation on the check that it is for ERF/ELF. *Please do NOT make checks payable to the Department of Revenue or send them to DOR.*

If you'd like a taped commercial or want more information on how you can help promote electronic filing and endangered resources donations, please call or write:

Barry Widera, Coordinator
Wisconsin Electronic Filing
P.O. Box 8977
Madison, WI 53708-8977
Phone: (608) 264-6886

— or —

Mary Kay Sherer
Bureau of Endangered Resources
P.O. Box 7921
Madison, WI 53707-7921
Phone: (608) 266-5243. □

Tips to Speed Refund Processing

If you have a refund coming on your Wisconsin income tax return and want your return processed as quickly as possible, you can help by following the tips listed below.

File Electronically

There are many good reasons to file your Wisconsin return electronically.

- It's fast and safe. Most refund checks are sent within a week. Direct deposits are even faster, and there's no check to lose.
- It's documented. Your electronic return transmitter is notified that your Wisconsin return has been received and accepted.
- It's easy and accurate. Approved tax preparers and others can file electronically for you, and the electronic filing system checks the return for common errors.

Use the Quick Refund Program

Under the Quick Refund Program, refunds are issued in as little as two weeks. Returns are checked for accuracy later, and an adjustment notice is mailed at that time, if necessary. To qualify for a quick refund, you must:

- File a signed and complete 1996 Form WI-Z, 1A, or 1, by April 1, 1997.
- Use the department-printed mailing label on which no information is changed.
- Have a Wisconsin address on the label.
- Enter the refund amount (including cents) in the quick refund box at the top of the return.
- Claim no homestead or farmland preservation credit, and owe no delinquent taxes or debts to other state agencies.

- Mail the return to Quick Refund, P.O. Box 38, Madison, WI 53787-0001.

Use Your Label

Apply the department-printed name and address label to the tax return you file. Here are some more tips:

- Use the label even if you are filing a computerized return or a return completed by a preparer.
- Draw a line through incorrect information and make corrections on the label.
- If you received a postcard with a label instead of forms, transfer that label to the return.
- Use the Wisconsin label, not the federal IRS label.
- Be sure the label is yours, not another taxpayer's.

File an Accurate and Complete Return

Avoid errors and delays in processing your tax return by following these tips:

- Make entries legible and on the correct lines.
- Attach the correct withholding statements.
- Claim only Wisconsin tax withheld, not federal tax, social security, or tax withheld for another state.
- Attach **all** necessary supporting schedules.
- Fill in **all** requested information when claiming the school property tax credit.
- Attach a **complete** copy of your federal return and schedules if you file on Form 1 or INPR.
- Attach a completed rent certificate or a copy of your property tax bill if you are claiming homestead credit (not necessary if you are claiming only the school property tax credit). ☐

Paying Taxes by Electronic Funds Transfer

The Department of Revenue requires electronic fund transfers (EFTs) for payment of motor vehicle fuel tax and petroleum inspection fees. Although not required, EFT is also available for payment of withholding tax; estimated tax (including corporation and individual extension payments and temporary recycling surcharge for partnerships); excise taxes (beer, liquor/wine, cigarette, tobacco products); and general aviation and alternate fuel taxes.

EFT is a safe, fast, and efficient automated process for transferring tax payments to the department. It eliminates the need for writing paper checks and filling out payment vouchers. The funds and tax payment information are transferred electronically through the Automated Clearing House (ACH) network.

Wisconsin Publication 118, *Electronic Funds Transfer Guide*, provides information and instructions regarding electronic funds transfers, and a request form for EFT authorization. For a copy of Publication 118, or if you have further questions about EFT, you may call the department's EFT Information Line in Madison at (608) 264-9918, or you may write to:

Revenue Accounting — EFT Unit
Wisconsin Department of Revenue
P.O. Box 8912
Madison, WI 53708-8912.

Publication 118 can also be ordered by fax using Fax-A-Form (call (608) 261-6229 from a fax telephone), or via the Internet (beginning by February 1997) at <http://www.dor.state.wi.us> ☐

Department Offers Taxpayer Assistance

During the filing season of January through April 15, 1997, department personnel will be available to answer questions.

In the department's larger offices, assistance is provided on a daily basis (Monday through Friday). Assistance in other offices generally is available on Mondays only, although there are exceptions as noted below.

Offices Providing Daily Assistance

Location	Address	Telephone No.	Hours
* Appleton	265 W. Northland Ave.	(414) 832-2727	7:45-4:30
* Eau Claire	718 W. Clairemont Ave.	(715) 836-2811	7:45-4:30
* Green Bay	200 N. Jefferson St., Rm. 526	(414) 448-5179	7:45-4:30
* Kenosha	5906 10th Ave., Rm. 106	(414) 653-7100	7:45-4:30
* Madison	125 S. Webster St.	NONE	8:00-4:30
* Madison	4638 University Ave.	(608) 266-2772	7:45-4:30
* Milwaukee	819 N. Sixth St., Rm. 408	(414) 227-3883	7:45-4:30
* Racine	616 Lake Ave.	(414) 638-7500	7:45-4:30
* Waukesha	141 N.W. Barstow St.	(414) 521-5310	7:45-4:30

Offices Providing Assistance on Mondays Only (unless otherwise noted)

Baraboo	1000 Log Lodge Ct.	(608) 356-8973	7:45-4:30
Beaver Dam	211 S. Spring St.	(414) 887-8108	7:45-4:30
Elkhorn	715 W. Walworth St.	(414) 723-4098	7:45-4:30
Fond du Lac	845 S. Main, Ste. 150	(414) 929-3985	7:45-4:30
Grafton	1930 Wisconsin Ave.	(414) 377-6700	7:45-4:30
Hayward	100 Ranch Rd.	(715) 634-8478	7:45-11:45
Hudson	1810 Crestview Dr., Ste. 1B	(715) 381-5060	7:45-4:30
Janesville	101 E. Milwaukee	(608) 758-6190	7:45-4:30 (a)
* La Crosse	620 Main St.	(608) 785-9720	7:45-4:30 (a)
Lancaster	130 W. Elm St.	(608) 723-2641	7:45-4:30
Manitowoc	914 Quay St.	(414) 683-4152	7:45-4:30
Marinette	Courthouse, 1926 Hall Ave.	(715) 732-7565	9:00-12:00
Marshfield	300 S. Peach Ave., Ste. 4	(715) 387-6346	7:45-4:30
Monroe	1518 11th St.	(608) 325-3013	7:45-11:45
Oshkosh	300D S. Koeller	(414) 424-2100	7:45-4:30
Rhineland	203 Schiek Plaza	(715) 365-2666	7:45-4:30
Rice Lake	11 E. Eau Claire St., Ste. 4	(715) 234-7889	7:45-4:30
Shawano	1340 E. Green Bay St., Ste. 2	(715) 526-5647	7:45-4:30
Sheboygan	807 Center Ave.	(414) 459-3101	7:45-4:30
Superior	1225 Tower Ave., Ste. 315	(715) 392-7985	7:45-4:30
Tomah	1200 McLean Ave.	(608) 372-3256	7:45-11:45
Watertown	600 E. Main St.	(414) 262-2700	7:45-11:45
Waupaca	644 Hillcrest Dr., Ste. 2	(715) 258-9564	7:45-11:45
Wausau	710 Third St.	(715) 842-8665	7:45-4:30
West Bend	120 N. Main St.	(414) 335-5380	7:45-4:30
Wisconsin Rapids	830 Airport Ave.	(715) 421-0500	9:00-4:30 (b)

* Open During noon hour

(a) Open Monday, Tuesday, and Wednesday

(b) Open Tuesdays only

How to Avoid "Sendbacks"

Thousands of tax returns and credit claims are sent back to taxpayers each year because of missing schedules or information. In the 1996 processing season (1995 returns and claims) the department sent back nearly 100,000 tax returns and credit claims. Listed below are tips for avoiding "sendbacks" of tax returns and credit claims.

Individual Income (Forms WI-Z, 1A, 1, and 1NPR)

- Attach copies of federal return and schedules to Form 1 or 1NPR.
- Attach withholding statements.
- Complete married couple credit schedule.
- Complete residence questionnaire on Form 1NPR.
- Attach other state's tax return to verify credit for tax paid to other states.
- Sign the tax return.

Corporation Franchise and Income (Forms 4, 5, 5S, 4T, and 4I)

- Fill in federal employer identification number.
- Attach copy of federal form.
- Attach schedules to support credits (e.g., manufacturer's sales tax, research, development zone, farmland tax relief).
- Complete Schedule S (temporary recycling surcharge) on Form 5S.
- Sign the tax return.

Homestead Credit (Schedule H)

- Include Wisconsin return, copy of federal return and schedules, and wage statements with Schedule H, or attach complete copy of tax return if Schedule H is filed after the tax return.
- Attach explanation if low or no income is reported.
- Follow special instructions for married, separated, or divorced persons.
- Attach rent certificate.
- Be sure rent certificate is filled in completely, is not altered, is not a photocopy, and does not have a stamped signature.
- Attach copy of property tax bill (not county receipt, installment stub, mortgage statement, canceled check, etc.).
- Attach ownership verification (copy of deed, land contract, divorce judgment, final judgment in an estate, etc.) if tax bill shows owners other than claimant and spouse.
- Sign the Schedule H.

Farmland Preservation Credit (Schedule FC)

- Attach copies of all property tax bills, and correct year's tax bills.
- Attach ownership verification (copy of deed, land contract, divorce judgment, final judgment in an estate, etc.) if tax bill shows owners other than claimant and spouse.
- Attach correct and complete zoning certificate.
- Attach copy of **executed** farmland preservation agreement.

- Attach closing agreement for sale or purchase of land.
- Verify prior year's property tax payment when tax bill indicates delinquent taxes (statement signed by county treasurer).
- Attach extension agreement if farmland preservation agreement is expired.

Partnership (Form 3)

- Fill in federal employer identification number.
- Attach copies of federal Form 1065 and Wisconsin Schedule 3K-1.
- Do not file federal Form 1065 and Schedule K-1 without Wisconsin Form 3 and Schedule 3K-1. ☐

Avoid Errors on Income or Franchise Tax Returns

Are your tax returns and credit claims filed without errors? Many errors are discovered each year, either in processing or in subsequent audits by the department. The information below may be helpful in preparing Wisconsin tax returns or credit claims.

Errors Discovered in Processing Returns

Common errors discovered in processing 1995 individual income tax returns include the following:

Math Errors —

260,000 returns (10% of returns processed) were adjusted for math errors.

School Property Tax Credit —

34,000 returns were adjusted for errors in claiming this credit; 80% of

the errors included looking up the wrong amount of credit.

Itemized Deduction Credit —

32,000 returns were adjusted; two-thirds of the errors included looking up the incorrect amount of standard deduction.

Incomplete Returns —

Processing of many returns was delayed because of missing information, such as school district, school property tax credit, earned income credit, itemized deduction credit, or taxes paid to other states.

Estimated Tax Underpayment —

34,000 returns were adjusted for underpayment interest because taxes were underpaid.

Temporary Recycling Surcharge —

Most errors included checking the special worksheet box or listing net income or loss when not subject to the surcharge.

Tax Withholding —

Most errors included claiming social security or another state's withholding as Wisconsin tax withheld.

Audit Adjustments

Errors discovered in auditing Wisconsin tax returns and credit claims resulted in the collection of \$151.8 million in taxes, excess credits, penalties, and interest in the fiscal year ending June 30, 1996. This includes sales and use taxes of \$74 million; individual and fiduciary income taxes (including credits) of \$19.9 million; corporation taxes of \$25.2 million; withholding of \$27.3 million; and others (recycling surcharge, and estate/inheritance, gift, local exposition, alcohol, cigarette, tobacco, and fuel taxes) of \$5.4 million. The most common errors are described below.

INDIVIDUAL AND FIDUCIARY**Income Computed Incorrectly —**

- unemployment compensation or social security income (federal/Wisconsin differences calculated incorrectly)
- capital gains (60% exclusion not taken or taken when not allowed)
- capital losses (claimed amount in excess of \$500 limitation)
- tax-option (S) corporation income (wrong amount entered from Schedule K-1)

Income Omitted —

- IRA distributions
- total gross receipts
- municipal interest
- interest and dividends

Credits Computed Incorrectly —

- school property tax (incorrectly claimed on business portion)
- dependent (incorrectly claimed for self or spouse)
- earned income (claimed in error or computed incorrectly)
- taxes paid to other states (incorrectly claimed other state's withholding)
- itemized deduction (percentage of income not subtracted from medical or miscellaneous deductions, or taxes or casualty losses claimed)

Incorrect Deductions or Expenses —

- IRA deduction (omitted or claimed incorrectly)
- personal travel or entertainment (incorrectly claimed as business expenses)
- office-in-home (not qualified to claim)

Other Errors —

- IRA penalty omitted
- Wisconsin return not amended for IRS adjustments
- incorrect filing status used
- farm loss limitation not properly computed

- temporary recycling surcharge omitted or calculated incorrectly
- capital loss carryover not claimed in subsequent year
- refund entered on estimated tax offset line

HOMESTEAD CREDIT**Household Income Omitted —**

- AFDC
- IRA/deferred compensation deductions
- unemployment compensation
- depreciation or sec. 179 expense
- net operating loss or capital loss carryover
- tax-exempt interest
- one-time exclusion from sale of residence

Property Taxes —

- special assessments incorrectly claimed
- taxes not properly prorated for co-ownership or for occupancy only part of year
- taxes not reduced for months AFDC received

Rent —

- rent not reduced for joint occupancy
- percentage of rent constituting property taxes computed incorrectly
- rent not reduced for months AFDC received

Credit —

- amount looked up incorrectly in computation table

FARMLAND PRESERVATION CREDIT**Household Income Omitted —**

- gross pension
- depreciation
- deferred compensation
- capital gain exclusion

Property Taxes —

- special assessments incorrectly claimed
- taxes not properly prorated for co-ownership
- taxes incorrectly claimed for land not covered by zoning certificate or agreement
- incorrect computation

Credit Percentage —

- incorrect percentage claimed. ☐

How to Obtain Wisconsin Tax Forms

Tax preparers and others requiring more than 6 of any one Wisconsin tax form or more than 29 total Wisconsin forms must use a forms order blank, Form P-744. The original of the completed order blank must be sent to the department. You can obtain a Form P-744 by writing, calling, or faxing your request to the department at the address or phone number listed on page 11 under "To Receive Forms in the Mail."

You can obtain up to 6 of any one Wisconsin tax form or a total of 29 Wisconsin forms by visiting any Department of Revenue office or by contacting the department by mail, by phone, by fax (either faxing a request for forms to be mailed or receiving forms via your fax machine), or via the Internet. These limits are imposed in order to maintain a supply of forms for others.

Some libraries, banks, and post offices have forms during the filing season. Most libraries have a copy of Wisconsin Package WI-X, from which most Wisconsin tax forms can be photocopied.

To Pick Up Forms at a Department of Revenue Office

If you want to pick up forms at a department office, you may visit any

of the department's 35 offices (including two locations in Madison). The office locations and hours of service are listed in the article titled "Department Offers Taxpayer Assistance" on page 8 of this Bulletin (assistance is also available at these offices).

To Receive Forms in the Mail

You can request that forms be mailed to you (indicate which forms you want, the year, and how many) by:

- Writing to Wisconsin Department of Revenue, Forms Request Office, P.O. Box 8903, Madison, WI 53708-8903,
- Calling the department in Madison at (608) 266-1961, or
- Faxing your request to the department at (608) 261-6239.

To Receive Forms Via Your Fax Machine

You can receive forms via your fax machine by using the department's Fax-A-Form system. Individual income tax, homestead credit, farmland preservation credit, corporation franchise and income tax, estate tax, fiduciary income tax, and partnership forms and instructions for both 1995 and 1996 are available via Fax-A-Form. For sales/use, withholding, and alcohol beverage taxes, only 1996 forms and instructions are available. In addition, 1993 and 1994 amended individual income tax forms and instructions are available, as well as publications published by the department (see the article titled "Tax Publications Available" on page 11 of this Bulletin).

To use Fax-A-Form, call (608) 261-6229 from the handset of your fax machine or the touch-tone telephone of your fax modem (don't press "start" yet). If your fax machine

does not have a handset, use the keypad if tones are transmitted, or connect a touch-tone telephone if tones aren't transmitted. Follow the voice prompts and enter the retrieval codes for the items you want, using the keypad. Press "start," "send," or "copy" (fax modem users click on "manual receive").

Fax-A-Form is available 24 hours a day, 7 days a week. The department does not charge a fee for this service (though you will have to pay your normal telephone charges and fax machine operating costs). If you have questions, you may write to Mary Diaz, Fax-A-Form Coordinator, Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708-8933, or call (608) 267-2025.

To Receive Forms Via the Internet

Major forms and instructions are available on the Internet. If you have Internet access you can download and print the forms 24 hours a day, throughout the year.

The address to access the department's World Wide Web site to receive forms is
<http://www.dor.state.wi.us> ☐

Tax Publications Available

Over 50 publications are available, free of charge. To receive any of the publications by mail, write, call, or fax a request to Wisconsin Department of Revenue, Forms Request Office, P.O. Box 8903, Madison, WI 53708-8903 (telephone (608) 266-1961, fax (608) 261-6239).

Publications can also be received via your fax machine, using the department's Fax-A-Form system by calling (608) 261-6229 from a fax telephone. Some publications are

also available via the Internet (beginning by February 1997), by accessing the department's World Wide Web site at

<http://www.dor.state.wi.us>

Income and Franchise Taxes

- 102 Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders (11/96)
- 103 Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, Trusts (10/96)
- 104 Wisconsin Taxation of Military Personnel (8/96)
- 106 Wisconsin Tax Information for Retirees (8/96)
- 109 Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 1996 (10/96)
- 112 Wisconsin Estimated Tax and Estimated Surcharge for Individual, Estates, Trusts, Corporations, Partnerships (11/96)
- 113 Federal and Wisconsin Income Tax Reporting Under the Marital Property Act (10/96)
- 115 Wisconsin Federal/State Electronic Filing Handbook (9/96)
- 116 Income Tax Payments Are Due Throughout the Year (12/95)
- 119 Limited Liability Companies (LLCs) (11/96)
- 120 Net Operating Losses for Individuals, Estates, and Trusts (11/96)
- 121 Reciprocity (10/95)
- 122 Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 1996 (10/96)
- 123 Business Tax Credits for 1996 (11/96)
- 600 Wisconsin Taxation of Lottery Winnings (11/93)
- 601 Wisconsin Taxation of Pari-Mutuel Wager Winnings (3/94)

Sales and Use Taxes

- 200 Sales and Use Tax Information for Electrical Contractors (10/95)
- 201 Wisconsin State and County Sales and Use Tax Information (8/96)
- 202 Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs (6/96)
- 203 Sales and Use Tax Information for Manufacturers (12/94)
- 205 Do You Owe Wisconsin Use Tax? (Individuals) (9/95)
- 206 Sales Tax Exemption for Non-profit Organizations (9/90)
- 207 Sales and Use Tax Information for Contractors (2/96)
- 210 Sales and Use Tax Treatment of Landscaping (5/94)
- 211 Sales and Use Tax Information for Cemetery Monument Dealers (10/91)
- 212 Businesses: Don't Forget About Use Tax (7/94)
- 213 Travelers: Don't Forget About Use Tax (3/93)
- 214 Do You Owe Wisconsin Use Tax? (Businesses) (9/93)
- 216 Filing Claims for Refund of Sales or Use Tax (9/95)
- 217 Auctioneers — How Do Wisconsin Sales and Use Taxes Affect Your Operations? (3/96)
- 219 Hotels, Motels, and Other Lodging Providers — How Do Wisconsin Sales and Use Taxes Affect Your Operations? (6/96)
- 220 Grocers — How Do Wisconsin Sales and Use Taxes Affect Your Operations? (8/96)

Audits and Appeals

- 501 Field Audit of Wisconsin Tax Returns (2/96)
- 505 Taxpayers' Appeal Rights of Office Audit Adjustments (6/96)
- 506 Taxpayers' Appeal Rights of Field Audit Adjustments (2/96)

- 507 How to Appeal to the Tax Appeals Commission (4/96)

Other Topics

- 111 How to Get a Private Letter Ruling From the Wisconsin Department of Revenue (3/96)
- 114 Wisconsin Taxpayer Bill of Rights (3/96)
- 117 Guide to Wisconsin Information Returns (10/96)
- 118 Electronic Funds Transfer Guide (4/96)
- 130 Fax A Form (8/96)
- 400 Wisconsin's Temporary Recycling Surcharge (11/96)
- 410 Local Exposition Taxes (11/94)
- 500 Tax Guide for Wisconsin Political Organizations and Candidates (9/95)
- 502 Do You Have Wisconsin Tax Questions? (10/95)
- 503 Wisconsin Farmland Preservation Credit (12/96)
- 504 Directory for Wisconsin Department of Revenue (10/96)
- 508 Wisconsin Tax Requirements Relating to Nonresident Entertainers (8/94)
- 509 Filing Wage Statements and Information Returns on Magnetic Media (3/94)
- 700 Speakers Bureau presenting ... (2/93)
- W-166 Wisconsin Employer's Withholding Tax Guide (3/96) ☐

Wisconsin Tax Bulletin Annual Index Available

Once each year the *Wisconsin Tax Bulletin* includes an index of materials that have appeared in past Bulletins. The latest index available appears in *Wisconsin Tax Bulletin* 96 (April 1996), pages 31 to 58, and includes information for issues 1 (October 1976) to 95 (January 1996). ☐

Withholding Tax Update Sent to Employers

The annual Withholding Tax Update was sent in December 1996, along with Forms WT-7, *Employer's Annual Reconciliation of Wisconsin Income Tax Withheld from Wages*, to employers registered to withhold Wisconsin taxes.

A copy of the Withholding Tax Update appears on page 57 of this Bulletin. ☐

Form 1099-Gs and 1099-INTs Mailed to Taxpayers

The Department of Revenue is mailing approximately 660,000 Form 1099-Gs and 18,000 Form 1099-INTs during December 1996 and January 1997. Federal law requires that the department provide 1996 Form 1099-Gs to persons who received a Wisconsin income tax refund in 1996 and claimed state income tax payments as an itemized deduction on the federal tax return for the year to which the refund applies. Form 1099-INTs must be provided to persons who received \$600 or more of interest on refunds issued by the Department of Revenue.

Regardless of whether a taxpayer is sent a Form 1099-INT, the taxpayer must report all interest received from the department in 1996 as income on his or her 1996 federal and Wisconsin tax returns.

All or a portion of a state income tax refund from Form 1099-G may also be includable in federal taxable income. However, **the refund should not be included** in Wisconsin taxable income.

Form 1099-G explains how the refund reported to the Internal Revenue Service (IRS) was determined. The first line shows the amount of the

refund. Subsequent lines show adjustments for: amounts applied to next year's estimated taxes; endangered resources donations; late filing penalties and interest; homestead, farmland preservation, farmland tax relief, and earned income credits; retirement plan penalties; and other adjustments. The last line shows the refund reported to the IRS. □

Information Returns Sent to Federal Retirees

During January 1997, Form 1099-G and/or Form 1099-INT information returns are being mailed by the Wisconsin Department of Revenue to federal retirees who received in 1996, refunds of Wisconsin income tax they paid on their federal retirement income for tax years 1984 through 1988.

Form 1099-INT will be sent to all federal retirees who received interest from the department in 1996. The interest is includable in both federal and Wisconsin taxable income.

Form 1099-G will be sent to federal retirees who received a Wisconsin income tax refund in 1996, and claimed state income tax payments as an itemized deduction on their federal tax return for the year to which the refund applies. The tax year to which the refund applies is identified on the Form 1099-G.

Form 1099-G will not be sent to federal retirees who received a refund of income tax in 1996 but did not itemize deductions on their federal return.

Taxability of Refund

The state income tax refund shown on Form 1099-G should not be included in Wisconsin taxable income. However, all or a portion of the refund may be includable in 1996 federal taxable income. The

Internal Revenue Service (IRS) has developed worksheets for each of the tax years 1984 to 1988, which may be used to help determine whether a state income tax refund must be included in federal taxable income. These worksheets may be obtained from the IRS.

Information Return Differences

There are three reasons why the total amount received by a federal retiree may differ from the total amount shown on the Forms 1099-G and 1099-INT. These reasons are:

- (1) The federal retiree did not itemize deductions on the federal return for one or more tax years; therefore, a Form 1099-G was not sent to the retiree for that year(s).
- (2) The federal retiree is participating in the class action in *Department of Revenue v. Hogan, et al.* The department is required to put a portion of the refund into an escrow account for attorney fees.

The amount that was put into an escrow account is considered income constructively received by the retiree and is included in the information return amounts.

- (3) All or a portion of the refund was offset against delinquent taxes, delinquent child support, or debts owed to other state agencies, municipalities, or counties. □

6-Year Prison Sentence

Two Sentenced for Stealing \$1.8 Million of Fuel Taxes

Fuel distributor Paul C. Kramer, 55, of Racine, was sentenced in November 1996 to six years in prison for his part in a fuel tax scam that cheat-

ed the state out of \$1.8 million. Dane County Circuit Court Judge Robert A. DeChambeau also ordered Kramer to serve an additional ten years of probation and to make restitution to the state.

Also sentenced for his role in the scam was Patrick C. Gedig, 50, of Franklin. He was sentenced to ten years probation, including one year in the county jail, after he pled guilty to the charges in 1994 and testified against Kramer during Kramer's trial. Gedig was also ordered to make restitution to the state.

Kramer had operated Ohio Fuel & Supply Co., Inc. (Ohio). During 1990 Gedig, who operated United Petroleum Corporation, owed Ohio \$700,000 for past fuel purchases. Kramer devised a scheme, to which Gedig agreed, to issue phony invoices to three other Kramer companies to collect over \$935,000 of fuel taxes, which was paid over to Kramer and not remitted to the state. In addition, Kramer later failed to remit \$868,000 of other fuel taxes to the state.

The prosecution also pointed out that Kramer was audited in 1987, 1990, and 1993 and was found to have evaded or failed to remit \$344,000 of fuel taxes. He also failed to remit \$255,000 of fuel taxes between December 1993 and April 1994. In addition, a 1989 audit resulted in an assessment of \$40,000 for sales taxes, and it was discovered that Kramer had not filed income tax returns for 1985, 1986, or 1987.

Penny Griffith, 47, of Berlin (Green Lake County) was found guilty in October 1996, of two counts of felony income tax evasion. As part of a plea bargain agreement, Griffith pled guilty and Circuit Court Judge William McMonigal ordered her to serve six years of probation, provide

100 hours of community service, make restitution to the State of over \$2,900, and repay \$12,300 to an elderly victim related to an additional count of theft.

Gordon Schumacher, 65, Sevastopol Town Chairman (Door County), was charged in October 1996 with 28 criminal violations. The charges include 25 counts of ethics law violations, one felony count of misconduct in public office, and two felony counts of tax evasion.

Schumacher allegedly pocketed over \$100,000 during the past six years in his position, which paid an official salary of only \$1,200 per year. The tax evasion charges allege that Schumacher failed to report all of the income he garnered as town chairman. He allegedly failed to report \$11,100 of income for 1993 and \$10,700 for 1994.

Each of the three felony violations is a crime punishable by imprisonment up to five years and fines up to \$10,000 upon conviction.

Four men have been charged with filing false Application for Title/Registration returns with intent to evade sales taxes. Each of the evasion charges carries penalties of up to 30 days in jail and up to \$500 in fines upon conviction. In addition civil penalties may apply, including assessment and collection of the taxes, penalties, and interest due.

Dr. Stuart Hoffman, of Mequon, was charged in October 1996 with filing a false return in August 1995, listing the purchase price of a 1991 Porsche as \$14,500 rather than its actual purchase price, \$45,300. He paid sales tax of \$725; the correct tax is \$2,265.

Gary L. Zurbuchen, of Dousman (Waukesha County) was charged in

October 1996 with filing a false return. He listed the purchase price of a 1993 Ford truck as \$1,000 and sales tax as \$50. He actually paid \$17,000 for the truck and should have paid sales tax of \$850.

Mark E. Breneman, 25, of Madison, was charged in October 1996 with filing a false return in 1993 listing the purchase price of a 1986 Mustang as \$500 rather than the actual price of \$5,250. He was also charged with filing another false return in 1995, listing the purchase price of a 1993 GMC truck as \$6,146 rather than \$17,000. He underpaid sale tax of \$858.22 on the two transactions.

Steven R. Hansen, Stoughton, was charged in November 1996 with filing a false Application for Title/Registration listing the purchase price of a 1992 Blazer as \$5,000 rather than the actual price of \$16,000. The sales tax he evaded is \$605. □

IRS Changes Tax Practitioner Program

Note: This article was submitted by the Midwest District of the Internal Revenue Service.

For the 1997 tax filing season (1996 tax returns), tax practitioners will receive only one free Package X. One copy of Package X will be mailed to each practitioner who is on the IRS mailing list under the Tax Practitioner Program. No other publications will be mailed free and automatically to practitioners. This change in the IRS Tax Practitioner Program is part of IRS's ongoing effort to make taxpayer information more widely available while reducing redundancy and controlling costs.

Practitioners will be able to purchase multiple copies of the following products through the Government

Printing Office (GPO) Superintendent of Documents (SOD).

- Publication 1132, *Reproducible Federal Tax Forms and Instructions* (Note: Publication 1579, *Tax Practitioner Reproducible Kit*, is obsolete and no longer available. Publication 1132 is in lieu of Publication 1579.)
- Publication 1194, *Tax Information Publications* (Note: Publication 1793, *Tax Practitioner Reference Set*, is obsolete and no longer available. Publication 1194 is in lieu of Publication 1793.)
- Publication 1194B, *Business Tax Information Publications*: Includes IRS publications most frequently requested by businesses. These publications are not included in Publication 1194.
- Publication 17, *Your Federal Income Tax*
- Publication 334, *Tax Guide for Small Business*

The following methods are available for ordering forms through the Superintendent of Documents:

- By mail: Use the SOD Form 7706 contained in Publication 1045. Although Form 7706 lists these forms/publications for sale in packets of 10, many of them are sold by single copy.
- By telephone: 202-512-1800
- By FAX: 202-512-2250
- Through GPO's Federal Bulletin Board (CD-ROM orders only and form downloads only) at 202-512-1387. After sign on, type:
/go irs
- Through GPO's World Wide Web Home Page:
http://www.access.gpo.gov/su_docs

In addition, **general** forms and publications are available through IRS by any of the following methods:

- Downloading electronic files from the Internal Revenue Information Service (IRIS) on the FedWorld Bulletin Board and printing or reproducing the forms needed. (Note: This does not include practitioner publications like 1132 and 1194. Those must be ordered through SOD.)
- To access IRIS directly via modem, call 703-321-8020.
- On the Internet, telnet to:
iris.irs.ustreas.gov
or, for file transfer protocol services, connect to:
ftp.irs.ustreas.gov
- Using the World Wide Web, connect to the IRS Home Page:
<http://www.irs.ustreas.gov>
- Technical questions can be directed to the FedWorld help desk at 703-487-4608.
- Ordering the IRS Tax Forms CD-Rom: Contains over 600 current year IRS Tax Forms, Instructions, and Taxpayer Information Publications (TIPs). Available through SOD, stock #648-096-00004-6. Also available at Government Book Stores.
- Fax Forms: Limited copies of **general** tax forms are available through IRS Fax Forms Service. Callers must phone directly from the handset of a fax machine. For a menu of items, call from a fax machine: 703-487-4160.
- Limited copies (usually **one** per practitioner) of **general** tax forms/publications are also available by calling the IRS at 1-800-TAX-FORM or by visiting an IRS office during taxpayer service hours. ☐

Ordering Federal Information Reporting Forms

Note: This article was submitted by the Midwest District of the Internal Revenue Service.

IRS has announced changes to the procedure for ordering blank copies of information reporting forms (like W-2s, 1099s, etc.). These are the forms used by businesses to report various types of income.

Form 7018, *Employer's Order Blank for 1996 Forms*, the form used by employers to order blank information reporting forms, can be found in the 1996 revision of Circular E, *Employer's Tax Guide*, on the inside back cover.

Tax practitioners who need to order blank copies of information reporting forms should use Form 7018 in Circular E. (Previously, practitioners used an order blank in Publication 1045. That order blank is no longer included in Publication 1045.) ☐

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, 1997, or at the stage in which action occurred during the period from October 2, 1996 to January 1, 1997.

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).

Proposed Rules Being Drafted

- 11.002 Permits, application, department determination-A

- 11.01 Sales and use tax return forms-A
- 11.35 Occasional sales by non-profit organizations on or after January 1, 1989-A
- 11.39 Manufacturing-A
- 11.41 Exemption of property consumed or destroyed in manufacturing-A
- 11.66 Telecommunications and CATV services-A
- 11.97 "Engaged in business" in Wisconsin-A

Rules Sent for Legislative Committee Review

- 11.83 Motor vehicles-A

Rules Adopted But Not Yet Effective

- 11.83 Motor vehicles-A (anticipated effective date 3/1/97)

Rules Adopted (in effect January 1, 1997, unless otherwise indicated)

- 2.47 Apportionment of net business income of interstate motor carriers of property-R&R
- 11.28 Gifts, advertising specialties, coupons, premiums and trading stamps-A
- 11.46 Summer camps-A
- 11.51 Grocers' guidelist-A
- 11.69 Financial institutions-A (effective 11/1/96)
- 11.87 Meals, food, food products and beverages-A
- 11.95 Retailer's discount-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 which have recently been revised. Included is information regarding sec. Tax 11.69 revised effective November 1, 1996, and secs. Tax 2.47, 11.28, 11.46, 11.51, 11.87, and 11.95, revised effective January 1, 1997.

In addition to the summaries of the changes, the text of some of the revised rules is reproduced, excluding notes and examples. In the amendments, material lined through (~~lined through~~) represents deleted text, and underscored (underscored) material represents new text.

To order up-to-date administrative rules of the Department of Revenue, you can use the order blank on page 59 of this Bulletin to obtain the Revenue section of the Wisconsin Administrative Code.

Tax 2.47 is repealed and recreated to prescribe the method of apportioning the net business income of interstate motor carriers, as required by secs. 71.04(8)(c) and 71.25(10)(c), Wis. Stats. The rule extends the application of the 2-factor apportionment formula for motor carriers of property to interstate bus companies, since the definition of "public utility" in secs. 71.04(8)(b) and 71.25(10)(b) includes any business entity providing service to the public and engaged in the transportation of persons for hire. For computing ton miles with respect to the carriage of persons, the rule provides that each person is equivalent to 200 pounds, consistent with sec. Tax 2.46, which assumes an average weight of 150 pounds per person and 50 pounds for luggage. The repeal and recreation of the rule first applies to taxable years beginning on or after January 1, 1997. The text of Tax 2.47 is as follows:

2.47 APPORTIONMENT OF NET BUSINESS INCOMES OF INTERSTATE MOTOR CARRIERS (1) DEFINITION. In this section, "ton mile" means the movement of one ton of persons or property, or both, the distance of one mile. For carriage of persons, each person shall be considered the equivalent of 200 pounds.

(2) GENERAL. For taxable years beginning on or after January 1, 1997, the apportionable income of an interstate motor carrier of persons or property, or both, doing business in Wisconsin, shall be apportioned to Wisconsin on the basis of the arithmetical average of the following 2 factors:

(a) The ratio of the gross receipts from carriage of persons or property, or both, first acquired for carriage in Wisconsin to the total gross receipts from carriage of persons or property, or both, everywhere.

(b) The ratio of ton miles of carriage in Wisconsin to ton miles of carriage everywhere.

(3) SUBSTITUTION OF FACTORS. Whenever gross receipts data is not available the department may authorize or direct substitution of a similar factor, such as gross tonnage, and whenever ton mile data is not available the department may similarly authorize substitution of a similar factor, such as revenue miles.

(4) MERCANTILE AND MANUFACTURING BUSINESSES. This section does not apply to any mercantile or manufacturing business which engages in some interstate carriage as an incident of the mercantile or manufacturing business.

Tax 11.28, relating to gifts and other advertising specialties given away, is revised as follows:

Tax 11.28(title) is amended to "Gifts and other advertising specialties" to more accurately reflect the content of the rule.

Tax 11.28(1)(a), (3)(b), and (5) are amended to conform language and punctuation to Legislative Council Rules Clearinghouse (Clearinghouse) standards.

Tax 11.28(2)(title) is amended to "Gifts and sales incentive plans" to more accurately reflect the content of that subsection.

Tax 11.28(2)(intro.) to (e) are renumbered Tax 11.28(2)(a) to (f), and pars. (b) and (e) as renumbered are amended, to conform to Clearinghouse standards. In addition, titles are created for renumbered Tax 11.28(2)(a) ("General") and (2)(e) ("Awards"). Tax 11.28(2)(b) as renumbered is also amended to reflect the department's current position relating to determining whether a retailer has accepted an exemption certificate in good faith, and to reflect sec. 77.56(3), Wis. Stats., which provides an exemption from use tax for property purchased without tax for resale which is donated to an entity exempt from sales or use tax under sec. 77.54(9a), Wis. Stats. The text for Tax 11.28(2)(b) is as follows:

11.28(2)(b) *Grand opening gifts.* A person who sells tangible personal property to a retailer who uses the property as gifts at a "grand opening" or similar event, such as an open house, celebrity appearance or "farm days," cannot accept a resale certificate in good faith if the seller is aware, or should be aware ~~with the exercise of reasonable diligence~~, of how the property will be used. ~~The seller shall be deemed to be aware of how the property is to be used if the retailer does not normally purchase this type of item or if the retailer does not normally purchase from the seller in this volume.~~ In cases where a seller furnishes free property to a retailer for use as gifts at a "grand opening" or similar event, the ~~person~~ seller furnishing the property to the retailer without charge is subject to the sales or use tax pursuant to s. Tax 11.14(2)(c) on its cost of the property donated, unless the property is exempt from use tax under s. 77.56(3), Stats., because it is donated to an entity exempt from sales or use tax under s. 77.54(9a), Stats.

Tax 11.28(3)(c) is repealed and recreated to reflect the department's current position that a resale exemption applies to property given away with a required purchase of another item, whether the purchased item is taxable or exempt. The text of Tax 11.28(3)(c) is as follows:

11.28(3)(c) *Coupons issued and redeemable by retailers.* 1. When a retailer distributes coupons which its customer may use to obtain free tangible personal property, the following shall apply:

a. When purchasing tangible personal property which will be given away to customers who must purchase other property to obtain the free property, a retailer may use a resale certificate to purchase the free property without payment of the sales tax, since the transaction is deemed a sale of both the free property and the other property. The sale of the free property and other property by the retailer is subject to Wisconsin sales or use tax, unless an exemption applies.

b. A retailer may not use a resale certificate when purchasing taxable property which the retailer knows, or should know, is to be given away to customers without the customers being required to purchase other property to receive the free property. If the property that is given away was acquired without tax for resale, the retailer shall report the use tax based on the cost of the property.

2. The taxable gross receipts of retailers, who issue cents-off coupons which reduce the price of merchandise they sell, and who receive no reimbursement from a manufacturer, are the reduced amounts charged the customer.

Tax 11.28(4)(c) is amended to clarify the department's position that food products given away are not subject to tax if an exemption applies under sec. 77.54(20), Wis. Stats. The text of Tax 11.28(4)(c) is as follows:

11.28(4)(c) ~~Except for meals, retailers~~ Retailers are subject to the sales and use tax on their cost of taxable property transferred when coupons are redeemed without consideration from a

sales agency, the consumer or any other person unless an exemption applies. ~~No use tax arises when a meal prepared from exempt food is given away, and the retailer shall not pass on any tax to the consumer of a free meal.~~

Tax 11.46(3)(c) is repealed and recreated to clarify that groceries sold at camps are subject to tax unless the exemption under sec. 77.54(20), Wis. Stats., applies. The text of Tax 11.46(3)(c) is as follows:

11.46(3)(c) Food, food products and beverages as defined in s. 77.54(20)(a) and (b), Stats., excluding those food, food products and beverages listed in s. 77.54(20)(c), Stats., sold at a camp for consumption off the premises of the camp. "Off the premises of the camp" means a location outside the boundaries of the camp.

Tax 11.46(5)(intro.) is amended to conform grammar, punctuation, and style to Clearinghouse standards.

Tax 11.51(1) is amended to conform punctuation and style to Clearinghouse standards, and to properly reflect sec. 77.54(20), Wis. Stats., which provides that food, food products, and beverages are subject to tax if sold for direct consumption on the premises. The requirement that these items must be used in the "home preparation of meals" to be exempt is not supported by statute. The text of Tax 11.51(1) is as follows:

11.51(1) GENERAL. All sales of tangible personal property are taxable except when a specific exemption applies. One of the exemptions is for "food, food products and beverages", which generally exempts all basic food items for human consumption ~~necessary for the home preparation of meals off the premises of the grocer.~~ This exemption, however, does not include many items normally available in grocery and food stores, such as soda water beverages, including bases or concentrates to produce soft drinks and fruit drinks, beer, intoxicating liquors, candy, paper products and detergents. The following lists in sub. (2)(a) and

(b) shall serve as a guide to grocers to determine the kinds of items that are taxable and exempt.

Tax 11.51(2)(a) and (b) are amended to conform style to Clearinghouse standards, and to reflect a Wisconsin Tax Appeals Commission decision (*Artesian Water Company*, April 8, 1994), which held that bottled water was exempt. In par. (a), "Water, bottled, sparkling, spring and distilled." is amended to "Water, carbonated and flavored." In addition "Can openers." and "Wax paper." are placed in proper alphabetical order. In par. (b), "Water, uncarbonated and unflavored." is added, "Peanut butter." is properly alphabetized, and in "Granola bars," "Peanuts," and "Raisins," the phrase "see par. (a)." is replaced with "except candy or yogurt coated."

Tax 11.69, relating to financial institutions, is revised as follows:

Tax 11.69(1), (2), (3), and (4) are renumbered Tax 11.69(2), (3), (4), and (1), to conform format to Clearinghouse standards. Subsection (1) as renumbered is amended to conform language to Clearinghouse standards and to add "savings bank" to the definition of financial institution. Subsection (2) as renumbered is amended to conform language to Clearinghouse standards. In sub. (3) as renumbered, pars. (a) to (h) are renumbered pars. (b), (d), (c), (e), (h), (f), (a), and (g) to conform format to Clearinghouse standards, and par. (g) as renumbered is amended to reflect the department's position that a financial institution is not considered the retailer of checks in situations where the check printer is the retailer.

In sub. (4) as renumbered, par. (c) is renumbered par. (d) and new par. (c) is created, to address purchases for resale, previously addressed in par. (b). Paragraphs (a), (b), and (d)

are amended to conform language and punctuation to Clearinghouse standards, and par. (b) is further amended to reflect the department's position that a financial institution may not purchase for resale items it will give to customers without charge. The text of Tax 11.69(3)(g) and (4)(b) and (c) is as follows:

11.69(3)(g) Personalized imprinted checks, except where the ~~financial institution has paid the tax on its purchases of such checks from a retailer and the financial institution resells the checks to customers at the same price or a price lower than its purchase price~~ check printer is the retailer of the checks to customers. A check printer is the retailer of checks where it sets the price for the checks, provides the order forms for the checks and invoices or bills the customer for the checks, even though the financial institution collects the order from the customer, charges the customer's account on behalf of the check printer and remits the amount due from the account to the check printer.

11.69(4)(b) Any tangible personal property purchased by a financial institution to be given away ~~or sold at cost or less than cost~~ to a customer, whether or not based upon the amount of a deposit, is taxable at the time it is purchased. This property includes calendars, playing cards, plat books, maps and any other items transferred to customers to promote business. Checking account and savings account forms provided to customers free of charge are also subject to the tax. ~~When such items are sold by a financial institution at a price in excess of cost, the financial institution is a retailer and shall report the sales tax on such sales. The financial institution may purchase such property without tax by giving its supplier a properly completed resale certificate when acting as a retailer.~~

(c) Purchases of tangible personal property that the financial institution will resell, rather than give away, may be purchased without tax by giving its supplier a properly completed resale certificate.

Tax 11.69(5)(a) is amended to clarify that sales for resale are not taxable, and to include savings banks in

the listing of financial institutions. The text of Tax 11.69(5)(a) is as follows:

11.69(5)(a) Sales to state chartered credit unions, and to federal and state chartered banks ~~and~~ savings and loan associations and savings banks are taxable, unless resold by the credit union, bank, savings and loan association or savings bank.

Tax 11.87(1)(a) to (g) are renumbered Tax 11.87(1)(b) to (h) and new par. (a) is created, to reflect the amendment to sec. 77.54(20)(c)4, Wis. Stats., by 1993 Wisconsin Act 332, which exempted meals sold on premises by community-based residential facilities. In addition par. (b) as renumbered is amended to clarify that whether food is exempt from tax is determined under sec. 77.54(20), Wis. Stats. The text of Tax 11.87(1)(a) and (b) is as follows:

11.87(1)(a) "Community-based residential facility" has the meaning in s. 50.01(1g), Stats.

(b) "Exempt food" means food, food products and beverages not subject to the sales and use tax as provided in s. 77.54(20), Stats.

Tax 11.87(3)(a) is amended to reflect the exemption for meals sold on premises by community-based residential facilities.

Tax 11.87(3)(d) is amended to properly reflect sec. 77.54(20), Wis. Stats., as explained in the summary for Tax 11.51(1). The text of Tax 11.87(3)(d) is as follows:

11.87(3)(d) Groceries. Sales of the basic food items food, food products and beverages for human consumption purchased for the home preparation of meals exempt from tax under s. 77.54(20), Stats. This includes sales of prepackaged ice cream, ice milk or sherbet in pint or larger sizes, whether prepackaged by the vendor or a supplier. Sales of smaller sized containers of these products are taxable. Sales of ice cream, ice milk, sherbet or yogurt as cones, sundaes, sodas, shakes and

frozen chocolate bars made from these products are taxable.

Tax 11.87(3)(e) is amended to change "supplemental social security" to "supplemental security income" to reflect correct terminology.

Tax 11.95, relating to the retailer's discount, is repealed and recreated to improve format per Clearinghouse standards, to reflect the creation of the stadium sales and use tax by 1995 Wisconsin Act 56, and to reflect the amendment to sec. 77.61(4)(c), Wis. Stats., by 1995 Wisconsin Act 280, which provides for a minimum amount of retailer's discount. The text of Tax 11.95 is as follows:

11.95 RETAILER'S DISCOUNT

(1) COMPUTATION. (a) Effective for Wisconsin sales and use tax returns filed for periods ending on or after January 1, 1997, for timely reporting state, county and stadium sales or use tax collected on their retail sales, except as provided in par. (b), retailers may deduct 0.5% of the sales and use tax payable on retail sales.

(b) If, for each reporting period required under s. 77.58(1), Stats., multiplying the sales and use tax payable on retail sales by 0.5% results in \$10 or less, the retailer's discount is the lesser of \$10 or the amount of the sales and use tax payable on retail sales.

(2) RETAILER'S DISCOUNT ALLOWED. The retailer's discount is allowed if the taxes are paid on or before the due date of the return, or on or before the expiration of any extension period if one has been granted.

(3) RETAILER'S DISCOUNT NOT ALLOWED. The retailer's discount is not allowed if any one of the following applies:

(a) The payment of sales and use tax is delinquent.

(b) The sales and use tax payable is as a result of a deficiency determination or filing an amended return after the due date of the return, or after the expiration of any extension period if one has been granted.

(c) The use tax payable is imposed pursuant to s. 77.53(2), Stats. □



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

Alimony

Terance and Patricia Boerner, and Donald F. and Cynthia M. Legler, Jr. (p. 19)

Domicile

Troy D. and Amy L. Holmen (p. 20)

Retirement benefits — U.S. interest

Leonard H. and Ardis Erickson (p. 20)

Retirement funds exempt

Donald and Janet Groschel (p. 21)

Tax Appeals Commission — class action claims

Petition for judicial review — timeliness

J. Gerard and Delores M. Hogan, et al. (p. 22)

Corporation Franchise and Income Taxes

Apportionment — air carriers — interstate

United Parcel Service Co. (p. 22)

Nexus — business loss carryforward

Extrusion Dies, Inc. (p. 23)

Sales and Use Taxes

Computer software — tangible vs. intangible

Manpower International, Inc. (p. 24)

Manufacturing — testing the manufactured product

Cherney Microbiological Services, Ltd. (p. 24)

On their 1990, 1991, and 1992 Wisconsin income tax returns, Terance and Patricia Boerner reported no alimony received. However, prior to 1990, Patricia Boerner reported alimony received on her Wisconsin income tax returns.

In May 1994, Donald F. and Cynthia M. Legler, Jr., filed amended 1990, 1991, and 1992 Wisconsin income tax returns with the department, deducting amounts as alimony paid in each of those years.

In May 1995, the department sent assessment notices to Terance and Patricia Boerner, and to Donald F. and Cynthia M. Legler, Jr. The assessments are assessments in the alternative, covering the years 1990, 1991, and 1992 (the “period under review”).

Noting that the tax treatment of family support payments for Wisconsin and federal income tax purposes is determined under secs. 71 and 215 of the Internal Revenue Code, (IRC), the Commission concluded that the “family support” payments made by Mr. Legler to Ms. Boerner during the period under review qualify as alimony under the pre-1985 language of IRC sec. 71, because they meet all of the requirements of sec. 71(a)(1), and the payments do not qualify as “payments to support minor children” under sec. 71(b), because the divorce decree does not “fix” an amount or percentage to be for such support. The definition of alimony under IRC sec. 71 is determined solely by reference to the language of the

INDIVIDUAL INCOME TAXES

Alimony. *Terance and Patricia Boerner, and Donald F. and Cynthia M. Legler, Jr. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 9, 1996). The issue in this case is whether payments made by Donald F. Legler to Patricia Boerner for the years 1990 through 1992 were alimony and therefore deductible by Mr. Legler and reportable as income by Ms. Boerner under Internal Revenue Code sections 71 and 215, or whether those payments were child support and therefore

neither deductible by Mr. Legler nor reportable as income by Ms. Boerner.

On or about February 22, 1984, taxpayers Patricia Boerner and Donald F. Legler, Jr., were granted a judgment of divorce. The divorce decree provided that family support shall be paid starting September 1, 1983, until further order of the Court. Maintenance was not waived by either party. In 1994, the divorce decree was modified to terminate “Family Support” and to establish “Child Support” for the remaining minor child.

divorce decree entered on February 22, 1984, and because that decree makes no mention of child support and the payments otherwise qualify as alimony under IRC sec. 71, they are income to Ms. Boerner and deductible by Mr. Legler.

The assessment against taxpayers Terance and Patricia Boerner is affirmed, and the assessment against taxpayers Donald F. and Cynthia M. Legler, Jr. is reversed.

Taxpayers Terance and Patricia Boerner have appealed this decision to the Circuit Court. The department and taxpayers Donald F. and Cynthia M. Legler, Jr. are joined as necessary parties to the appeal. □

— Domicile. *Troy D. and Amy L. Holmen vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 1, 1996). The issue in this case is whether taxpayer Amy L. Holmen was a resident of Wisconsin during all of 1993 and is thus liable for Wisconsin income taxes on income she earned in 1993.

Taxpayer Troy D. Holmen enlisted in the United States Air Force in April 1989. He was stationed in California when the taxpayers were married, in October 1991.

Troy Holmen was transferred to an Air Force base in Florida, and the taxpayers moved to Florida in June 1992. They were placed on a waiting list for base housing, and they moved to base housing in 1993.

The Air Force base in Florida was used for special operations, and the Air Force desired to have special operations personnel stationed there on a long-term basis. As a result, the taxpayers expected to reside on or near the Florida base for several years.

Taxpayer Amy L. Holmen obtained a job in Florida in July 1992. She voted in Wisconsin via absentee ballot in November 1992 but did not vote in any Florida election, because she felt she was not well enough informed about local and state races in Florida.

Amy Holmen did not obtain a Florida operators license because she did not need a local license for cashing checks at the base exchange, and she wanted to save the expense. She intended to obtain a Florida operators license when her Wisconsin operators license expired in December 1995. In 1993, she purchased, registered, and insured a truck in Florida. Prior to 1993, she had closed all of her bank accounts in Wisconsin and opened one or more accounts in Florida, and all her personal possessions were moved to Florida.

In 1992, Troy Holmen decided to make the Air Force his career. As a result, the taxpayers did not expect to return to Wisconsin as residents, because Wisconsin has no Air Force bases at which he could be stationed. During the time the taxpayers resided in Florida, however, Troy Holmen maintained his Wisconsin residency.

Shortly before his tour of service in the Air Force was scheduled to expire in September 1994, Troy Holmen decided not to re-enlist and informed Amy Holmen of his decision. She wanted him to remain in the Air Force, and she wanted to remain in Florida. This disagreement was one of the events that eventually led to divorce proceedings.

Troy Holmen obtained his discharge in September 1994, and Amy Holmen returned to Wisconsin with him in an effort to save their marriage.

On their amended 1993 Wisconsin income tax return, Amy Holmen was designated as a resident of Florida. Prior to 1993, Amy Holmen intended to make Florida her permanent domicile and took steps to establish Florida as her permanent domicile.

The Commission concluded that taxpayer Amy L. Holmen abandoned her domicile in Wisconsin and established a new domicile in Florida prior to January 1, 1993, and she continued to be domiciled in Florida throughout 1993. Therefore, she is not liable for Wisconsin income taxes on income earned during 1993.

When Amy Holmen moved to Florida she intended to make Florida her home for the indefinite future, and she took the ordinary steps one would take when moving to a new permanent residence. She clearly did not intend to return to Wisconsin, because it had no Air Force base at which Troy Holmen could be stationed.

The department has not appealed this small claims decision.

CAUTION: This is a small claims decision of the Wisconsin Tax Appeals Commission and may not be used as a precedent. This decision is provided for informational purposes only. □

— Retirement benefits — U.S. interest. *Leonard H. and Ardis Erickson vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 15, 1996). The issue in this case is whether Wisconsin is prohibited by 31 U.S.C. sec. 3124 (a) from taxing that portion of the taxpayers' annuity dividends that reflects interest earnings on obligations of the United States government.

The taxpayers are former public employees and currently are annuitants in the Wisconsin Retirement System ("WRS"). Each of their initial annuities were based on a formula that takes into account years of service, highest three years of earnings, and age at retirement. In addition to these initial annuities, each taxpayer has received dividends based upon a calculation that is influenced by the surpluses experienced by certain reserves within the Public Employee Trust Fund ("PETF").

For the years 1988 through 1991, the taxpayers filed joint income tax returns, including in their income all of their respective annuities and dividends received from the WRS. They later filed a claim for refund for those years, on the basis that a portion of the income earned by the PETF was derived from obligations of the U.S. government and was thus exempt from taxation by the state. They did not claim a refund associated with their **initial** WRS annuities, but rather just on that portion of the **dividends** they believed was derived from interest on U.S. government obligations. The department denied their claim for refund, asserting that tax exempt interest does not retain its character when it passes through a qualified retirement plan, such as the WRS.

During the period for which the taxpayers claimed a refund, an undetermined portion of the investment return credited to the PETF was based on interest on obligations of the U.S. government. Wisconsin taxed the taxpayers' annuities (including dividends) by imposing the income tax on the total annuity received, reduced by any unrecovered cost basis. Their Wisconsin income tax liability was not measured by, computed by, or affected in any way by the income the PETF receives on U.S. government obligations.

The Commission concluded that Wisconsin's taxation of the taxpayers' WRS annuity dividends did not violate 31 U.S.C. sec. 3124(a), because the amount of interest on U.S. government obligations was not considered, either directly or indirectly, in the calculation of the tax.

The taxpayers' reliance on *Capital Preservation Fund, Inc. v. Department of Revenue*, 145 Wis. 2d 841 (Ct. App. 1988), in which the Court of Appeals held that income derived by a money market fund from U.S. government obligations and distributed to the fund's shareholders could not be subjected to tax by the State, is misplaced in two respects. First, unlike the fund in *Capital Preservation*, the PETF is not a conduit or pass-through entity. Moreover, since the Employee Trust Funds Board is not obligated to distribute surpluses equally to all classes of annuitants, the amount of the taxpayers' dividends is not necessarily proportional to the amount of interest credited to the PETF deriving from U.S. government obligations. Secondly, the taxpayers do not have an ownership interest in the U.S. government securities at issue. In *Capital Preservation*, the Court of Appeals held that 31 U.S.C. sec. 3124(a) protects only the taxpayer who has the right to dispose of the government securities and who bears the risk of profit or loss.

The taxpayers have not appealed this decision. □

— Retirement funds exempt.

Donald and Janet Groschel vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, July 19, 1996). The issue in this case is whether or not annuity payments received by taxpayer Donald Groschel (the taxpayer) were "paid on the account of [a] person

who was a member of [the Milwaukee teachers' annuity and retirement fund] as of December 31, 1963," and are thus exempt from Wisconsin income taxation under sec. 71.05(1)(a), Wis. Stats.

The taxpayer was a teacher in the City of Milwaukee Public School system from September 1958 until June 1967, and he became a member of the Milwaukee teachers' annuity and retirement fund ("MRF") beginning about September 1958. He left the Milwaukee Public School system in June 1967 to take a teaching position in another school district, and he became a member of the State Teachers Retirement System ("STRS") on or about July 1, 1967. The MRF and STRS were merged into the Wisconsin Retirement System ("WRS") in 1982.

In September 1968, the taxpayer withdrew from the MRF all of his contributions to the MRF, leaving on account for him no contributions from either him or the state. On May 24, 1990, the taxpayer purchased from the WRS nine years of previously forfeited Milwaukee teaching service.

The taxpayer retired on June 9, 1990, and began receiving a retirement annuity based on his age, three highest years of income as a teacher, service under the STRS, and his years of creditable service purchased in May 1990. In August 1994, taxpayers Donald and Janet Groschel filed with the department joint amended income tax returns for 1990 through 1993, claiming refunds of income taxes for taxes previously paid on Mr. Groschel's retirement annuity from he WRS.

The Commission concluded that even though the taxpayer was a member of the MRF on December 31, 1963, that alone is not sufficient to qualify for the exemption under

sec. 71.05(1)(a), Wis. Stats., because the statute exempts payments “*paid on the account* of any person who was a member of [the MRF] as of December 31, 1963.” [Emphasis supplied.] When the taxpayer withdrew his contributions from the MRF, there was nothing in his MRF account, either in the form of his contributions or state contributions. Therefore, his WRS annuity payments are not exempt from the income tax, because they are not paid on his MRF account that existed as of December 31, 1963. The taxpayer’s repurchase of previously forfeited MRF years of creditable service does not reinstate credit in his retirement deposit fund.

The taxpayers have appealed this decision to the Circuit Court. □

— Tax Appeals Commission — class action claims; Petition for judicial review — timeliness. *Wisconsin Department of Revenue vs. J. Gerard and Delores M. Hogan, et al.* (Court of Appeals, District IV, December 21, 1995). See *Wisconsin Tax Bulletin* 96 (April 1996), page 15, for a summary of the Court of Appeals decision.

The taxpayers appealed the Court of Appeals decision to the Wisconsin Supreme Court, which denied their petition for review. In *Wisconsin Tax Bulletin* 98 (July 1996), page 18, it was reported that the taxpayers filed a petition for writ of certiorari with the United States Supreme Court.

In October 1996, the United States Supreme Court denied the taxpayers’ petition for writ of certiorari. The case will not be heard by the United States Supreme Court. □

CORPORATION FRANCHISE AND INCOME TAXES

— Apportionment — air carriers — interstate. *United Parcel Service Co. vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, July 31, 1996). United Parcel Service Company (UPSCO) appeals from a Circuit Court order affirming a decision of the Wisconsin Tax Appeals Commission. The Commission upheld UPSCO’s franchise tax assessments for 1985 and 1986 imposed by the Wisconsin Department of Revenue using the apportionment formula under Wisconsin Administrative Code section Tax 2.46. For summaries of the prior decisions, see *Wisconsin Tax Bulletins* 90 (January 1995, page 20) and 95 (January 1996, page 25).

UPSCO contends:

- (1) the apportionment formula, as applied by the department, violated the Due Process and Commerce Clauses of the United States Constitution because one of the factors used in the apportionment formula (the arrivals and departures factor) is unrelated to UPSCO’s Wisconsin income, and the use of that factor attributed income to Wisconsin out of all proportion to the business transacted in Wisconsin;
- (2) the department erroneously refused to modify the arrivals and departures factor under sec. 71.07(3) and (5), Wis. Stats. (1985-86); and
- (3) Wisconsin Administrative Code section Tax 2.46 should be interpreted to require the arrivals and departures factor to be calculated using the takeoff and landing weight of arriving and departing aircraft, rather than the raw number of such aircraft.

The Court of Appeals rejected each of these contentions and affirmed the decision of the Circuit Court.

- (1) UPSCO has failed to meet its burden of proving by clear and cogent evidence that the apportionment formula, as applied by the department, attributed income to Wisconsin “out of all appropriate proportion” to the business transacted in Wisconsin, or “led to a grossly distorted result.” As noted by the Circuit Court, the average variance in the percentage of UPSCO’s income apportioned to Wisconsin between the parties’ disputed methods in the years 1985 and 1986 is approximately 1.5 percent. In light of the Wisconsin Supreme Court’s conclusion in *Consolidated Freightways*, 164 Wis. 2d 764 (1991), that a 1.1 percent increase was constitutionally acceptable, the Court of Appeals cannot conclude that a 1.5 percent increase constitutes clear and cogent evidence that the apportionment formula under Wisconsin Administrative Code sec. Tax 2.46, as applied to UPSCO, is unconstitutional.

In *Consolidated Freightways*, the Wisconsin Supreme Court looked at whether the overall apportionment formula produced a fair apportionment. Following *Consolidated Freightways*, the focus of inquiry is on the apportionment formula as a whole, not on a single factor. Moreover, even if the arrivals and departures factor were looked at in isolation, the Court of Appeals would conclude it bears a reasonable relationship to the taxpayer’s business.

- (2) Section 71.07(3), Wis. Stats. (1985-86), does not apply to UPSCO. By its plain terms, it

applies only to the apportionment formula that is applied to corporations, nonresident individuals, and nonresident estates and trusts. That formula is set out in sec. 71.07(2)(a)-(cr), Wis. Stats. (1985-86). The apportionment of financial organizations and public utilities, such as UPSCO, is separately provided for in sec. 71.07(2)(e), Wis. Stats. (1985-86), and Wisconsin Administrative Code section Tax 2.46. For the same reason, sec. 71.07(5), Wis. Stats. (1985-86), does not apply. That section provides an alternative method of apportionment, but only for corporations, nonresident individuals, and nonresident estates and trusts.

- (3) Wisconsin Administrative Code section Tax 2.46(1) plainly provides that the factor consists of "aircraft arrivals and departures." There is no suggestion in the rule that the arrivals and departures should be weighted. While a weighted factor may be more accurate, it is up to the department, not the Court of Appeals, to change its rule.

The taxpayer appealed this decision to the Wisconsin Supreme Court, which denied the petition for review. □

— Nexus — business loss carryforward. *Extrusion Dies, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 21, 1996). The issue in this case is whether EDC International Corp. had sufficient activity within the state of Wisconsin to constitute nexus and may, therefore, be considered "doing business" or "engaged in business" here for purposes of Wisconsin's franchise tax during the fiscal year ending January 31, 1989.

The taxpayer is arguing nexus existed and the department is claiming that it did not. The parties take up these positions because the taxpayer seeks to take advantage of a net business loss carried forward from the year in question. The taxpayer may claim this loss only if it was doing business in Wisconsin and, therefore, subject to the Wisconsin corporate franchise or income tax during the taxable year in which the loss was sustained. Section 71.26(4), Wis. Stats.

In 1986, John Altmann formed EDC International Corp. to purchase the shares of Extrusion Dies, Inc., a Wisconsin corporation.

EDC Acquisition Corp. purchased all of the stock of EDC International Corp. on October 14, 1988. Prior to and after being acquired by EDC Acquisition Corp., EDC International Corp. held 100% of the stock of Extrusion Dies, Inc. EDC Acquisition Corp. merged into EDC International Corp. on October 14, 1988. The surviving corporation was called EDC International Corp.

EDC International Corp. was a corporation organized and formed under the laws of Delaware and authorized to do business in the state of Wisconsin. The corporation's primary business during the period under review was that of a holding and management company.

Extrusion Dies, Inc., was a Wisconsin corporation that existed from 1971 to January 18, 1989. It was a manufacturer of dies and die parts sold primarily to plastics manufacturers. On January 18, 1989, Extrusion Dies, Inc., merged into EDC International Corp. EDC International Corp. changed its name to Extrusion Dies, Inc., a Delaware corporation, on January 18, 1989. Extrusion Dies, Inc., a Delaware

corporation, is the only surviving entity of the three corporations.

The surviving corporation, Extrusion Dies, Inc., a Delaware corporation, is a manufacturer of dies and die parts that are sold primarily to plastics manufacturers.

EDC International Corp. filed a corporate income tax return in the state of Delaware for the period February 1, 1988, to January 31, 1989, claiming 100% of the following:

Interest Expense (Bonds)	\$ 986,107
Loan Fees	74,532
Non-Compete Agreement	
Amortization	142,857
Additional Interest Expense	106,302
Due	<u>260</u>
Total Loss Claimed	\$1,310,058

The expenses described above were added into federal income on the corporate franchise tax return filed by Extrusion Dies, Inc., a Wisconsin corporation, for the tax year ending January 31, 1989. This return was signed on April 17, 1989.

A Wisconsin Department of Revenue Form 5 for the tax year ended January 31, 1989, was filed by Extrusion Dies, Inc., a Delaware corporation, on April 15, 1993, claiming the following expenses:

Interest Expense (Bond)	\$ 986,107
OID Amortization	208,615
Amortization of Loan Fees	74,532
Amortization of	
Non-Compete Agreement	<u>142,857</u>
Total Expenses Claimed	\$1,412,111

This return was amended and filed on or about May 15, 1995.

The officers and directors of EDC International Corp. prior to October 14, 1988, were John Altmann, a Wisconsin resident and president of Extrusion Dies, Inc., a Wisconsin

corporation; D.E. Minard, a New York resident; and E.L. Hoffman, a New York resident.

After the merger of EDC International Corp. and Extrusion Dies, Inc., a Wisconsin corporation, the officers and directors were John Altmann (a Wisconsin resident), Arthur Wadman (a New York resident), James L. Flanagan, a certain Mr. Postlewaite, Vernon J. Krupa, David A. Decker, James P. Thornton, Harry G. Lippert, Carl D. Gengelbach, John P. Boxtrom, Darold R. Schuster, and Donald R. Garton (all Wisconsin residents). All officers and directors, with the exception of Mr. Postlewaite, were employees of Extrusion Dies, Inc.

The records of EDC International Corp. were kept in the offices of Extrusion Dies, Inc., in Chippewa Falls, Wisconsin. Extrusion Dies, Inc., did not charge EDC International Corp. for the use of its space.

The accounting functions for EDC International Corp. were performed by Darold Schuster, a Wisconsin resident. Extrusion Dies, Inc., a Wisconsin corporation, did not charge EDC International Corp. for Mr. Schuster's services. Tax returns and other financial reports were prepared by Virchow, Krause, Hegelson & Co., in Eau Claire, Wisconsin.

EDC International Corp. maintained its banking accounts at Fleet National Bank, Boston, Massachusetts.

The meetings of the Board of Directors of EDC International Corp. were held in Wisconsin.

EDC International Corp. did not have any paid employees and did not own or lease an office in any state. The mailing address for EDC International Corp. was 911 Kirth, Chippewa Falls, Wisconsin.

EDC International Corp. and Extrusion Dies, Inc., prior to 1988 maintained separate financial and banking accounts.

The Commission concluded the during its taxable year ending January 31, 1989, EDC International Corp. was not "engaged in business" or "doing business" in Wisconsin within the meaning of secs. 71.22(11) and 71.23, Wis. Stats.

The taxpayer has appealed this decision to the Circuit Court. □

SALES AND USE TAXES

Computer software — tangible vs. intangible. *Wisconsin Department of Revenue vs. Manpower International, Inc.* (Court of Appeals, District IV, August 22, 1996). See *Wisconsin Tax Bulletin* 99 (October 1996), page 19, for a summary of the Court of Appeals decision that stated the taxpayer's sales of prewritten computer software, from 1987 through 1990, were not subject to Wisconsin sales or use tax.

As reported in *Wisconsin Tax Bulletin* 99 (October 1996), page 19, the department appealed the Court of Appeals decision to the Wisconsin Supreme Court. The Wisconsin Supreme Court denied the department's petition for review in a notice dated December 17, 1996. Therefore, the Court of Appeals decision is final. □

Manufacturing — testing the manufactured product. *Cherney Microbiological Services, Ltd. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, April 23, 1996, May 3, 1996, and July 15, 1996). The issues in this case are:

- A. Whether one may claim exemption from Wisconsin sales and use tax under sec. 77.54(2), Wis. Stats., for purchases of materials which are consumed or destroyed in the process of quality control testing of product samples drawn from a manufacturing line, where the purchaser of the materials is not itself a manufacturer but consumes the materials in performing its testing service for a manufacturer.
- B. Whether the taxpayer has demonstrated by clear evidence that it is entitled to the consumed materials exemption under sec. 77.54(2), Wis. Stats.

During the period from January 1, 1989 through December 31, 1992 ("the period under review"), the taxpayer was a Wisconsin corporation engaged in the business of providing microbiological testing services to its customers. The taxpayer's services predominantly included testing sample materials provided by its customers for the presence of certain pathogens, including but not limited to salmonella, listeria, E. coli, and staphylococcus aureus. In many cases, these tests were either required to be performed by the taxpayer's customers according to the regulations of either the United States Department of Agriculture ("USDA") or the Food and Drug Administration ("FDA") or according to protocol determined from the pronouncements of these agencies. As such, these tests were part of the quality control program of the taxpayer's customers.

In the process of performing its various tests upon the samples provided to it by customers, the taxpayer consumed or used various supplies and equipment, including test kits, culture media, chemicals, and sterile containers. In many cases, the

equipment or supplies consumed had been purchased from out-of-state vendors, and no Wisconsin sales tax was self-assessed or paid. These materials were purchased and stored in bulk, and were not necessarily allocated to specific jobs.

Virtually all of the tests conducted by the taxpayer during the period under review were performed upon samples provided by food manufacturers which were drawn from the customer's production lines, i.e., that portion of the manufacturing process after the raw material phase but before the packaging and placement in inventory of finished goods.

During the period under review, the taxpayer at times performed tests upon customer samples not drawn from manufacturing production processes. These included: (1) proficiency tests which were coordinated by the taxpayer to gauge and calibrate the accuracy of sample test methods, (2) tests performed upon well water samples of certain non-manufacturing customers, and (3) tests performed upon samples provided by manufacturing customers which were drawn from outside the manufacturing process, i.e., from the raw material or finished goods phase of the production process.

Based upon a ratio of proficiency test revenue to total revenue in

1992, a representative year, the taxpayer's proficiency testing activity comprised approximately 2.1% of its business. By reasonable inference, the taxpayer's proficiency testing activity comprised approximately 2.1% of its consumption of equipment and supplies.

Well water testing for non-manufacturing customers comprised 0.5% of the taxpayer's tests performed during 1992, a representative year. By reasonable inference, the taxpayer's non-manufacturing well water tests comprised 0.5% of its consumption of equipment and supplies.

The taxpayer at times performed tests upon raw material samples provided by its customers, and also performed tests upon finished goods samples, for example, as a potential product recall precaution. These types of tests occurred in rare instances, however, during the period under review.

The Commission concluded:

A. One may claim the consumed materials exemption from Wisconsin sales and use tax under sec. 77.54(2), Wis. Stats., for purchases of materials which are consumed or destroyed in the process of quality control testing of product samples drawn from a manufacturing

line, where the purchaser of the materials is not itself a manufacturer but consumes the materials purchased in performing its testing service for a manufacturer.

B. The taxpayer has demonstrated by clear evidence that it is entitled to the consumed materials exemption under sec. 77.54(2), Wis. Stats., because virtually all of its quality control tests are performed on samples for manufacturing customers drawn from the manufacturing process line, which testing has been determined previously by the department to be "in the manufacture" of tangible personal property when performed by the manufacturer. To the extent that levels of non-manufacturing testing have been quantified as to frequency of performance or percentage of gross revenues, however, materials consumed to perform such testing are not exempt.

The department did not appeal the decision but has adopted a position of nonacquiescence relating to equipment and other items not incorporated, consumed, or destroyed in performing testing services on work-in-process samples for manufacturers. □



Tax Releases

"Tax releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. In situations where the facts vary from those given herein, the answers may not apply. 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.

The following tax releases are included:

Individual Income Taxes

1. Interest Expense Used to Compute Itemized Deduction Credit (p. 26)

Corporation Franchise and Income Taxes

2. Carryforward of Unused Development and Enterprise Zones Tax Credits (p. 27)
3. Wisconsin Filing Requirements for Multi-Fund Regulated Investment Companies (p. 28)

Sales and Use Taxes

4. Credit for Sales and Use Taxes Paid to Other States and Local Units of Government (p. 29)
 5. Farming Exemption — Containers for Hay or Silage (p. 40)
 6. Manufacturing Exemptions — Effect of *Cherney* Decision (p. 40)
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INDIVIDUAL INCOME TAXES

1 Interest Expense Used to Compute Itemized Deduction Credit

Statutes: Section 71.07(5), Wis. Stats. (1993-94)

Background: Section 71.07(5), Wis. Stats. (1993-94), provides a credit for individuals when the total of certain of their federal itemized deductions exceeds

their Wisconsin standard deduction. Not all federal itemized deductions are recognized for purposes of computing the Wisconsin itemized deduction credit. For example, sec. 71.07(5)(a)5 provides that interest expense incurred to purchase or refinance a residence that is not a principal residence and not located in Wisconsin may not be used to compute the credit.

Facts: Taxpayer A is a Wisconsin resident who owns a debt-free principal residence located in Wisconsin. Taxpayer A takes out a first mortgage on the principal residence in the amount of \$100,000. A portion (\$10,000) of the proceeds is used to reduce A's other debt and the remaining \$90,000 of the first mortgage is used to purchase a second home (this home will not be A's principal home) located outside Wisconsin. The entire amount of interest payable on the \$100,000 mortgage will be allowable as an itemized deduction on A's federal income tax returns.

Question: Can any portion of the interest paid on the \$100,000 mortgage on Taxpayer A's principal residence be used for purposes of computing the Wisconsin itemized deduction credit?

Answer: Yes, the entire amount of interest paid on this mortgage may be used for purposes of computing Taxpayer A's Wisconsin itemized deduction credit.

Section 71.07(5) provides that the Wisconsin itemized deduction credit is to be computed on the basis of amounts allowed as itemized deductions under the Internal Revenue Code with certain exceptions. One of the exceptions is that interest incurred to purchase or refinance a residence that is not a principal residence and is not located in Wisconsin may not be used to compute the Wisconsin itemized deduction credit. However, this exception does not apply in Taxpayer A's situation. The interest paid by Taxpayer A is incurred directly from a mortgage on a primary residence located in Wisconsin. Use of the mortgage proceeds is not a consideration with regard to whether this interest may be used to compute the Wisconsin itemized deduction credit. □

CORPORATION FRANCHISE AND INCOME TAXES

2 Carryforward of Unused Development and Enterprise Zones Tax Credits

Statutes: Sections 71.28(1dd) through 71.28(1ds) and 71.28(4), Wis. Stats. (1993-94), and as affected by 1995 Wisconsin Acts 27 and 209

Background: Section 71.28(1di)(b)3, Wis. Stats., provides that tax-option corporations may not claim the development and enterprise zones investment credit, but the eligibility for, and amount of, that credit shall be determined on the basis of their economic activity, not that of their shareholders. The corporation shall compute the amount of credit that may be claimed by each of its shareholders. The shareholders may claim the credit based on the corporation's activities in proportion to their ownership interest and may offset it against the tax attributable to their income from the corporation's business operations in the development or enterprise zone and against the tax attributable to their income from the corporation's directly related business operations.

Section 71.28(1di)(c), Wis. Stats., provides that if a credit computed is not entirely offset against Wisconsin franchise or income taxes otherwise due, the unused balance may be carried forward for 15 years. In the case of a change in ownership or business of a corporation, sec. 383 of the Internal Revenue Code (IRC) applies to unused credits. Internal Revenue Code sec. 383 limits the amount of credits that may be carried over when an ownership change, as described in IRC secs. 381 and 382, occurs.

Similar provisions apply for the other nonrefundable development and enterprise zones tax credits.

Facts: ABC Corporation has elected and qualified to be treated as an S corporation for federal income tax purposes and has not elected out of tax-option (S) status for Wisconsin franchise and income tax purposes for its taxable year beginning January 1, 1996. In 1996, the Wisconsin Department of Commerce certifies ABC Corporation for enterprise zone tax credits.

ABC Corporation computes the enterprise zone tax credits that flow through to its shareholders for 1996. The shareholders are unable to claim the total amount of the 1996 credits on their 1996 Wisconsin individual income tax returns because the credits exceed the tax

attributable to their share of the income from the corporation's business operations in the enterprise zone and its directly related business operations.

For its taxable year beginning January 1, 1997, ABC Corporation revokes its S corporation election and becomes a regular (C) corporation.

Question 1: Do the unused 1996 enterprise zone tax credits remain with the shareholders or return to ABC Corporation?

Answer 1: The unused 1996 enterprise zone tax credits remain with the shareholders. Since Wisconsin law prohibits a tax-option (S) corporation from claiming development or enterprise zones tax credits, any credits generated while ABC Corporation is a tax-option (S) corporation remain with its shareholders. The election to change from S corporation to C corporation status does not, in and of itself, constitute a change of ownership or business that would be subject to the credit carryover rules of IRC secs. 381, 382, and 383.

Question 2: If ABC Corporation computes new enterprise zone tax credits for its taxable year beginning January 1, 1997, may the corporation claim those credits?

Answer 2: Yes, ABC Corporation may claim any new enterprise zone tax credits it generates as a C corporation for its taxable year beginning January 1, 1997.

Question 3: Since the shareholders of ABC Corporation may offset the enterprise zone tax credits against the tax attributable to their income from the corporation's business operations in the enterprise zone and from the corporation's directly related business operations, is the salary paid to a shareholder/employee or dividends paid to shareholders treated as income from the corporation's business operations?

Answer 3: No, neither the salary paid to a shareholder/employee nor dividends paid to shareholders are income from the corporation's business operations for purposes of determining the amount of enterprise zone tax credits that may be claimed for a taxable year.

As a result, if ABC Corporation becomes a C corporation for 1997, a shareholder's unused 1996 enterprise zone tax credits will be lost unless ABC corporation reelects tax-option (S) corporation status within the 15-year carryforward period. □

3 Wisconsin Filing Requirements for Multi-Fund Regulated Investment Companies

Statutes: Sections 71.24(1) and 71.26(2)(b), Wis. Stats. (1993-94)

Background:

Federal Law: Section 851(a) of the Internal Revenue Code (IRC) defines a "regulated investment company" as any domestic corporation which, at all times during the taxable year,

- is registered with the Securities and Exchange Commission as a management company or investment trust under the Investment Company Act of 1940 (ICA),
- has an election in effect under the ICA to be treated as a business development company, or
- is a common trust fund or similar fund that is neither an investment company under sec. 3(c)(3) of the ICA nor a common trust fund as defined under sec. 584(a).

Under IRC sec. 851(b), to qualify as a regulated investment company (RIC), a corporation must make an election to be a RIC and must meet 6 other requirements with respect to its income, investments, and dividend payouts.

In the case of a RIC having more than one fund, IRC sec. 851(h)(1) provides that each fund is treated as a separate corporation under the Internal Revenue Code. Therefore, each fund must file a separate Form 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies, for federal income tax purposes.

A "fund" is defined in IRC sec. 851(h)(2) as a segregated portfolio of assets, whose beneficial interests are owned by the holders of a class or series of stock that is preferred over all other classes or series for that portfolio of assets.

Wisconsin Law: Section 71.24(1), Wis. Stats. (1993-94), requires every corporation, except corporations all of whose income is exempt from taxation, to file Wisconsin franchise or income tax returns.

Section 71.26(2)(b), Wis. Stats. (1993-94), as amended by 1995 Wisconsin Acts 27 and 380, provides that for a corporation which qualifies as a regulated investment company under the Internal Revenue Code as defined for Wisconsin purposes, "net income" means the federal regulated investment company taxable income as determined under the Internal Revenue Code as defined for Wisconsin purposes, with certain exceptions for depreciation and gain or loss on the disposition of assets.

Facts and Question: XYZ Funds, Inc., is a corporation which was organized in Wisconsin in 1992. The corporation is a series of 10 investment portfolios. For federal income tax purposes, each of the 10 investment portfolios files a separate federal income tax return, Form 1120-RIC.

Only XYZ Funds, Inc., is registered as a corporation with the Wisconsin Department of Financial Institutions, Division of Corporate and Consumer Services. The 10 investment funds are not separately registered with that state agency.

Is each of the 10 investment funds required to file a separate Wisconsin corporation franchise or income tax return?

Answer: No, each of the 10 investment funds is not required to file a separate Wisconsin tax return. Only XYZ Funds, Inc., must file a Wisconsin corporation franchise or income tax return, since only XYZ Funds, Inc., is registered as a corporation. In calculating its net income, XYZ Funds, Inc., must include the taxable income computed under the Internal Revenue Code of each of its 10 investment funds. XYZ Fund, Inc., must attach a copy of the 10 federal income tax returns, Form 1120-RIC, filed by the investment funds with its Wisconsin franchise or income tax return. □

SALES AND USE TAXES

Note: The following tax releases interpret the Wisconsin sales and use tax law as it applies to the 5% state sales and use tax. The 0.5% county and 0.1% stadium sales and use taxes may also apply. For information on sales or purchases that are subject to the county or stadium sales and use tax, refer to Wisconsin Publication 201, *Wisconsin State and County Sales and Use Tax Information*.

4 Credit for Sales and Use Taxes Paid to Other States and Local Units of Government

Statutes: Sections 77.53(16) and 77.71(2), (3), and (4), Wis. Stats. (1993-94 as amended through 1995 Wisconsin Act 61)

Introduction: Many persons located in Wisconsin, including individuals, corporations, and partnerships, purchase and take possession of items outside of Wisconsin and then store, use, or consume the items in Wisconsin. These persons may be required to pay the sales or use tax of another state or local unit of government when taking possession of the items in the other state.

Wisconsin sales and use tax law allows a credit against the Wisconsin state, county, and special district (stadium) use tax due for sales or use tax that is properly charged and paid to another state or local unit of government on items purchased outside Wisconsin, and brought into Wisconsin for storage, use, or consumption. The credit is limited to the amount of tax imposed under Wisconsin law on those same items. (**Note:** The local exposition district taxes are only imposed on the sales of certain property and services, and **not** on the storage, use, or consumption of the property and services subject to the local exposition taxes. No local exposition **use** tax is imposed.)

Information Contained in This Tax Release

I. Background: Applicable Wisconsin Statutes

II. Limitation on Amount of Credit for Sales or Use Tax Paid to Another State

III. Examples: Facts, Questions, and Answers

1. State and Local Sales Tax Paid to Other State is Less Than Wisconsin State and County Use Tax — Page 31.
2. State and Local Sales Tax Paid to Other State is More Than Wisconsin State and County Use Tax — Page 32.
3. State Sales Tax Paid to Other State is Less Than Wisconsin State Use Tax, But Local Tax Paid to Other State is More Than Wisconsin County Use Tax — Page 32.
4. State Sales Tax Paid to Other State is More Than Wisconsin State Use Tax, But Local Tax

Paid to Other State is Less Than Wisconsin County Use Tax — Page 33.

5. Other State's State Sales Tax Paid on Property is More Than Wisconsin State Use Tax and No Tax Paid to Other State on Labor Charges — Page 34.
6. Construction Contractors — Other State's State Sales Tax is More Than Wisconsin State Use Tax and No Local Tax Charged in Other State — Page 35.
7. Registered Vehicles — Other State's State Sales Tax is Less Than Wisconsin State Use Tax, But Other State's Local Sales Tax is More Than Wisconsin County Use Tax — Page 36.
8. Other State's State and Local Sales Tax Improperly Paid — Page 37.
9. Other State's State or Local Sales or Use Tax Imposed AFTER Wisconsin State or County Sales or Use Tax Imposed — Page 38.
10. Other State's Sales or Use Tax Paid on a Transaction Subject to Wisconsin State and County SALES Tax (not USE tax) — Page 38.
11. State and Local Sales Tax Paid to Other State is Less Than Wisconsin State, County, and Stadium Use Tax — Page 39.

I. Background: Applicable Wisconsin Statutes

In this tax release, all statutory references are to Wis. Stats. (1993-94 as amended through 1995 Wisconsin Act 61).

Credit for Other State's State Sales or Use Tax Paid: Section 77.53(16), Wis. Stats., provides that "If the purchase, rental or lease of tangible personal property or service subject to the tax imposed by this section was subject to a sales tax by another state in which the purchase was made, the amount of sales tax paid the other state shall be applied as a credit against and deducted from the tax, to the extent thereof, imposed by this section." In this subsection "sales tax" includes a use or excise tax imposed on the use of tangible personal property or taxable service by the state in which the sale occurred and "state" includes the District of Columbia but does not include the commonwealth of Puerto Rico or the several territories organized by congress." (Underlining added.)

Credit for Other State's Local Sales or Use Tax Paid — General: Section 77.71(2), Wis. Stats., provides that "An excise tax is imposed at the rate of 0.5% in the case of a county tax or at the rate under s. 77.705 in the case of a special district tax of the sales price upon every person storing, using or otherwise consuming in the county or special district tangible personal property or services if the property or service is subject to the state use tax under s. 77.53, except that a receipt indicating that the tax under sub. (1), (3) or (4) has been paid relieves the buyer of liability for the tax under this subsection and except that if the buyer has paid a similar local tax in another state on a purchase of the same property or services that tax shall be credited against the tax under this subsection and except that for motor vehicles that are used for a purpose in addition to retention, demonstration or display while held for sale in the regular course of business by a dealer the tax under this subsection is imposed not on the sales price but on the amount under s. 77.53 (1m)." (Underlining added.)

Credit for Other State's Local Sales or Use Tax Paid — Construction Contractors: Section 77.71(3), Wis. Stats., provides that "An excise tax is imposed upon a contractor engaged in construction activities within the county or special district, at the rate of 0.5% in the case of a county tax or at the rate under s. 77.705 in the case of a special district tax of the sales price of tangible personal property that is used in constructing, altering, repairing or improving real property and that becomes a component part of real property in that county or special district, unless the contractor has paid the sales tax of a county in the case of a county tax or of a special district in the case of a special district tax in this state on that property, and except that if the buyer has paid a similar local sales tax in another state on a purchase of the same property that tax shall be credited against the tax under this subsection." (Underlining added.)

Credit for Other State's Local Sales or Use Tax Paid — Registered or Titled Items Including Automobiles, Boats, and Aircraft: Section 77.71(4), Wis. Stats., provides that "An excise tax is imposed at the rate of 0.5% in the case of a county tax or at the rate under s. 77.705 in the case of a special district tax of the sales price upon every person storing, using or otherwise consuming a motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length, trailer, semitrailer, all-terrain vehicle or aircraft, if that property must be registered or titled with this state and if that property is to be customarily kept in a county that has in effect an ordinance under s. 77.70 or in a special district that has in effect a resolution under s.

77.705, except that if the buyer has paid a similar local sales tax in another state on a purchase of the same property that tax shall be credited against the tax under this subsection." (Underlining added.)

Note 1: "Similar local sales tax" and "local tax" as used in this tax release means a sales or use tax imposed by a city, village, town, county, or other local unit of government in another state.

Note 2: The Wisconsin Sales and Use Tax Return line references in this tax release are references to the Wisconsin Sales and Use Tax Return with a revision date of 7/96.

II. Limitation on Amount of Credit for Sales or Use Tax Paid to Another State

The three charts below summarize the amount of credit for another state's state or local sales or use tax properly paid which may be claimed against the Wisconsin state, county, or stadium use tax due.

Chart 1 — Amount of Credit Allowed for Other State's State Sales or Use Tax Properly Paid Which May Be Claimed Against Wisconsin State Use Tax Due

(A) State Tax Rate Charged in Other State	(B) Amount of State Tax Paid to Other State Allowed as Credit Against Wisconsin State Use Tax Due
Less Than 5%	Amount of State Tax Paid to Other State *
Equal to or Greater Than 5%	Amount of Wisconsin State Use Tax Due *

Chart 2 — Amount of Credit Allowed for Other State's Local Sales or Use Tax Properly Paid Which May Be Claimed Against County Use Tax Due

(A) Local Tax Rate Charged in Other State	(B) Amount of Local Tax Paid to Other State Allowed as Credit Against County Use Tax Due
Less Than 0.5%	Amount of Local Tax Paid to Other State **
Equal to or Greater Than 0.5%	Amount of County Use Tax Due in Wisconsin **

Chart 3 — Amount of Credit Allowed for Other State's Local Sales or Use Tax Properly Paid Which May Be Claimed Against Stadium Use Tax Due

(A) Local Tax Rate Charged in Other State	(B) Amount of <i>Local</i> Tax Paid to Other State Allowed as Credit Against Stadium Use Tax Due
Less Than 0.1%	Amount of Local Tax Paid to Other State **
Equal to or Greater Than 0.1%	Amount of Stadium Use Tax Due in Wisconsin **

* Any other state's **state** sales or use tax which is paid in excess of the Wisconsin **state** use tax due may not be claimed as a credit and used to offset any **county** or **stadium** use tax due in Wisconsin.

** Any **local** sales or use tax paid to another state which is in excess of the combined **county and stadium** use tax due in Wisconsin may not be claimed as a credit and used to offset any Wisconsin **state** use tax due.

However, if the local tax paid to the other state is **equal to or greater than the combined** county and stadium use tax due in Wisconsin, the local tax may be used to offset **both** the Wisconsin county use tax and the Wisconsin stadium use tax due.

If the local tax paid to the other state is **less than the combined** county and stadium use tax due in Wisconsin, the local tax paid to the other state must be **allocated** between the Wisconsin county use tax and the Wisconsin stadium use tax due. An acceptable method to the department is to allocate the local tax paid to the other state on the ratio of 5/6 to the county use tax due and 1/6 to the stadium use tax due. See example 11 on page 39.

III. Examples

The following examples include various situations which persons may encounter with respect to Wisconsin state, county, and stadium sales and use taxes, if they purchase items outside of Wisconsin and are required to pay sales or use taxes to the other state. The examples provide information as to the amount of sales tax paid to the other state which may be claimed as a credit against the Wisconsin state, county, and stadium use taxes due and how to compute and report the Wisconsin state, county, and stadium use tax due.

Example 1: State and Local Sales Tax Paid to Other State is Less Than Wisconsin State and County Use Tax

Facts 1:

- Company A, located in Wisconsin, purchases equipment for \$1,000 from a supplier located in State B.
- Company A takes possession of the equipment in State B.
- Company A is properly charged State B's 4% state sales tax (\$1,000 x 4% = \$40) and State B's .25% local sales tax (\$1,000 x .25% = \$2.50).
- Company A brings the equipment into Wisconsin for use in a county that has adopted the 0.5% county sales and use tax, but has not adopted the 0.1% stadium sales and use tax.

Questions 1:

- May the 4% state sales tax (\$40) and the .25% local sales tax (\$2.50) paid to State B, be claimed as credits against the 5% Wisconsin state and 0.5% county use tax due?
- What amount of Wisconsin state and county use tax must be paid to Wisconsin on this transaction?
- How should Company A report the additional use tax due in Wisconsin on this transaction?

Answers 1:

- Yes. The amount of state sales tax paid to State B (\$40), may be claimed as a credit under sec. 77.53(16), Wis. Stats., against the 5% Wisconsin state use tax due. The amount of local sales tax paid to State B (\$2.50), may be claimed as a credit under sec. 77.71(2), Wis. Stats., against the 0.5% county use tax due.
- The net amount of Wisconsin state and county use tax due is computed as follows:

	State Use Tax	County Use Tax
Wisconsin Use Tax Due	\$50 (\$1,000 x 5%)	\$5.00 (\$1,000 x .5%)
Less: State B's Tax Paid	<u>40</u> (\$1,000 x 4%)	<u>2.50</u> (\$1,000 x .25%)
Net Tax Due to Wisconsin	<u>\$10</u>	<u>\$2.50</u>

- c. Company A should report the additional Wisconsin state and county use tax due as follows:

» **Computation of Additional State Use Tax Due**

$$\frac{\text{Additional State Use Tax Due } (\$10)}{\text{State Tax Rate } (.05)} = \text{Measure of State Use Tax Due } (\$200)$$

The measure of additional state use tax due (\$200) should be entered on line 16 of the Wisconsin Sales and Use Tax Return.

» **Computation of Additional County Use Tax Due**

$$\frac{\text{Additional County Use Tax Due } (\$2.50)}{\text{County Tax Rate } (.005)} = \text{Measure of County Use Tax Due } (\$500)$$

The measure of additional county use tax due (\$500) should be reported on Schedule CT, column B, of the Wisconsin Sales and Use Tax Return, on the applicable county's line.

Example 2: State and Local Sales Tax Paid to Other State is More Than Wisconsin State and County Use Tax

Facts 2:

- Company C, located in Wisconsin, purchases equipment for \$10,000 from a supplier located in State D.
- Company C takes possession of the equipment in State D.
- Company C is properly charged State D's 6% state sales tax (\$10,000 x 6% = \$600) and State D's 1% local sales tax (\$10,000 x 1% = \$100).
- Company C brings the equipment into Wisconsin for use in a county that has adopted the 0.5% county sales and use tax but has not adopted the 0.1% stadium sales and use tax.

Questions 2:

- a. May the 6% state sales tax (\$600) and the 1% local sales tax (\$100) paid to State D, be claimed as credits against the 5% Wisconsin state and 0.5% county use tax due?

- b. What amount of Wisconsin state and county use tax must be paid to Wisconsin on this transaction?

Answers 2:

- a. Yes. The amount of state sales tax paid to State D (\$600), may be claimed as a credit under sec. 77.53(16), Wis. Stats., against the 5% Wisconsin state use tax due. The amount of local sales tax paid to State D (\$100), may be claimed as a credit under sec. 77.71(2), Wis. Stats., against the 0.5% county use tax due. Each of the credits above is limited to the amount of Wisconsin state (\$500) and county (\$50) use tax due on that same purchase.
- b. The net amount of Wisconsin state and county use tax due is computed as follows:

	State Use Tax	County Use Tax
Wisconsin Use Tax Due	\$500 (\$10,000 x 5%)	\$50 (\$10,000 x .5%)
Less: State D's Tax Paid *	<u>500</u> (\$10,000 x 5%)	<u>50</u> (\$10,000 x .5%)
Net Tax Due to Wisconsin	<u>\$ -0-</u>	<u>\$ -0-</u>

- * **Note:** The amount of credit for the state and local sales tax paid to State D is limited to the amount of Wisconsin state and county use tax imposed on that same property or service.

Since the state and local sales tax paid to the other state is greater than the state and county use tax due to Wisconsin, no entry is required on the Wisconsin Sales and Use Tax Return to report the credit claimed for sales taxes paid to another state which offset the Wisconsin state and county use tax due.

Example 3: State Sales Tax Paid to Other State is Less Than Wisconsin State Use Tax, But Local Tax Paid to Other State is More Than Wisconsin County Use Tax

Facts 3:

- Company E, located in Wisconsin, purchases equipment for \$1,000 from a supplier located in State F.
- Company E takes possession of the equipment in State F.

- Company E is properly charged State F's 4% state sales tax (\$1,000 x 4% = \$40) and State F's 1% local sales tax (\$1,000 x 1% = \$10).
- Company E brings the equipment into Wisconsin for use in a county that has adopted the 0.5% county sales and use tax, but has not adopted the 0.1% stadium sales and use tax.

Questions 3:

- May the 4% state sales tax (\$40) and the 1% local sales tax (\$10) paid to State F, be claimed as credits against the 5% Wisconsin state and 0.5% county use tax due?
- What amount of Wisconsin state and county use tax must be paid to Wisconsin on this transaction?
- How should Company E report the additional use tax due in Wisconsin on this transaction?

Answers 3:

- Yes. The amount of state sales tax paid to State F (\$40), may be claimed as a credit under sec. 77.53(16), Wis. Stats., against the 5% Wisconsin state use tax due. The amount of local sales tax paid to State F (\$10), may be claimed as a credit under sec. 77.71(2), Wis. Stats., against the 0.5% county use tax due. The **local** sales tax paid to State F (\$10) in excess of the Wisconsin county use tax due (\$5) may not be claimed as a credit against the Wisconsin **state** use tax due.
- The net amount of Wisconsin state and county use tax due is computed as follows:

	State Use Tax	County Use Tax
Wisconsin Use Tax Due	\$50 (\$1,000 x 5%)	\$ 5 (\$1,000 x .5%)
Less: State F's Tax Paid *	<u>40</u> (\$1,000 x 4%)	<u>5</u> (\$1,000 x .5%)
Net Tax Due to Wisconsin	<u>\$10</u>	<u>\$-0-</u>

- * **Note:** The amount of credit for the local sales tax paid to State F is limited to the amount of Wisconsin county use tax imposed on that same property or service. In addition, the excess **local** tax paid to State F may not be claimed as a credit against the Wisconsin **state** use tax due.

- Company E should report the additional Wisconsin state and county use tax due as follows:

» Computation of Additional State Use Tax Due

$$\frac{\text{Additional State Use Tax Due } (\$10)}{\text{State Tax Rate } (.05)} = \text{Measure of State Use Tax Due } (\$200)$$

The measure of additional state use tax due (\$200) should be entered on line 16 of the Wisconsin Sales and Use Tax Return.

» Computation of Additional County Use Tax Due

$$\frac{\text{Additional County Use Tax Due } (\$-0-)}{\text{County Tax Rate } (.005)} = \text{Measure of County Use Tax Due } (\$-0-)$$

Since the purchase of the equipment by Company E was subject to another state's local sales tax which is equal to or greater than the county use tax due in Wisconsin, the local tax paid to the other state is used to reduce the county use tax due in Wisconsin to zero. No entry is required on the Wisconsin Sales and Use Tax Return to report the credit claimed for local sales taxes paid to another state which offset the Wisconsin county use tax due.

Example 4: State Sales Tax Paid to Other State is More Than Wisconsin State Use Tax, But Local Tax Paid to Other State is Less Than Wisconsin County Use Tax**Facts 4:**

- Company G, located in Wisconsin, purchases equipment for \$10,000 from a supplier located in State H.
- Company G takes possession of the equipment in State H.
- Company G is properly charged State H's 6% state sales tax (\$10,000 x 6% = \$600). No local sales or use tax is paid by Company G in State H.
- Company G brings the equipment into Wisconsin for use in a county that has adopted the 0.5% county sales and use tax, but has not adopted the 0.1% stadium sales and use tax.

Questions 4:

- May the 6% state sales tax paid to State H (\$600), be claimed as a credit against the 5% Wisconsin state use tax due?
- What amount of Wisconsin state and county use tax must be paid to Wisconsin on this transaction?
- How should Company G report the additional use tax due in Wisconsin on this transaction?

Answers 4:

- Yes. The amount of state sales tax paid to State H (\$600), may be claimed as a credit under sec. 77.53(16), Wis. Stats., against the 5% Wisconsin state use tax due. The state sales tax paid to State H in excess of the Wisconsin state use tax due may not be claimed as a credit against the Wisconsin county use tax due.
- The net amount of Wisconsin state and county use tax due is computed as follows:

	State Use Tax	County Use Tax
Wisconsin Use Tax Due	\$500 (\$10,000 x 5%)	\$50 (\$10,000 x .5%)
Less: State H's Tax Paid *	<u>500</u> (\$10,000 x 5%)	<u>-0-</u>
Net Tax Due to Wisconsin	<u>\$ -0-</u>	<u>\$50</u>

- * **Note:** The amount of credit for the state sales tax paid to State H is limited to the amount of Wisconsin state use tax imposed on that same property or service. In addition, the excess state sales tax paid to State H may not be claimed as a credit against the Wisconsin county use tax due.
- Company G should report the additional Wisconsin state and county use tax due as follows:

» Computation of Additional State Use Tax Due

Additional State Use Tax Due (\$-0-)	=	Measure of State Use Tax Due (\$-0-)
State Tax Rate (.05)		

Since the purchase of the equipment by Company G was subject to another state's state sales tax which is equal to or greater than the state use tax due in Wisconsin, the state sales tax paid to the other state is used to reduce the state use tax due in Wisconsin

to zero. No entry is required on the Wisconsin Sales and Use Tax Return to report the credit claimed for sales taxes paid to another state which offset the Wisconsin state use tax due.

» Computation of Additional County Use Tax Due

Additional County Use Tax Due (\$50)	=	Measure of County Use Tax Due (\$10,000)
County Tax Rate (.005)		

The measure of additional county use tax due (\$10,000) should be reported on Schedule CT, column B, of the Wisconsin Sales and Use Tax Return, on the applicable county's line.

Example 5: Other State's State Sales Tax Paid on Property is More Than Wisconsin State Use Tax and No Tax Paid to Other State on Labor Charges**Facts 5:**

- Company I, located in Wisconsin, has equipment repaired in State J.
- The repair service provider located in State J charges Company I \$2,000 for repair parts and \$1,000 for labor.
- State J's 6.25% state sales tax is properly charged on the repair parts (\$2,000 x 6.25% = \$125).
- State J's state sales tax is not charged on the labor.
- Company I takes possession of the repaired equipment in State J and pays State J's state sales tax on the parts. No local sales tax applies in State J.
- Company I brings the repaired equipment into Wisconsin for use in a Wisconsin county that has not adopted the 0.5% county sales and use tax or the 0.1% stadium sales and use tax.

Questions 5:

- May State J's 6.25% state sales tax paid on the parts (\$125) be claimed as a credit against the 5% Wisconsin state use tax due?
- What amount of Wisconsin state and county use tax must be paid to Wisconsin on this transaction?
- How should Company I report the additional use tax due in Wisconsin on this transaction?

Answers 5:

- a. Yes. State J's state sales tax paid on the repair parts (\$125) may be claimed as a credit, under sec. 77.53(16), Wis. Stats., against the 5% Wisconsin state use tax due on the repair parts. The credit is limited to the amount of Wisconsin state use tax due on that same purchase ($\$2,000 \times 5\% = \100). Since State J's state sales tax was not paid on the labor, no credit may be claimed against the 5% Wisconsin state use tax due on the labor.
- b. No Wisconsin county use tax is due since the repaired item was not stored, used, or consumed in a county that has adopted the 0.5% county sales and use tax. The net amount of Wisconsin state use tax due is computed as follows:

	State J's State Sales Tax Paid (6.25%)	Wisconsin Use Tax Due (5%)	Amount of State J's Tax Allowed As Credit	Net Wisconsin Use Tax Due
Repair Parts = \$2,000	\$125	\$100	\$100 *	\$-0-
Repair Labor = \$1,000	\$-0-	\$50	\$-0-	\$50

* **Note:** The amount of credit for sales and use tax paid to another state is limited to the amount of Wisconsin use tax imposed on that same property or service.

- c. Company I should report the additional Wisconsin state use tax due as follows:

» **Computation of Additional State Use Tax Due**

$$\frac{\text{Additional State Use Tax Due } (\$50)}{\text{State Tax Rate } (.05)} = \text{Measure of State Use Tax Due } (\$1,000)$$

The measure of additional state use tax due (\$1,000) should be entered on line 17 of the Wisconsin Sales and Use Tax Return.

No county use tax is due since the equipment was brought into Wisconsin for use in a county that has not adopted the county sales and use tax and therefore, no entry is required on the Wisconsin Sales and Use Tax Return to report the credit claimed for local sales taxes paid to another state which offset the Wisconsin county use tax due.

Example 6: Construction Contractors — Other State's State Sales Tax is More Than Wisconsin State Use Tax and No Local Tax Charged in Other State

Facts 6:

- Construction Contractor K, located in Wisconsin, purchases materials for \$1,000 from a supplier located in State L.
- Construction Contractor K takes possession of the materials in State L.
- Construction Contractor K is properly charged State L's 6% state sales tax (\$60). No local sales tax is charged in State L.
- Construction Contractor K brings the materials to Wisconsin and stores them in a county that has not adopted the 0.5% county sales and use tax or the 0.1% stadium sales and use tax.
- Construction Contractor K then uses the materials in a real property construction activity in Wisconsin in a county that has adopted the 0.5% county tax, but has not adopted the 0.1% stadium sales and use tax.

Questions 6:

- May the 6% state sales tax paid to State L (\$60) be claimed as a credit against the 5% Wisconsin state use tax due?
- What amount of Wisconsin state and county use tax must be paid to Wisconsin on this transaction?
- How should Construction Contractor K report the additional use tax due in Wisconsin on this transaction?

Answers 6:

- Yes. The amount of state sales tax paid to State L (\$60) may be claimed as a credit under sec. 77.53(16), Wis. Stats., against the 5% Wisconsin state use tax due. The credit is limited to the amount of Wisconsin state use tax imposed on that same purchase.
- The net amount of Wisconsin state and county use tax due is computed as follows:

	State Use Tax	County Use Tax
Wisconsin Use Tax Due	\$50 (\$1,000 x 5%)	\$ 5 (\$1,000 x .5%)
Less: State L's Tax Paid *	<u>50</u> (\$1,000 x 5%)	<u>-0-</u> (\$0- x .5%)
Net Tax Due to Wisconsin	<u>\$-0-</u>	<u>\$ 5</u>

* **Note:** The amount of credit for state and local sales tax paid to another state is limited to the amount of Wisconsin state and county use tax imposed on that same property or service.

- c. Construction Contractor K should report the additional Wisconsin state and county use tax due as follows:

» **Computation of Additional State Use Tax Due**

$$\frac{\text{Additional State Use Tax Due } (\$-0-)}{\text{State Tax Rate } (.05)} = \text{Measure of State Use Tax Due } (\$-0-)$$

Since the purchase of the materials by Construction Contractor K was subject to another state's state sales tax which was equal to or greater than the state use tax due in Wisconsin, the state sales tax paid to the other state is used to reduce the state use tax due in Wisconsin to zero. No entry is required on the Wisconsin Sales and Use Tax Return to report the credit claimed for sales taxes paid to another state which offset the Wisconsin state use tax due.

» **Computation of Additional County Use Tax Due**

$$\frac{\text{Additional County Use Tax Due } (\$5)}{\text{County Tax Rate } (.005)} = \text{Measure of County Use Tax Due } (\$1,000)$$

The measure of additional county use tax due (\$1,000) should be reported on Schedule CT, column B, of the Wisconsin Sales and Use Tax Return, on the applicable line indicating the county in which the materials were used in the real property improvement.

Example 7: Registered Vehicles — Other State's State Sales Tax is Less Than Wisconsin State Use Tax, But Other State's Local Sales Tax is More Than Wisconsin County Use Tax

Facts 7:

- Individual M, located in Wisconsin, purchases a boat (an item required to be registered or titled in Wisconsin) for \$10,000 from a supplier located in State N.
- Individual M takes possession of the boat in State N.
- Individual M is required to pay State N's 4% state sales tax (\$10,000 x 4% = \$400) and State N's 1% local sales tax (\$10,000 x 1% = \$100).
- The boat is customarily kept in a Wisconsin county that has adopted the 0.5% county sales and use tax, but has not adopted the 0.1% stadium sales and use tax.

Questions 7:

- May the 4% state sales tax (\$400) and 1% local sales tax (\$100) paid to State N be claimed as a credit against the 5% Wisconsin state and 0.5% county use tax due?
- What amount of Wisconsin state and county use tax must be paid to Wisconsin on this transaction?
- How should Individual M report the additional use tax due in Wisconsin on this transaction?

Answers 7:

- Yes. The amount of state sales tax paid to State N (\$400) may be claimed as a credit under sec. 77.53(16), Wis. Stats., against the 5% Wisconsin state use tax due. The amount of local sales tax paid to State N (\$100) may be claimed as a credit under sec. 77.71(3), Wis. Stats., against the 0.5% county use tax due. The **local** sales tax paid to State N in excess of the Wisconsin county use tax due may not be claimed as a credit against the Wisconsin **state** use tax due.

- b. The net amount of Wisconsin state and county use tax due is computed as follows:

	State Use Tax	County Use Tax
Wisconsin Use Tax Due	\$500 (\$10,000 x 5%)	\$50 (\$10,000 x .5%)
Less: State N's Tax Paid *	<u>400</u> (\$10,000 x 4%)	<u>50</u> (\$10,000 x .5%)
Net Tax Due to Wisconsin	<u>\$100</u>	<u>\$-0-</u>

* **Note:** The amount of credit for state and local sales tax paid to another state is limited to the amount of Wisconsin state and county use tax imposed on that same property or service.

- c. Individual M should report the additional Wisconsin state and county use tax due as follows:

» **Computation of Additional State Use Tax Due**

$$\frac{\text{Additional State Use Tax Due } (\$100)}{\text{State Tax Rate } (.05)} = \text{Measure of State Use Tax Due } (\$2,000)$$

The additional Wisconsin state use tax due by Individual M on the purchase of the boat (\$100) should be entered in Section 3, line 4 of Form 9400-193 "Boat Registration and Titling Application" (Rev. 12-91), at the time the boat is registered in Wisconsin.

» **Computation of Additional County Use Tax Due**

$$\frac{\text{Additional County Use Tax Due } (\$-0-)}{\text{County Tax Rate } (.005)} = \text{Measure of County Use Tax Due } (\$-0-)$$

Since the purchase of the boat by Individual M was subject to a local tax in State N which was equal to or greater than the county use tax due in Wisconsin, the local sales tax paid to the other state is used to reduce the county use tax due in Wisconsin to zero. No entry is required to report the credit claimed for local sales taxes paid to another state which offset the county use tax due in Wisconsin.

Example 8: Other State's State and Local Sales Tax Improperly Paid

Facts 8:

- Company O, located in Wisconsin, purchases \$200 of office supplies from Company Q located in State P.

- The office supplies are shipped by common carrier from Company Q to Company O's offices located in a Wisconsin county that has adopted the 0.5% county sales and use tax, but has not adopted the 0.1% stadium sales and use tax.
- Company Q charges State P's 6% state sales tax (\$200 x 6% = \$12) and State P's 0.5% local sales tax (\$200 x 0.5% = \$1) on the transaction.

Questions 8:

- May the 6% state sales tax and 0.5% local sales tax paid to State P be claimed as credits against the 5% Wisconsin state and 0.5% county use tax due?
- What amount of Wisconsin state and county use tax must be paid to Wisconsin on this transaction?
- How should Company O report the additional use tax due in Wisconsin on this transaction?

Answers 8:

- No. State P's state and local sales taxes paid on this transaction may not be claimed as credits under secs. 77.53(16) and 77.71(2), Wis. Stats., respectively, against the 5% Wisconsin state and 0.5% county sales tax due because the tax was not **properly** owed to State P. Company Q should not charge State P's state and local sales tax on this transaction because the sale occurred in Wisconsin.

To obtain a refund of the State P's state and local sales tax improperly imposed on the transaction, Company O should contact Company Q.

- Company O must pay the 5% Wisconsin state use tax (\$10) and the 0.5% Wisconsin county use tax (\$1) due on this transaction.
- Company O should report the Wisconsin state and county use tax due as follows:

» **Computation of State Use Tax Due**

Purchase Price of Office Supplies		State Tax Rate		State Use Tax Due
(\$200)	x	(5%)	=	(\$10)

The measure of additional Wisconsin state use tax due by Company O on the purchase of the office supplies (\$200) should be entered on line 17 of the Wisconsin Sales and Use Tax Return.

» **Computation of Additional County Use Tax Due**

Purchase Price of Office Supplies		County Tax Rate		County Use Tax Due
(\$200)	x	(0.5%)	=	(\$1)

The measure of additional Wisconsin county use tax due by Company O on the purchase of the office supplies (\$200) should be entered on Schedule CT, column B of the Wisconsin Sales and Use Tax Return, on the applicable county's line.

Example 9: Other State's State or Local Sales or Use Tax Imposed AFTER Wisconsin State or County Sales or Use Tax Imposed**Facts 9:**

- Company R, located in Wisconsin, purchases materials for \$5,000 from Supplier S located in State T. No sales or use tax was paid on the purchases of those materials.
- The materials are stored in Wisconsin in a county that has adopted the 0.5% county sales and use tax, but which has not adopted the 0.1% stadium sales and use tax.
- Company R pays the 5% Wisconsin state use tax (\$250) and the 0.5% county use tax (\$25) since the materials are stored in Wisconsin.
- Company R transports the materials in Company R's trucks to State T and uses the materials in a real property construction activity.
- Company R is required to pay State T's state use tax (\$5,000 x 6% = \$300), since the materials were consumed in State T in a real property construction activity.

Question 9: May State T's 6% state use tax be claimed as a credit against the 5% Wisconsin state use tax due?

Answer 9: No. State T's 6% use tax paid may not be claimed as a credit under sec. 77.53(16), Wis. Stats., against the 5% Wisconsin state use tax due on the materials stored in Wisconsin because the Wisconsin taxes were properly incurred **before** State T's taxes were imposed.

Example 10: Other State's Sales or Use Tax Paid on a Transaction Subject to Wisconsin State and County SALES Tax (not USE tax)**Facts 10:**

- Company U, located in State V, purchases materials for \$1,000 from Supplier W who is also located in State V.
- Company U stores the materials in State V before they are transported to Wisconsin in Company U's trucks for use in a job in a Wisconsin county that has adopted the 0.5% county tax but has not adopted the 0.1% stadium sales and use tax.
- Company U is required to pay State V's 6% use tax (\$60) on its cost of the materials because the materials are stored in State V, and then used in a construction job, which under State V's law is considered a real property construction activity.
- Under Wisconsin law, the construction job is considered a sale and installation of tangible personal property (not a real property construction activity).
- Company U is liable for the 5% Wisconsin state **SALES** tax (\$100) and the 0.5% Wisconsin county **SALES** tax (\$10) on its retail selling price (\$2,000) of the materials and installation, to Customer X located in Wisconsin.

Questions 10:

- May State V's 6% state **sales or use** tax be claimed as a credit by Company U against the 5% Wisconsin state and 0.5% county **SALES** tax due?
- What amount of Wisconsin state and county **SALES** tax must be collected on this transaction?

Answers 10:

- No. State V's 6% state **sales or use** tax may not be claimed by Company U as a credit, under sec. 77.53(16), Wis. Stats., against the 5% Wisconsin state and 0.5% county **SALES** tax due on this transaction.

Since Wisconsin is imposing a **SALES** tax under sec. 77.52(1) on the transaction between **Company U and Customer X** (Company U's customer), and

State V is imposing a sales or use tax on the transaction between **Company U and Supplier W**, no credit for the sales or use tax paid to State V on the materials may be used to offset the **SALES** tax owed to Wisconsin.

Although there is a provision in Chapter 77, Wis. Stats., which allows the amount of Wisconsin state and county **USE** tax due under sec. 77.53, Wis. Stats., to be offset by the amount of state and local sales or use tax paid to another state, there is no provision in Chapter 77, Wis. Stats., which allows the sales or use tax paid to another state to be used to reduce the amount of Wisconsin **SALES** tax due under sec. 77.52(1), Wis. Stats..

- b. Company U must charge the 5% Wisconsin state **SALES** tax (\$100) and the 0.5% county **SALES** tax (\$10) on this transaction.

Example 11: State and Local Sales Tax Paid to Other State is Less Than Wisconsin State, County, and Stadium Use Tax

Facts 11:

- Company Y, located in Wisconsin, purchases equipment for \$1,000 from a supplier located in State Z.
- Company Y takes possession of the equipment in State Z.
- Company Y is properly charged State Z's 4% state sales tax (\$1,000 x 4% = \$40) and State Z's 0.3% local sales tax (\$1,000 x 0.3% = \$3).
- Company Y brings the equipment into Wisconsin for use in a county that has adopted both the 0.5% county sales and use tax, and the 0.1% stadium sales and use tax.

Questions 11:

- a. May the 4% state sales tax (\$40) and the 0.3% local sales tax (\$3) paid to State Z, be claimed as credits against the 5% Wisconsin state, 0.5% county, and 0.1% stadium use tax due?
- b. What amount of Wisconsin state, county, and stadium use tax must be paid to Wisconsin on this transaction?

- c. How should Company Y report the additional use tax due in Wisconsin on this transaction?

Answers 11:

- a. Yes. The amount of state sales tax paid to State Z (\$40), may be claimed as a credit under sec. 77.53(16), Wis. Stats., against the 5% Wisconsin state use tax due. The amount of local sales tax paid to State Z (\$3) may be claimed as a credit under sec. 77.71(2), Wis. Stats., against the 0.5% county and 0.1% stadium use tax due.
- b. The net amount of Wisconsin state, county, and stadium use tax due is computed as follows:

State Use Tax	
Wisconsin Use Tax Due	\$50 (\$1,000 x 5%)
Less: State Z's Tax Paid	<u>40</u> (\$1,000 x 4%)
Net Tax Due to Wisconsin	<u>\$10</u>

Since the local tax paid to State Z (\$3) is less than the **combined** county and stadium use tax due in Wisconsin, (\$1,000 x 0.6% = \$6), the credit for the local sales and use tax paid to State Z must be allocated between the county and stadium use tax due to Wisconsin. An allocation method acceptable to the department is as follows:

» Amount Allocated to County Tax

Local Tax Paid to State Z	x	5/6 *	=	Local Tax Allowed as Credit Against County Tax
(\$3)		(0.8333)		(\$2.50)

» Amount Allocated to Stadium Tax

Local Tax Paid to State Z	x	1/6 *	=	Local Tax Allowed as Credit Against Stadium Tax
(\$3)		(0.1667)		(\$0.50)

- * The 5/6-1/6 allocation is used because 5/6 of the combined county and stadium use tax due (0.5% county tax rate + 0.1% stadium tax rate = 0.6%) results from the county tax and 1/6 of the combined county and stadium use tax due results from the stadium use tax due.

	State Use Tax	County Use Tax
Wisconsin Use Tax Due	\$5.00 (\$1,000 x .5%)	\$1.00 (\$1,000 x .1%)
Less: State Z's Tax Paid	<u>2.50</u> (See above)	<u>0.50</u> (See above)
Net Tax Due to Wisconsin	<u>\$2.50</u>	<u>\$0.50</u>

- c. Company Y should report the additional Wisconsin state, county, and stadium use tax due as follows:

» **Computation of Additional State Use Tax Due**

$$\frac{\text{Additional State Use Tax Due (\$10)}}{\text{State Tax Rate (.05)}} = \text{Measure of State Use Tax Due (\$200)}$$

The measure of additional state use tax due (\$200) should be entered on line 16 of the Wisconsin Sales and Use Tax Return.

» **Computation of Additional County Use Tax Due**

$$\frac{\text{Additional County Use Tax Due (\$2.50)}}{\text{County Tax Rate (.005)}} = \text{Measure of County Use Tax Due (\$500)}$$

The measure of additional county use tax due (\$500) should be reported on Schedule CT, column B of the Wisconsin Sales and Use Tax Return, on the applicable county's line.

» **Computation of Additional Stadium Use Tax Due**

$$\frac{\text{Additional Stadium Use Tax Due (\$0.50)}}{\text{County Tax Rate (.001)}} = \text{Measure of Stadium Use Tax Due (\$500)}$$

The measure of additional stadium use tax due (\$500) should be reported on Schedule CT, column D, of the Wisconsin Sales and Use Tax Return, on the applicable county's line.

5 Farming Exemption — Containers for Hay or Silage

Statutes: Section 77.54(3m), Wis. Stats. (1993-94)

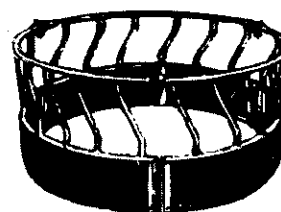
Law: Section 77.54(3m), Wis. Stats. (1993-94), provides an exemption from Wisconsin sales and use tax for containers for fruits, vegetables, grain, and animal wastes used exclusively in the business of farming.

Question: Are containers for hay or silage, which are used exclusively in the business of farming, exempt from Wisconsin sales and use tax under sec. 77.54(3m), Wis. Stats. (1993-94)?

Answer: Yes. Containers for hay or silage qualify for exemption under sec. 77.54(3m), Wis. Stats. (1993-94), if used exclusively in farming.

Examples of containers which qualify if used exclusively in farming include:

- Plastic bags, plastic sleeves, and plastic sheeting used to contain hay or silage.
- Round bale feeders used to hold hay. (Round bale feeders are portable round containers which hold hay. The hay is accessible to livestock through openings in the feeder.)



round bale feeder

□

6 Manufacturing Exemptions — Effect of Cherney Decision

Statutes: Section 77.54(2), (6)(a), (6m), and (6r), Wis. Stats. (1993-94)

Wis. Adm. Code: Sections Tax 11.39(2) (October 1995 Register), Tax 11.40 (April 1994 Register), and Tax 11.41 (March 1991 Register)

Background: The Wisconsin Tax Appeals Commission has held in the case of *Cherney Microbiological Services, Inc. vs. Wisconsin Department of Revenue* (94-S-209, April 23, 1996, revised July 15, 1996), that a testing laboratory was entitled to claim exemption from Wisconsin sales or use tax on certain purchases under sec. 77.54(2), Wis. Stats. The Commission explained that virtually all of the quality control tests performed by Cherney were on samples supplied by manufacturers and, since the department has ruled that testing when performed by a manufacturer is part of the manufactur-

ing process, Cherney was entitled to claim exemption on those purchases, even though it was not itself a manufacturer.

The department filed a Notice of Nonacquiescence dated July 22, 1996, with respect to a portion of the decision.

Question 1: What effect does the Notice of Nonacquiescence filed by the department have on the conclusions reached by the Wisconsin Tax Appeals Commission in the *Cherney* decision?

Answer 1: The Notice of Nonacquiescence filed by the department in response to the *Cherney* decision applies **only** to that portion of the decision that allowed exemption from sales or use tax for (a) equipment and (b) items (e.g., maps, books, and uniforms) not incorporated, consumed, or destroyed in performing testing services on work-in-process samples for manufacturers.

Question 2: What is the department's position as a result of the *Cherney* decision and the department's filing of a Notice of Nonacquiescence as they pertain to the sales and use tax exemptions relating to manufacturing?

Answer 2: The following describes the department's position as a result of the *Cherney* decision and the Notice of Nonacquiescence filed by the department.

A. Consumables

Under sec. 77.54(2), Wis. Stats. (1993-94), persons performing services, where those services would fall within the scope of manufacturing if they were performed by a manufacturer in manufacturing tangible personal property destined for sale, are entitled to claim exemption from Wisconsin sales or use tax for tangible personal property (except fuel and electricity) consumed or destroyed or losing its identity in performing those services.

Exemption from sales or use tax applies to the property consumed or destroyed or losing its identity, even though the service provider is not a manufacturer (i.e., does not produce a new item with a different form, use, or name from existing materials through use of machinery by a process popularly regarded as manufacturing). The services must be performed on tangible personal property destined for sale.

Tangible personal property consumed or destroyed or losing its identity in the performance of services outside the scope of manufacturing is not exempt from Wisconsin sales or use tax.

The scope of manufacturing is defined in sec. Tax 11.39(2), Wis. Adm. Code (October 1995 Register) and through Commission and Court decisions.

Note: Although the *Cherney* decision involved a testing laboratory, the position described in Part A above also applies to other service providers who meet the conditions described in Part A above.

B. Machinery and Equipment

Section 77.54(6)(a), Wis. Stats. (1993-94), requires that for exemption from sales or use tax to apply to machinery and specific processing equipment, they must be exclusively and directly **used by a manufacturer** in manufacturing tangible personal property. It is still the department's position that machinery and equipment used by testing laboratories and other service providers are not exempt from Wisconsin sales or use tax, if the laboratories or other service providers are not manufacturers of tangible personal property (i.e., do not produce a new item with a different form, use, or name from existing materials through use of machinery by a process popularly regarded as manufacturing). □



Private Letter Rulings

"Private letter rulings" are written statements issued to a taxpayer by the department that interpret Wisconsin tax laws to the taxpayer's specific set of facts. Any taxpayer may rely upon the ruling to the same extent as the requestor, provided the facts are the same as those set forth in the ruling.

The number assigned to each ruling is interpreted as follows: The "W" is for "Wisconsin," the first two digits are the year the ruling becomes available for publication (80 days after the ruling is issued to the taxpayer), the next two digits are the week of the year, and the last three digits are the number in the series of rulings issued that year. The date following the 7-digit number is the date the ruling was mailed to the requestor.

Certain information contained in the ruling that could identify the taxpayer requesting the ruling has been deleted. Wisconsin Publication 111, "How to Get a Private Letter Ruling From the Wisconsin Department of Revenue," contains additional information about private letter rulings.

The following private letter rulings are included:

Sales and Use Taxes

Exemptions — governmental
units — fundraising
W9639005 (p. 42)

Resale, purchase for — electric-
ity or steam generator
W9648006 (p. 43)

✱ W9639005, July 8, 1996

Type Tax: Sales and Use

Issue: Exemptions — governmental
units — fundraising

Statutes: Section 77.54(7m) and
(9a), Wis. Stats. (1993-94)

Wis. Adm. Code: Section Tax
11.35(1)(d) (June 1991 Register)

This letter responds to your request for a private letter ruling regarding the Wisconsin sales tax treatment of the gross receipts the XYZ Organization (Organization) will be receiving from parking and camping fees charged at the ABC Event (Event).

Per your original request and the additional information you provided to the department in your subsequent letter, the facts are as follows:

Facts

- The Organization is a part of the Town of XYZ.
- The Town of XYZ (which includes the Organization) does not hold a Wisconsin seller's permit.
- The Town of XYZ (which includes the Organization) does not make any sales of tangible personal property or taxable services, other than those sales made at the Event and at one one-day fundraiser which benefits the Organization.
- The Town of XYZ (which includes the Organization) is not the organizer or promoter of the Event.
- Company A, a separate legal entity which is not a part of the Town of

XYZ, organizes and promotes the Event.

- Admission to the Event is limited to those persons who have purchased tickets from Company A.
- The Town of XYZ (which includes the Organization) does not receive any of the admissions paid to Company A by persons attending the Event.
- In addition to paying the admission to Company A, some persons attending the Event pay an additional fee for camping and parking at the Event.
- There are three different types of camping fees — Reserved Main Grounds, Open Main Grounds, and Overflow.
- The "Reserved Main Grounds" camping fees are collected by Company A. Company A pays the Wisconsin sales tax on these fees and also pays a portion of these fees to the Organization.
- The Organization collects the "Open Main Grounds" and "Overflow" camping fees. These fees are kept by the Organization.
- The Organization also collects the parking fees during the Event. These fees are kept by the Organization.

Request

You ask whether the Organization is required to collect Wisconsin sales tax on the receipts from: (1) the "Open Main Grounds" camping fees, (2) the "Overflow" camping fees, and (3) the parking fees, which the Organization collects during the Event.

Ruling

Based on the Facts above, the Organization is not required to collect Wisconsin sales tax on their gross receipts received from (1) the "Open Main Grounds" camping fees, (2) the "Overflow" camping fees, and (3) the parking fees, which the Organization collects during the Event.

Analysis

Section 77.54(7m), Wis. Stats. (1993-94), provides an exemption from sales tax for "Occasional sales of tangible personal property or services, including but not limited to admissions or tickets to an event; by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization; not involving entertainment for which payment in the aggregate exceeds \$300 for performing or as reimbursement of expenses unless access to the event may be obtained without payment of a direct or indirect admission fee conducted by the organization if the organization is not engaged in a trade or business and is not required to have a seller's permit. For purposes of this subsection, an organization is engaged in a trade or business and is required to have a seller's permit if its sales of tangible personal property and services, not including sales of tickets to events, and its events occur on more than 20 days during the year, unless its receipts do not exceed \$15,000 during the year..."

Section Tax 11.35(1)(d), Wis. Adm. Code, June 1991 Register, provides that "...A governmental unit described in s. 77.54(9a)(a) through (e), Stats., is considered a 'similar organization'..." for purposes of the exemption provided in sec. 77.54(7m), Wis. Stats. (1993-94).

Since the Organization is part of the Town of XYZ, it is part of a governmental unit and therefore is a "similar organization" for purposes of the occasional sales exemption provided in sec. 77.54(7m), Wis. Stats. (1993-94).

The gross receipts the Organization receives from (1) "Open Main Grounds" camping fees, (2) "Overflow" camping fees, and (3) parking fees, are not subject to Wisconsin sales tax because the Town of XYZ (which includes the Organization), meets all of the following conditions:

- 1) The Town of XYZ is not engaged in a trade or business. The Town of XYZ is not engaged in a trade or business if it meets at least one of the following:
 - a) Its sales of otherwise taxable tangible personal property or services or its events occur on 20 days or less during the calendar year, regardless of the dollar amount of sales, or
 - b) Its taxable gross receipts for the calendar year are \$15,000 or less, regardless of the number of days on which its sales or events occur. Nontaxable gross receipts are not included for purposes of the \$15,000 gross receipts test.
- 2) Entertainment is not involved at an event for which payment in the aggregate exceeds \$300, unless access to the event may be obtained without the payment of a direct or indirect admission to the organization conducting the event.
- 3) The organization does not have or is not required to have a Wisconsin seller's permit, except for conducting bingo.

Condition 1 above is met because the Town of XYZ (which includes the Organization), does not make sales of taxable tangible personal property or hold events involving entertainment for which an admission is charged on 20 days or more during the calendar year.

Condition 2 is met because the Town of XYZ (which includes the Organization), is not the organization "conducting" the Event. Company A is the

organization conducting the Event. Since the Town of XYZ (which includes the Organization) is not the organization charging the admission to the Event, and does not receive any portion of the admissions to the Event, the Organization is **not** the organization conducting the event which includes entertainment, for which payment in the aggregate exceeds \$300 for performing or for reimbursement of expenses.

Condition 3 is met because the Town of XYZ (which includes the Organization), based on the facts provided in this ruling, does not hold and is not required to hold a Wisconsin seller's permit. □

✳ **W9648006**, September 10, 1996

Type Tax: Sales and Use

Issue: Resale, purchase for — electricity or steam generator

Statutes: Sections 77.52(2)(a)10 and 77.54(9a), Wis. Stats. (1993-94)

Wis. Adm. Code: Sections Tax 11.57(4)(b) (April 1993 Register), and 11.68(4)(b) and (6)(a) (April 1994 Register)

This letter responds to your request for a private letter ruling.

Facts

Company ABC (Company) is a limited liability company. Company has entered into a contract with the Wisconsin State Agency X (State) to perform a turnkey construction project under which Company will design and build a replacement generator (Generator) for the Company DEF Plant (Plant) in Wisconsin.

Company will purchase a Generator from a vendor. Title to the Genera-

tor will pass from the vendor to Company. Company will install Generator. When the work is finished and the Generator is fully operational, Company will provide the State with a bill of sale for the Generator, passing title to the State. Company will be responsible for training State personnel to operate the Generator, preparing an operating manual, and working out all bugs in the system before the project is complete and Company receives final payment.

Processing functions performed at the Plant are as follows. Boilers at the Plant produce steam. A portion of the steam produced is used to heat buildings at State Agency B (Agency). The remaining portion of the steam is diverted to the Generator to produce electricity. The electricity is routed to substations at Agency for use by Agency.

Request

You ask the following questions:

1. Is the sale of the Generator by the vendor to Company a sale of tangible personal property not subject to Wisconsin sales or use tax because it is for resale as tangible personal property?
2. Is the sale of the Generator by Company to the State a sale of tangible personal property exempt from Wisconsin sales or use tax under sec. 77.54(9a), Wis. Stats. (1993-94)?

Ruling

1. The sale of the Generator by the vendor to Company is a sale of tangible personal property not subject to Wisconsin sales or use tax because it is for resale as tangible personal property.

Company is not engaged in real property construction when it

installs the Generator for the State. The Generator remains tangible personal property upon installation.

2. The sale and installation of the Generator by Company to the State is exempt from Wisconsin sales or use tax.

Analysis

1. Section 77.52(1), Wis. Stats. (1993-94), imposes a Wisconsin sales tax on the sale of tangible personal property at retail in Wisconsin.

Section 77.51(14)(intro.), Wis. Stats. (1993-94), provides that a "retail sale" does not include the sale of tangible personal property that will be resold as tangible personal property.

Section Tax 11.68(4)(b), Wis. Adm. Code (April 1994 Register), provides that when property is installed primarily to provide service to a building or structure and is essential to the use of the building or structure, it is a real property improvement. However, when similar property is installed in a manufacturing plant to perform a processing function, it may, as machinery, retain its status as personal property.

Section Tax 11.68(6)(a)4, Wis. Adm. Code, further provides that the following property remains tangible personal property after installation: machinery, including safety attachments, equipment, tools, appliances, process piping, and wiring, used exclusively by manufacturers, processors and others performing a processing function with the items.

Section Tax 11.57(4)(b), Wis. Adm. Code (April 1993 Register),

provides that the sale of a steam generator and other machines and equipment exclusively and directly used in manufacturing electricity or steam are exempt from Wisconsin sales or use tax.

The Generator purchased by Company is used to perform a processing function (i.e., manufacturing electricity) and remains tangible personal property after installation. Since the Generator will be sold as tangible personal property by Company, the sale of that Generator by the vendor to Company is not a retail sale, as defined in sec. 77.51(14)(intro.), Wis. Stats. (1993-94), and is not subject to Wisconsin sales or use tax.

Company should provide the vendor with a properly completed resale certificate.

2. Section 77.54(9a)(a), Wis. Stats. (1993-94), provides an exemption from Wisconsin sales or use tax for sales of tangible personal property or taxable services to the state of Wisconsin or any agency thereof.

Section 77.52(2)(a)10, Wis. Stats. (1993-94), provides, in part, that the service to tangible personal property is subject to Wisconsin sales or use tax unless the property being serviced is exempt from Wisconsin sales or use tax.

The sale of the Generator to the State is a sale of tangible personal property to an agency of the state of Wisconsin and, therefore, is exempt from tax. The service to the Generator (i.e., installation) is not subject to Wisconsin sales or use tax because the property being serviced (i.e., Generator) is exempt from tax. □